Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/03400/2019

THE IMMIGRATION ACTS

Heard remotely via Skype for Business	**Decision & Reasons Promulgated**
On 12 March 2021	**On 24 March 2021**

Before

UPPER TRIBUNAL JUDGE LANE

Between

MANJINDER SINGH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mr Johal
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, who was born on 24 December 1987, is a citizen of India. He appealed to the First-tier Tribunal against a decision of the Entry Clearance Officer dated 8 January 2018, refusing him entry clearance to the United Kingdom for settlement. The finding First-tier Tribunal, in a decision promulgated on 28 January 2020, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The parties agreed before the First-tier Tribunal that third party financial support would be forthcoming from the appellant's brother in law. It was accepted by the appellant [7] that the appellant could not succeed under the Immigration Rules as he should be excluded on the ground of unsuitability; before the appellant was removed to India in November 2015 (he remains living abroad), he worked illegally whilst an overstayer for 7 years. The appellant and his United Kingdom sponsor entered a religious marriage in India in November 2016. They have one child, a daughter born in the United Kingdom in February 2014.

3. The judge considered the appeal on Article 8 ECHR grounds. He found [20] that it would be reasonable for the appellant's daughter and wife to enjoy family life with him by moving to live in India.

4. The judge's analysis is problematic. At [12], he refers to the 'extremely thorough and helpful' report of Carol Norcott, an independent social worker. He records that Ms Norcott considered that the family living in India would not be 'viable' and 'would cause too much distress' but he does not say why she reached that conclusion or on what evidence. The judge finds that the report's conclusion is 'not necessarily the case' but fails to give any reasons. The judge concludes this paragraph by finding that the continued separation of the family would cause 'hardship' whilst for the family to relocate to India would cause 'a great deal of hardship'. Both findings are light on hard reasoning. Moreover, notwithstanding that the he finds that living in India will have harsher consequences for the family than remaining separated, the judge goes on, without giving clear reasons, at [20] to find that the option of living in India would be 'reasonable.' The judge's findings are clear enough but at crucial points in his analysis, where reasons for his findings are required, he has failed to provide these. I am not satisfied that it has been clearly explained to the appellant why he lost this appeal.

5. I also note the comments made by Upper Tribunal Judge Grubb who granted permission. The First-tier Tribunal judge has concluded that it would be reasonable for the family to live in India without addressing the fact that this is a mixed religious marriage; the appellant is a Sikh whilst the sponsor is a Muslim. It is unclear whether the judge has considered the difficulties which that fact may cause the family on relocation to India. If he has discounted the difficulties, the judge has not explained why.

6. I find that, for the reasons discussed above, the decision of the First-tier Tribunal should be set aside. Mr Johal, who appeared for the appellant before the First-tier Tribunal and Upper Tribunal, asked me to remake the

decision on the existing evidence in the Upper Tribunal. I do not propose to do that. Nearly 18 months have passed since the hearing in the First-tier Tribunal; this is a significant period, especially in the life of the appellant's young daughter. Further fact-finding is required to bring evidence of the family's circumstances up to date. That task is better undertaken in the First-tier Tribunal to which this appeal is returned for it to remake the decision. Finally, Mr Johal pointed out that the appellant and sponsor's child is now over 7 years old. I draw his attention to Judge Grubb's comment at [5] of the grant of permission regarding section 117B(6) of the 2002 Act (as amended).

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that Tribunal to remake the decision at a hearing *de novo.* **(Not Judge I F Taylor; Birmingham (Nottingham) hearing centre; First-tier Tribunal to decide if face to face or remote hearing; no interpreter; no agreed date so list on first available date; 1.5 hours)**

Signed Date 12 March 2021
Upper Tribunal Judge Lane