IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003019

First-tier Tribunal No: HU/00347/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 25th of January 2024

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

ENTRY CLEARANCE OFFICER

Appellant

and

SIMRANDEEP SINGH
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr T Lindsay, Senior Home Office Presenting Officer
For the Respondent: Mrs Mathuru, the sponsor

Heard at Field House on 19 January 2024

DECISION AND REASONS

1. Although this is an appeal by the Entry Clearance Officer ('ECO'), I will refer to the parties as they were before the First-tier Tribunal. The appellant is a citizen of India born on 18 July 1985. His appeal against the refusal of entry clearance under Appendix FM of the immigration rules was allowed by First-tier Tribunal Judge Sweet ('the judge') on human rights grounds on 27 June 2023.

2. The ECO (respondent) appealed on the grounds that the appellant was subject to an extant deportation order having been convicted of possession and supply of class A drugs and sentenced to 3 years and 6 months' imprisonment on 15 January 2015. The judge failed to make findings in respect of paragraph 391 of the immigration rules and the fact that leave to enter cannot be granted until the deportation order is revoked. The grounds also submit the judge failed to have regard to the specified evidence requirements and to give adequate reasons for finding the financial requirements were met. Permission to appeal was granted by Upper Tribunal Judge Gleeson on 13 November 2023 on all grounds.

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The judge's decision

3. The judge heard evidence from the sponsor and made the following factual findings. The appellant married the sponsor in India on 5 January 2018. The appellant had previously been married and divorced in July 2017. The sponsor had previously been married and divorced in April 2017. She has two children from her first marriage. The appellant applied for entry clearance on 28 August 2022 to join the sponsor in the UK. The application was refused because the appellant's exclusion was conducive to the public good and 10 years had not elapsed since he was sentenced to 3 years and 6 months' imprisonment on 15 January 2015.

4. The judge referred to the appellant's witness statement and acknowledged that there was an outstanding appeal against the deportation order dated 14 February 2015. The appellant was deported on 10 August 2015 and his previous appeal against the refusal of entry clearance dated 28 February 2019 was withdrawn. The appellant made an application to revoke the deportation order on 19 August 2020.

5. The judge made the following relevant findings:

> "14. It seems to me that this is a case where the decision against the deportation order should be made as soon as possible, if not yet made, because it is manifestly unfair and disproportionate for the appellant to be kept away from his spouse in the UK (and her children), particularly when she is suffering a serious deteriorating eye condition, which is causing a state of semi-blindness and is fully described in various letters from Moorfields Eye Hospital (Professor Andrew Webster). This is a case, in my view, which, if the appellant can meet the financial requirements (details of the outstanding financial information referred to in the refusal letter has now been provided in the form of a rental document from the local authority), this entails a breach of the appellant's Article 8 ECHR rights, and therefore forms an exception to the automatic refusal under S-EC.1.4 of Appendix FM.
>
> 15. In these circumstances, I allow the appeal, subject to the outcome of the outstanding deportation appeal and financial investigations set out above."

Submissions

6. The respondent relied on the grounds and submitted the judge had erred in law in allowing the appeal on a provisional basis. The judge found that the refusal of entry clearance was disproportionate if the financial requirements were met but there was insufficient evidence to show that the financial requirements were in fact met. The judge failed to deal with the deportation order and make findings relevant to Article 8. The respondent cannot grant leave to enter while the deportation order is in force. The judge failed to consider the immigration rules on revocation. On a proper application of section 117C of the 2002 Act, the appellant could not succeed under Article 8. The deportation order had not been revoked and 10 years had not passed since the appellant was sentenced.

7. The sponsor was partially sighted and had no peripheral vision. I confirmed at the outset of the hearing that she could follow and take part in the proceedings without reasonable adjustments. I explained the relevant legal provisions and the respondent's submissions to the sponsor. She appreciated the relevance of the deportation order and questioned the delay in deciding the application for revocation of the deportation order. Mr Lindsay assured her he would make

enquiries. The sponsor explained the difficulties she and her children faced in the UK without the appellant. She accepted her income was insufficient to meet the financial requirements but that the appellant would support her and obtain employment on arrival in the UK.

Conclusions and reasons

8. It is not in dispute that the appellant is the subject of a deportation order and his application for revocation remains outstanding. The appellant cannot satisfy the suitability requirements of the immigration rules because he has been convicted of an offence, sentenced to a term of imprisonment of 3 years and 6 months and a period of 10 years has not passed since the end of his sentence. In addition, it is accepted the appellant cannot meet the financial requirements of the immigration rules.

9. I find the judge has erred in law in failing to take into account the deportation order and the fact that the appellant could not satisfy the immigration rules when assessing proportionality under Article 8. The judge also erred in law in allowing the appeal on a provisional basis. For these reasons, the respondent's appeal is allowed. I set aside the decision of 27 June 2023 and remake it.

10. The deportation of foreign criminals is in the public interest. The appellant is a foreign criminal and is subject to a deportation order. A period of 10 years has not passed since the end of his sentence. The appellant cannot satisfy the exceptions in section 117C of the 2002 Act. In addition, he cannot satisfy the suitability and eligibility requirements of Appendix FM of the immigration rules. I attach significant weight to the public interest.

11. In carrying out the balancing exercise in the assessment of proportionality under Article 8, I take into account the appellant's and the sponsor's family and private life. I rely on the factual findings in paragraphs 3 and 4 above. The appellant married the sponsor in India in 2018 and the sponsor has visited him in India every year, save during Covid restrictions. The sponsor has a permanent, untreatable and progressive form of blindness and is severely sight impaired. Her children assist her and the appellant would be able to provide much needed support if he was granted entry clearance.

12. Taking into account all the circumstances and looking at the evidence in the round, the appellant's Article 8 rights and those of the sponsor and her children cannot outweigh the public interest in this case. The refusal of entry clearance is proportionate. The appellant's appeal against the refusal of entry clearance is dismissed.

Notice of Decision

The ECO's appeal is allowed and the decision promulgated on 27 June 2023 is set aside.
The decision is remade as follows: The appellant's appeal is dismissed.

J Frances

Judge of the Upper Tribunal
Immigration and Asylum Chamber

22 January 2024