



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/18700/2019(P)

THE IMMIGRATION ACTS

Decided under rule 34  
On 20 August 2020

Decision & Reasons Promulgated  
On 25 August 2020

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

HARPREET SINGH GILL  
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The Upper Tribunal sent directions on 30 June 2020, indicating a provisional view that in light of the need to take precautions against the spread of Covid-19 and the overriding objective, it would be appropriate in this case to determine the issue of whether the First-tier Tribunal's decision involved the making of an error of law and if so whether the decision should be set aside, without a hearing. Written submissions in accordance with those directions have been received by both parties, both of whom expressly accepted that the error of law issues were appropriate to determine without a hearing in this case.
2. In circumstances where no objections were made to the issues being determined without a hearing and where the parties have made written submissions; it is in the interests of justice to proceed to determine the error of law issues on the papers in light of the written submission available and the full appeal file.

3. The Appellant appeals with permission against the decision of First-tier Tribunal Judge Greasley promulgated on 3 March 2020, in which the Appellant's appeal against the decision to refuse his human rights claim dated 30 October 2019 was dismissed.
4. The Appellant is a national of India, born on 12 April 1975, who first came to the United Kingdom in August 2001 as a worker with valid leave to September 2001, following which he has remained unlawfully in the United Kingdom. The Appellant made an application for leave to remain on 31 October 2018 which was refused and a further application was made on the basis of private and family life on 16 July 2019; the refusal of which is the subject to his appeal.
5. The Respondent refused the application on the basis that although it was accepted that he was in a genuine and subsisting relationship with a person with indefinite leave to remain in the United Kingdom, the Appellant could not meet the immigration status or English language requirement in Appendix FM to the Immigration Rules. The exception in paragraph EX.1 was considered but not met as there were no insurmountable obstacles to family life being continued outside of the United Kingdom. The Appellant did not meet the requirements of paragraph 276ADE of the Immigration Rules for a grant of leave to remain on private life grounds and there were no exceptional circumstances to warrant a grant of leave to remain.
6. Judge Greasley dismissed the appeal in a decision promulgated on 3 March 2020 on all grounds. Whilst the Appellant's relationship in the United Kingdom was accepted, the First-tier Tribunal found that there were no insurmountable obstacles to family life being continued outside of the United Kingdom. In particular, it was not accepted that neither the Appellant's or Sponsor's family knew of their marriage given the evidence that the Appellant's brother knew about it and both families live in the same village in India and the inconsistent evidence about the Sponsor's contact with her family and because of the absence of any background country evidence to show that the marriage would be against local customs or norms as claimed. Further, that although the couple would face a degree of difficulty and disruption by moving to India, there were no insurmountable obstacles or significant difficulties which could not be overcome or would entail serious hardship, with medical treatment being available to the Sponsor and no evidence that IVF would not be available to the couple on return.

### **The appeal**

7. The Appellant appeals on the ground that the First-tier Tribunal erred in making adverse credibility findings against the Appellant and Sponsor, not following the approach set out in MM (DRC, plausibility) [2005] UKIAT 00019 by assessing them as witnesses, in particular by reference to their oral evidence.
8. In accordance with the directions sent on 30 June 2020, the Appellant made further written submissions which were, in substance, identical to the grounds of appeal without any further points being raised.

9. The Respondent's rule 24 notice, submitted in response to the directions dated 30 June 2020, opposes the appeal on the basis that the First-tier Tribunal properly directed itself and clearly considered all the evidence before it. In particular, the decision expressly refers to the written and oral evidence, as well as the documentary evidence and makes credibility findings based on the same at paragraph 23. It is submitted that the decision contains sound reasons for the adverse credibility findings made and contrary to the grounds of appeal, the evidence before the First-tier Tribunal was that the Appellant's brother knew of the marriage.

### **Findings and reasons**

10. The grounds of appeal are on the sole narrow point as to the First-tier Tribunal's assessment of credibility but fail to identify what specifically it is that the First-tier Tribunal failed to take into account or how it could possibly be material to the outcome of the appeal.
11. The First-tier Tribunal's decision includes express reference to the written and oral evidence of both the Appellant and the Sponsor in terms of its substance, together with the documentary evidence (the medical report in particular) and from paragraph 23 goes on to highlight the inconsistencies in the evidence as to whether any family members knew about the marriage and whether there was any contact with either family. The First-tier Tribunal found on the evidence that the Appellant's brother knew of the marriage and disapproved of it, that it was implausible that his wider family, nor that of the Sponsor, who all live in the same village, would not also know about it. The First-tier Tribunal also referred to the lack of background country material supporting the claim that the marriage would be disapproved of by the family or generally in the Punjab.
12. I have considered the evidence that was before the First-tier Tribunal and having read the decision as a whole, it is entirely unclear what it is that the Appellant asserts has not been taken into account when assessing credibility. There is no identification of anything in particular and on the relatively short evidence that was given, particularly in light of the nature of that evidence, there is nothing to suggest any wider consideration was required of, for example, the manner in which evidence was given that could possibly have been relevant to the assessment made. The adverse credibility findings were made primarily on the basis of inconsistencies in the evidence that was given. There is no error of law in the First-tier Tribunal's assessment of credibility or in the reasoned adverse credibility findings.
13. In any event, even if the Appellant and Sponsor were entirely credible about their family relationships (or lack thereof) and difficulties that would arise with them in their home village because of their marriage; there was simply no evidence before the First-tier Tribunal beyond mere assertion as to why they could not return anywhere else in India. There was no explanation for the claim that they would be destitute and nothing to suggest that neither would be able to secure employment or accommodation on return. The First-tier Tribunal expressly considered that the property in England could be sold, the Sponsor is a national of India with education and employment history as well as access to medical treatment on return; and both

the Appellant and Sponsor are resourceful people who remain familiar with the language, traditions and culture in India. On no rational view on these facts could the First-tier Tribunal have found that there would be insurmountable obstacles to family life continuing in India.

14. Further, once the factors in section 117B of the Nationality, immigration and Asylum Act 2002 are taken into account, on no rational view could the Appellant's removal be a disproportionate interference with his right to respect for private and family life. Therefore, even if the error of law as claimed was made out (which I do not find that it was), it could not have been material to the outcome of the appeal on the facts before the First-tier Tribunal.

### **Notice of Decision**

The making of the decision of the First-tier Tribunal did not involve the making of a material error of law. As such it is not necessary to set aside the decision.

The decision to dismiss the appeal is therefore confirmed.

No anonymity direction is made.

Signed *G Jackson*

Upper Tribunal Judge Jackson



Date 20<sup>th</sup> August 2020