



IAC-FH-CK-V1

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

Appeal Number: IA/47206/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 10 December 2015**

**Decision & Reasons Promulgated  
On 22 January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

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

Appellant

**and**

**MR FAIZAN USMAN KAZI  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Ms Willocks-Briscoe, Home Office Presenting Officer

For the Respondent: Ms J Rothwell, Counsel instructed by Fisher Jones Greenwood

**DECISION AND REASONS**

1. The claimant is a national of India born on 18 October 1986. He appealed against a decision by the Respondent dated 10 November 2014 refusing his application made on 4 April 2012 for leave to remain as a Tier 1 (Post-Study Work) Migrant and to remove him by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2008. He lodged an appeal on 21 November 2014 and his appeal came before Judge Steer of the First-tier Tribunal for hearing on 5 June 2013.

2. Following a concession by the claimant's representative at that time which was that his claim was on all fours with that in the case of Nasim (Raju: reasons not to follow?) [2013] UKUT 00610 (IAC) it was conceded that he could not succeed under paragraph 245FD of the Immigration Rules. Instead the claimant pursued a claim based upon Article 8 of the European Convention on Human Rights and this was due to the fact that he had been living with his partner since 2009. His partner was also a national of India but has been granted leave to remain until 2018 as a student.
3. The judge heard evidence from the claimant and also from his partner and she concluded that they were living together in a genuine and subsisting relationship since 2009; that they were credible and that the Appellant otherwise met the requirements for leave to remain as a partner under the family life provisions in the Immigration Rules. Therefore, she allowed the appeal in a decision promulgated on 3 July 2015.
4. On 8 July 2015, the Respondent sought permission to appeal in-time to the Upper Tribunal. The grounds in support of that application submitted that Judge Steer had made a material misdirection of law in that she had allowed the appeal on the basis that the claimant's relationship satisfied the requirements of LTR-P.1.1, i.e. cohabitation for two years prior to the application. However, this did not establish that the other provisions of Appendix FM had been met, including the requirements of Appendix FM-SE, nor had it been established that the financial requirements were satisfied with specified evidence or why paragraph EX.1 was decided in his favour.
5. Permission to appeal was granted by First-tier Tribunal Judge Grant-Hutchison on 7 October 2015 on the basis that it is arguable that the judge has misdirected herself in allowing the appeal under Appendix FM LTR-P.1.1 on the basis of the claimant's two year relationship with his partner, without considering the financial requirements or in the alternative why paragraph EX.1 falls in his favour.
6. At the hearing before me the claimant was represented by Ms Rothwell, who very fairly conceded at the outset that there had been a material error of law. Although she had not had sight of the grounds of appeal she pointed out that in any event the claimant could not qualify as a partner under the Immigration Rules as his partner upon whom his case rests is not settled. At the current time she has Tier 4 leave.
7. She further stated that there were other errors in that whilst the judge had referred to the claimant and his partner being different castes, in fact it was more complex than that in that the claimant is a Muslim youngest son and his partner is a Sikh, and the judge failed to make any findings upon this material issue.
8. It was agreed by both parties that due to the fact that the errors were fundamental to the decision of Judge Steer that essentially there needed to be a de novo hearing. The only findings I consider that could be

preserved from that decision are at [35] and that is that the claimant and his partner are credible and that they have been living together in a genuine and subsisting relationship since 2009.

**Notice of Decision**

The appeal by the Respondent is allowed and is remitted back to the First-tier Tribunal for a further hearing, with the finding at [35] of the decision of First-tier Tribunal Judge Steer set out at [8] above preserved.

No anonymity direction is made.

Signed

Date: 7 January 2016

Deputy Upper Tribunal Judge Chapman