



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/01929/2020

THE IMMIGRATION ACTS

Heard at: Manchester Civil Justice Centre (remote)

Decision & Reasons Promulgated

On: 1st October 2021

On: 26th November 2021

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

The Secretary of State for the Home Department

Appellant

And

Wajahat Mohammed
(no anonymity direction made)

Respondent

For the Appellant:
For the Respondent:

Mr McVeety, Senior Home Office Presenting Officer
Mr Garrod, Counsel instructed by Orchid Solicitors Ltd

DECISION AND REASONS

1. The Respondent is a national of Pakistan born on the 8th November 1973. On the 13th October 2020 the First-tier Tribunal (Judge Coutts) allowed his appeal on human rights grounds. The Secretary of State now has permission to appeal against that decision.

2. The matter in issue before Judge Coutts was whether the United Kingdom's obligations under Article 8 ECHR required the Respondent to be granted leave to remain in the United Kingdom with his British wife. On the one hand there was no dispute that the marriage was genuine and subsisting, nor that the Respondent's wife was unwell and wanted her husband here to support and care for her; on the other was the public interest in maintaining a firm and fair immigration system, and the Respondent did not meet the requirements of the rules. The Secretary of State argued that the grounds for refusing leave in this case were strong. The Respondent had arrived in the UK on the 15th November 2001 on a work permit valid for a matter of months, but had never returned to India. He had made a series of unmeritorious applications to remain in the UK, including a claim for asylum, but had never regularised his position. He had therefore been in breach of immigration control measures for approximately 19 years. It was not, submitted the Secretary of State, disproportionate to refuse him leave in these circumstances.
3. Judge Coutts disagreed and allowed the Respondent's appeal. Judge Coutts found that the Respondent could not succeed on 'private life' grounds under the rules (paragraph 276ADE(1)(vi)) because there were not "very significant obstacles to his integration" in India. Further he could not succeed on 'family life' grounds under the rules (Appendix FM) because he and his partner had not been together for two years or more, and it could not be said that there were insurmountable obstacles to that family life continuing outside of the UK. Judge Coutts nevertheless found that the refusal of leave was a disproportionate interference with the Respondent's Article 8(1) right to family life, for the following reasons:

“46. I have had the benefit of hearing the oral evidence of the appellant and sponsor regarding the genuineness of their relationship and the health and care needs of the sponsor.

47. I found this evidence to be compelling.

48. I find that this is not a case where the appellant can return to India and then apply for entry clearance and then, after a short period, return here because he will be faced with the same prohibition of not having lived with the sponsor for a period of two years; and in those circumstances, the appellant's poor immigration history is also likely to be a significant hurdle to the grant of any entry clearance.

49. Moreover in the meantime the sponsor will be without the essential day to day care she requires from the appellant that assists her to cope with the limitations she experiences from her medical conditions.

50. The respondent has a duty to promote family life and it is accepted that the appellant and sponsor are in a settled relationship where the

appellant's knowledge of the English language is not in dispute and where he also meets the threshold in terms of accommodation and financial support"

4. The appeal was allowed on that basis.
5. In her grounds of appeal dated the 16th October 2020 the Secretary of State submits that it is "surprising" that the appeal was allowed even though the rules were found not to be met. It is of course legally permissible for an appeal to be allowed on Article 8 grounds in these circumstances so I read this as an observation, rather than a formal ground of appeal.
6. The Secretary of State's second complaint is that the First-tier Tribunal erred in apparently weighing in the appellant's *favour* the fact that he cannot succeed under the rules [at FTT §48]. This is submitted to be irrational. The fact that his immigration history would obstruct a successful application for entry clearance is submitted to be a neutral factor at best. I see the Secretary of State's point, but I am not satisfied that she gives the decision of Judge Coutts a holistic or fair reading. The point made at this juncture in the decision is, to my reading, that the Sponsor is unwell and anxious and is very much dependent upon her partner to care for her. If he were to return to India at this stage, there would be a significant delay in them being reunited. As I read it, Judge Coutts concluded that this would be unreasonable, and therefore disproportionate.
7. The third ground is that inadequate reasons were given generally for allowing the appeal. Before me Mr McVeety expanded on this ground to submit that simply describing the evidence as "compelling" does not amount to reasons. Having dismissed the appeal with reference to every available rule, the Secretary of State submits that the First-tier Tribunal was obliged to do more than that, particularly where it had already found that it would not be unreasonable to expect the Respondent's partner to travel to India with him.
8. I am inclined to agree with Mr McVeety on this point. If, as I read it, the Tribunal allowed the appeal on the grounds that it would be disproportionate if the Respondent's partner were to be left here alone, terribly unwell and anxious, whilst she waited for him to return, it should have at least given reasons as to why it would also not be reasonable to expect her to go with him whilst he made his application.
9. In the end it does not matter whether the decision of Judge Coutts is set aside or upheld. That is because, as of the date that I make this decision, the Respondent is entitled to leave to remain on Article 8 grounds pursuant to paragraph 276ADE(1)(iii) of the Immigration Rules, since he has now spent 20 years living continuously in the United Kingdom. Although the Secretary of State did consider the matters outlined at my §2 above to weigh against the Respondent

in the overall balancing exercise, she did not find them to be factors of such significant countervailing weight to justify a refusal on 'suitability' grounds: the Respondent does not therefore fall foul of 276ADE(1)(i). There being no dispute that the Respondent entered the UK on a work permit on the 15th November 2001 or that he has been here ever since, in any remaking I would be bound to allow his appeal in light of the rule: TZ (Pakistan) and PG (India) v Secretary of State for the Home Department [2018] EWCA Civ 1109. There is therefore no utility in setting aside the decision of Judge Coutts. Any error is not such that the decision should be set aside and the decision is therefore preserved.

Decisions and Directions

10. The decision of the First-tier Tribunal does not contain an error of law such that the decision should be set aside. The Secretary of State's appeal is dismissed.
11. There is no order for anonymity.



Upper Tribunal Judge Bruce
22nd November 2021