



IAC-FH-NL-V1

**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/04994/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 8<sup>th</sup> March 2016**

**Decision & Reasons  
Promulgated  
On 8<sup>th</sup> April 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

**Between**

**MR SANDEEPRAO CHIMEA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr D Aihe, instructed by Wisestep Immigration Specialists  
For the Respondent: Mr P Nath, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a citizen of Mauritius, appealed to the First-tier Tribunal against the decision of the Secretary of State dated 16<sup>th</sup> January 2015 to refuse his application for leave to remain as the spouse of someone present and settled in the United Kingdom. First-tier Tribunal Judge

O'Garro dismissed the appeal under the Immigration Rules and under Article 8 of the European Convention on Human Rights and the Appellant now appeals with permission to this Tribunal.

2. The background to this appeal is that the Appellant entered the United Kingdom as a student on 5<sup>th</sup> September 2007 and was thereafter granted an extension of leave to remain as a Tier 4 Student until 7<sup>th</sup> June 2014. His application for leave to remain as a spouse was refused on 22 November 2013 and he made a further application on 6<sup>th</sup> June 2014 on the basis of his marriage to a British citizen.
3. In the reasons for refusal letter the Respondent refused the application under Appendix FM S-LTR1.6 which is the suitability requirements which states that the presence of the applicant in the United Kingdom is not conducive to the public good because their conduct (including convictions which do not fall within paragraphs S-LTR1.3-1.5), character, associations or other reasons make it undesirable to allow them to remain in the United Kingdom. The Secretary of State stated that the Appellant failed to declare that he had a conviction on 29<sup>th</sup> May 2014 at East London Magistrates' Court when he was charged on 4<sup>th</sup> May 2014 with battery contrary to Section 39 of the Criminal Justice Act 1988 and that he had a conviction for battery on 9<sup>th</sup> May 2014. The Secretary of State concluded that the Appellant met the requirements of S-LTR1.6. The Secretary of State also went on to consider whether exception EX.1 of Appendix FM applied and concluded that, although relocating together to Mauritius may cause a degree of hardship for the Appellant's British partner, the Secretary of State was not satisfied that there are insurmountable obstacles in accordance with EX.1.2 preventing them from continuing their relationship in Mauritius and concluded that the Appellant failed to fulfil EX.1.1(b) of Appendix FM of the Rules.
4. In the reasons for refusal letter the Secretary of State also considered the Appellant's private life and concluded that the Appellant had not shown that there would be very significant obstacles to his integration into Mauritius if he were required to leave the United Kingdom because he spent twenty years in Mauritius, spent all his formative years in that country and he provided no evidence to show any problems with re-integrating in Mauritius to return to his family there and therefore concluded that the Appellant failed to meet the requirements of paragraph 276ADE(i)(vi) of the Rules.
5. The First-tier Tribunal Judge noted that the Appellant attended the hearing but was not called to give evidence and he said that his partner would not be attending the hearing. The judge noted that the Appellant's representative, Mr Aihe, explained that the Appellant's partner did not attend the hearing because in his view the issue before the Tribunal was very narrow which was in relation to the alleged failure to declare his conviction for assault. Mr Aihe contended before the First-tier Tribunal Judge that the Secretary of State's decision was wrong because the Appellant had actually declared his conviction. The judge considered the

suitability of requirements and concluded that it was clear that the Respondent could find an applicant unsuitable if his conduct which includes having any conviction makes it undesirable for him to remain in the UK. The judge noted that at the date of the decision the Appellant had a conviction for battery and that this was used by the Respondent in her decision that the Appellant's behaviour calls into question his character and/or conduct and the judge concluded that the Respondent's refusal on grounds of suitability is in accordance with the law.

6. The judge went on to consider paragraph 276ADE and concluded that the Appellant had provided no additional evidence to show that he will not be able to integrate if he returns to his country. The judge went on to consider Article 8 in accordance with the five step approach set out in the case of **R v SSHD ex parte Razgar [2004] UKHL 27**. The judge noted that the Appellant claims to be in a subsisting relationship with his partner but she did not attend the appeal hearing to show her support for his application nor did she provide a statement. The judge bore in mind that the Appellant was convicted of battery against his partner and had been living with his aunt at least up to the date of his conviction in June 2014 and concluded that, without the Appellant's partner's evidence to confirm that they are still in a subsisting relationship or any other evidence to show that the relationship is still subsisting, he was not satisfied that the Appellant and his partner are cohabiting with each other or that they are in a subsisting relationship. The judge therefore concluded that she was not satisfied that the Appellant has a family life in the UK. The judge accepted that the Appellant has a private life but concluded that it is proportionate to return the Appellant to Mauritius in the public interest.
7. The Appellant's grounds of appeal to the Upper Tribunal contend that, although the Home Office refused the application on the basis that the Appellant did not declare his convictions, he could not declare the convictions at the date of the application because he did not have the relevant information and that that information was provided following his application. It is submitted that the decision maker may have considered whether or not the gravity of the conviction of the Appellant or its sentence and duration was serious enough to justify refusal of leave in relation with the Immigration Directorate's instructions. It is contended that no emphasis is placed on the evidence that the Appellant received a community order and was not imprisoned. It is contended that the Appellant informed the Immigration Judge that his wife had formed the view that the issue at stake was narrow and she could not attend the hearing on the day and the Home Office did not challenge the subsistence of the Appellant's marriage and that therefore the judge erred in reaching this conclusion.

