Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/02824/2020 V

THE IMMIGRATION ACTS

Heard at Field House via Teams	**Decision & Reason Promulgated**
On 3rd August 2021	**On 15th September 2021**

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

RAVIKUMAR [P]
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Badar of Counsel, instructed by Connaught Law Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of India born in 1987. He arrived in the UK in September 2009 with entry clearance as a Tier 4 student migrant. He extended his leave until 10th July 2015 in this capacity, but on 25th June 2013 his leave was curtailed to expire on 25th August 2013 as his sponsor's licence was revoked. The appellant then overstayed. On 3rd

October 2013 he made an application to remain outside of the Immigration Rules which was refused without a right of appeal on 22nd November 2013. On 15th July 2016 the appellant applied to remain on human rights grounds but the application was refused and certified as being clearly unfounded on 20th July 2016. On 11th April 2019 the appellant applied to remain again on human rights grounds. On this occasion he was refused with a right of appeal in a decision dated 4th February 2020. His appeal against the decision was dismissed by First-tier Tribunal Judge Dempster in a determination promulgated on the 5th February 2021.

2. Permission to appeal was granted by Judge of the First-tier Tribunal Scott-Baker on 26th February 2021 on the basis that it was arguable that the First-tier judge had erred in law in failing to consider the fact that the appellant was gay and whether this affected the assessment by reference paragraph 276ADE(1)(vi) of the Immigration Rules and/or on wider Article 8 ECHR grounds.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law. The hearing was heard by Microsoft Teams in light of the need to reduce transmission of Covid-19 in the context of the pandemic. Neither party objected to this format and I found that it was a means by which the appeal could be fairly and justly determined. There were no significant issues of connectivity or audibility.

Submissions – Error of Law

4. The grounds of appeal argue that the First-tier Tribunal erred in law by firstly failing to look at the period of the appellant's residence and the contribution he has made to the UK by volunteering with the NHS and his lack of links to India in determining the appeal in relation to the Immigration Rules at paragraph 276ADE(1)(vi) and on wider Article 8 ECHR grounds. Secondly, it is argued that the 930 hours of unpaid work for the NHS in a time of national emergency ought to have been given greater weight, as should the issues he has with his sexuality (for which he has been disowned by his family) and his mental health. It is argued that his major depressive disorder and generalised anxiety disorder meant he could not leave the UK. It is argued that the appellant has at all time attempted to show compliance with the immigration laws of the UK, and that again should be given weight. Thirdly, it is argued that due to a failure to give weight to relevant evidence that the decision of the First-tier Tribunal is legally flawed.

5. Mr Badar relied upon the grounds but said that he was not pursuing arguments around the treatment of the evidence of the appellant's mental health. He argued that the fact that the First-tier Tribunal failed to explicitly mention the appellant was gay was a material error as together with other factors this could have made a difference to the outcome; and further Mr Badar argued that it was irrational not to say that 930 hours of volunteering during the Covid-19 pandemic was not

an exceptional matter which weighed in the appellant's factor and outweighed the public interest in maintaining immigration control.

6. In a Rule 24 notice dated 3rd March 2021 the respondent argues that the grounds simply attempt to reargue the appeal. The First-tier Tribunal was aware of the appellant's period of residence in the UK, his mental health problems, his sexuality and ties to the UK. It is argued that the medical evidence was dealt with properly: the psychologist's report was out of date; there was no evidence the appellant was receiving treatment for depression of any type; and there was no evidence treatment was not available in India. The evidence that the appellant had been disowned by his family as a result of his sexuality was considered, and weight was given to the consideration he would not have family support in India. The appellant's sexuality was not argued to have any greater impact in the appellant's witness statement. The lack of a support network was considered by the First-tier Tribunal but it was considered he could find employment in India given his level of education and that he could have remote assistance from his friends in the UK. The decision of the First-tier Tribunal should be upheld. I did not need to call on Mr Tufan to make any further submissions.

Conclusions – Error of Law

7. This is a private life human rights appeal which was correctly determined by the First-tier Tribunal by reference to paragraph 276ADE(1)(vi) of the Immigration Rules and more widely under Article 8 ECHR.

8. It is clear from the summary of evidence at paragraph 21 of the decision of the First-tier Tribunal that the appellant raised mental health issues; the fact that he had been disowned by his family due to being gay; and the volunteering he had done supporting people who were self-isolating due to the Covid 19 pandemic. It is accepted by the First-tier Tribunal that the appellant has close friends in the UK at paragraph 23 of the decision. The conclusion of the consultant psychologist, Mr Smythe, dated 1st May 2019, that the appellant has severe generalised anxiety disorder and major depressive disorder with psychotic features is recorded at paragraph 25 of the decision.

9. At paragraphs 28 to 32 of the decision of the First-tier Tribunal the application of paragraph 276ADE(1)(vi) to the determination of the appeal is considered. The appellant's mental health and the evidence of Dr Smythe is considered, and the consideration of whether he would have very significant obstacles to integration starts from the proposition that he would not have family support or a friendship network in India. It is concluded however that notwithstanding his mental health issues he would be able to find friends in his country of origin where he spent his first 22 years of life; that he speaks two national languages; that he is highly educated and that there was no evidence that in time he would not find work, or that he could not be assisted by his friends who

support him in the UK in the interim. The First-tier Tribunal properly directs itself as to the correct test, by reference to Parveen v SSHD [2018] EWCA Civ 932, that very significant obstacles is an elevated test and what must be shown is not just a mere inconvenience or upheaval. I find that nothing material was omitted from this consideration as the only relevance of the appellant being gay which is put forward in the evidence is that this would mean that he had no family support in India. There was no evidence that this would lead to any other difficulties with integration on return to India, and it would not have been proper for the First-tier Tribunal to speculate that this would be the case absent any country of origin or other evidence supporting such a proposition.

10. In considering the appeal more widely under Article 8 ECHR at paragraphs 33 to 55 of the decision of the First-tier Tribunal consideration is given to his established social network and his paid and voluntary work. It goes without saying that the weight given to any evidence is a matter for the First-tier Tribunal Judge unless their decision is irrational. There are proper legal directions that there is a strong public interest in maintaining immigration control, and to the fact little weight can be attached to private life ties formed in the UK as the appellant has been unlawfully and precariously present, applying s.117B(4) and (5) of the Nationality, Immigration and Asylum Act 2002. The fact that the appellant retains no private or family ties in India, the latter being lost due to his sexuality, is placed in the balance. It is accepted in his favour that the appellant has contributed much in the last year to society due to his voluntary work but ultimately a conclusion that his removal is a proportionate interference with his right to respect for private life is reached for entirely lawful and rational reasons.

Decision:

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

2. I uphold the decision of the First-tier Tribunal dismissing the human rights appeal.

Signed: Fiona Lindsley Date: 3rd August 2021
Upper Tribunal Judge Lindsley