Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/13854/2015

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke-on-Trent	**Decision & Reasons Promulgated**
On 16th November 2017	**On 10th January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

SONIA JASPAL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr N Ahmed, Counsel instructed by Syeds Solicitors
For the Respondent: Mr A McVeety, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a female citizen of India born on 6th March 1992. She first arrived in the United Kingdom on 16th April 2012 when she was given leave to enter as a Tier 4 (General) Student until 25th August 2014. After two unsuccessful applications for leave to remain, on 4th August 2015 the Appellant again applied for leave to remain on human rights grounds on the basis of her marriage to a British citizen namely Satpal Singh Hanspal. That application was refused for the reasons given in the Respondent's

refusal letter dated 2nd December 2015. The Appellant appealed and her appeal was heard by Judge of the First-tier Tribunal Austin (the Judge) sitting at Stoke-on-Trent on 19th December 2016. He decided to dismiss the appeal under the Immigration Rules and on human rights grounds for the reasons given in his Decision dated 16th January 2017. The Appellant sought leave to appeal that decision and on 20th September 2017 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained a material error on a point of law so that it should be set aside.

3. The Judge dismissed the appeal because according to what he wrote at paragraph 28 of the Decision it was conceded by the Appellant that she did not meet the requirements of the Immigration Rules. The Judge also found that the Appellant did not satisfy the requirements of Appendix FM of HC 395 because in the past she had overstayed by more than 28 days, which was not disputed by the Appellant, and therefore she failed to satisfy paragraph E-LTRP.2.2 of Appendix FM. Further, the Appellant had not provided the appropriate financial information as required by Appendix FM-SE. Although the Judge accepted that there was a genuine and subsisting relationship between the Appellant and her husband, the Judge did not accept that the Appellant provided full-time care for her parents-in-law. Therefore there were no significant difficulties to the Appellant and her husband continuing their family life outside the UK and the Appellant did not meet the requirements of paragraph EX.1.(b) of Appendix FM. The Judge then found that there were no exceptional circumstances allowing him to consider the Appellant's Article 8 ECHR rights outside of the Immigration Rules. However, the Judge went on to find that the decision of the Respondent did not amount to a disproportionate interference with the private and family life of the Appellant in the UK. In this connection the Judge decided having considered the factors contained in Section 117B of the Nationality, Immigration and Asylum Act 2002 that the public interest in enforcing immigration control outweighed any personal circumstances relating to the Appellant.

4. At the hearing before me, Mr Ahmed argued that the Judge had erred in law in coming to these conclusions. It had been disputed at the hearing that the Appellant had overstayed in the past, and the Judge had made a wrong factual decision in this respect. That being the case, paragraph E-LTRP.2.2 of Appendix FM did not apply and the Appellant met the requirements of the five year route. The Appellant also met the requirements of the ten year route as the financial requirements of Appendix FM-SE did not apply to such an application. In any event, the Appellant satisfied the requirements of paragraph EX.1 of Appendix FM. The Judge had failed to consider properly whether there were any insurmountable obstacles to the Appellant and her husband returning together to India. The Judge had failed to appreciate that the family of the

Appellant's husband originated from Kenya. The Appellant's husband had never lived in India and had no ties to that country.

5. As regards Article 8 outside of the Immigration Rules, Mr Ahmed submitted that the Judge had failed to carry out the balancing exercise necessary for any proper assessment of proportionality. The Judge had not taken account of the principles set out in **Chikwamba v SSHD [2008] UKHL 40**.

6. In response, Mr McVeety argued that there had been no such errors of law. It was clearly recorded in the Decision that at the hearing the Appellant conceded that she did not qualify for leave to remain under Appendix FM of HC 395. In any event, the Appellant presented little or no evidence that there were insurmountable obstacles to her and her husband continuing their family life in India. The Judge had made a finding in this respect which he had been entitled to make on the evidence before him. In particular, he rejected the claim that the Appellant provided full-time care for her parents-in-law on the basis that they did not require such care. The Judge had carried out a proper assessment of proportionality. There were factors contained in Section 117B of the 2002 Act which the Appellant satisfied, but it had now been decided that such could only be viewed as neutral factors. They could not operate in favour of the Appellant. The fact that the Judge found family life possible in India was conclusive as to the issue of proportionality.

7. I find no material error of law in the decision of the Judge. It is clearly recorded in the Decision that at the hearing the Appellant did not dispute that she had overstayed in the past. It cannot be an error of law for the Judge to act upon such a concession made freely by a properly represented Appellant at the hearing. Therefore it is not an error of law for the Judge to dismiss the appeal under Appendix FM on the basis of his finding that paragraph E-LTRP.2.2 of Appendix FM was not met, in which event any error of law by the Judge in respect of Appendix FM-SE is not material.

8. Otherwise, the arguments of the Appellant amount to no more than a disagreement with the decision of the Judge. The Judge reached conclusions open to him on the evidence before him and which he fully explained. He made such a conclusion as to any insurmountable obstacles to the Appellant and her husband settling in India. There was no evidence before the Judge that the family of the Appellant's husband originated from Kenya. Having found that there were no exceptional circumstances in the case, the Judge was not obliged to consider the Appellant's Article 8 ECHR rights outside of the Immigration Rules. However, he did so and carried out that assessment properly. He was entitled to find that the public interest of immigration control outweighed any circumstances relating to the Appellant. It is not now argued that the Appellant has any care responsibilities in respect of her in-laws. The Judge dealt with the Section 117B factors correctly and it was inevitable that he would attach most weight to the public interest in the balancing exercise as he had

earlier found that there were no insurmountable obstacles to the Appellant and her husband living together in India.

9. For these reasons I find no material error of law in the decision of the Judge.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal did not make an order for anonymity. I was not asked to do so, and indeed find no reason to do so.

Signed Date 4th January 2018

Deputy Upper Tribunal Judge Renton