### **Error of Law**

8. Appearing before me Mr Aihe submitted that there is an error of law in relation to the disclosure of the conviction. I clarified the timeline with the parties and it appears that the Appellant was charged with battery on 4<sup>th</sup>

May 2014, he was convicted on 9<sup>th</sup> May 2014 and was sentenced on 29<sup>th</sup> May 2014. I note that the Appellant's application form was signed and dated by him on 27<sup>th</sup> May 2014. However I also further note that the consent by the third party was signed on 3<sup>rd</sup> June 2014 (Section 13) and I note that the reasons for refusal letter states that the application was submitted on 6<sup>th</sup> June 2014.

9. Mr Aihe submitted that the alleged failure to disclose the conviction goes to the suitability requirements and the Respondent's conclusions in relation to those requirements in the reasons for refusal letter and he submitted that the judge could have applied his discretion in light of the circumstances of the conviction. He submitted that the judge could have sent the decision back to the Secretary of State to review in light of the facts that the Appellant had in fact disclosed.
10. Mr Nath submitted that the judge adequately dealt with the issue of the conviction at paragraphs 15 and 16 of the decision and did go on to consider the issue of the suitability requirements under the five and ten year route. He submitted that this was a discretion before the Secretary of State and it is clear that the discretion was exercised properly. He submitted that the reasons for refusal letter dealt with both the issue as to the disclosure of the conviction and the conviction itself in concluding that the Appellant could not meet the suitability requirements and that the Secretary of State had dealt with this matter sufficiently.
11. I am satisfied that the judge made no error in relation to this matter. It is clear from the reasons for refusal letter that it is the conviction itself that the Secretary of State considered in relation to the suitability requirements and this is also clear from the judge's decision in relation to this issue. I find that it was open to the judge to find that the Respondent's refusal on grounds of suitability is in accordance with the law. It is not clear why the judge phrased her consideration of this part of her decision in terms of the Secretary of State's decision being 'in accordance with the law'. However in my view this is a matter of semantics in this case because the judge clearly found that it was reasonable to conclude that the Appellant's conviction calls into question his character. I am satisfied that it was open to the judge to consider the matter in this way.
12. I have considered whether it was the failure to disclose the conviction or sentence or it was the conviction itself that led to the decision on suitability. I am satisfied because of the timeline above that at the time the Appellant signed the application form he had not yet been sentenced but had been convicted. It is clear that the Secretary of State did understand that this related to one and the same conviction for battery and that it was open to the Secretary of State to conclude that the Appellant did not meet the suitability requirements in relation to this matter and that it was open to the judge to conclude as she did.
13. In relation to the Article 8 issue Mr Aihe has submitted that the judge's assessment was not correct because the judge went into the issue of the

relationship which was not raised in the refusal letter. However, the refusal letter dealt with the matter within the Immigration Rules. It is clear from the consideration of EX.1 that the Secretary of State considered issues around whether there were insurmountable obstacles preventing the Appellant and his partner continuing the relationship in Mauritius. That issue was therefore live before the Immigration Judge. Further, the Secretary of State had reached a conclusion in relation to paragraph 276ADE(1)(vi) as to whether there were 'very significant obstacles' to the Appellant returning to Mauritius. This also was a live issue before the judge. Further, the judge went on as he was obliged to do, to consider the appeal in relation to freestanding Article 8 and therefore all issues were open before the judge.

14. I find that it was open to the judge to conclude that there was no subsisting relationship between the Appellant and his partner based on the evidence or lack of evidence before the judge at the date of the hearing. The judge was obliged to make findings in relation to the evidence before her and did so. So in considering Article 8 the judge was entitled and indeed obliged to make a finding as to whether there was sufficient evidence to establish family life and the judge did so based on the evidence before her.
15. I conclude that the judge made no material error of law and the decision of the First-tier Tribunal Judge shall stand.

### **Notice of Decision**

The decision of the First-tier Tribunal judge did not contain a material error of law.

The decision of the First-tier Tribunal shall stand.

No anonymity direction is made.

Signed

Date 21 March 2016

Deputy Upper Tribunal Judge Grimes

### **TO THE RESPONDENT** **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 21 March 2016

Deputy Upper Tribunal Judge Grimes