Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/11293/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 9 September 2015	**On 15 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAGRAL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

TIKLU DEY LASKAR
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:

For the Appellant: Mr .E. Tufan, Senior Home Office Presenting Officer
For the Respondent: Mr. M. Hasan, Counsel instructed by Kalam Solicitors

DECISION AND REASONS

1. The First-tier Tribunal (FtTT) did not make an anonymity direction. I have not been asked to make one and see no public policy reason for doing so and none is made.

2. This is an appeal by the Secretary of State for the Home Department (hereafter "the respondent") against the decision of the First-tier Tribunal (FtTT) (Judge Omotosho). On 7 January 2015 the FtTT allowed the appeal of Mr Laskar (hereafter "the claimant"), a citizen of Bangladesh, against the decision of the respondent dated 12 February 2014 refusing his application for leave to remain as the spouse of a British citizen and giving directions for his removal contrary to section 10 of the Immigration and Asylum Act 1999.

3. The claimant arrived in the UK on 19 May 1991 with entry clearance conferring leave to enter as a visitor until 19 November 1991. He overstayed his permitted leave and the events that followed disclose a protracted immigration history. It is not necessary at this stage to make detailed reference to that history but, essentially, the claimant made a settlement application on 30 March 2007 in order to regularise his status in the UK. That application was refused on 5 October 2009 and the claimant was served with an IS151B removal decision. What followed was a string of requests from the respondent for information and subsequent representations made by the claimant's then representatives.

4. On 12 February 2014 the Respondent refused the application for reasons set out in a Reasons for Refusal letter ('RFRL') of that date and a Notice of Immigration Decision was issued. The RFRL referred to paragraph 276A-D of the Rules and noted, in particular, that the respondent was not satisfied that the claimant had completed a continuous period of 14`years unlawful residence in the UK pursuant to paragraph 276B of the Rules. The application was also refused with reference to Appendix FM of the Rules, paragraph 276ADE and Article 8 (ECHR).

5. The claimant appealed to the IAC.

6. Both the claimant and his wife attended before the FtTT to give evidence: they each adopted their respective witness statements and both were cross-examined. The FtTT allowed the appeal under the Immigration Rules and on human rights grounds pursuant to Article 8 (ECHR) for reasons set out in its decision. In summary, the FtTT found that the claimant and his wife gave credible evidence [34]. The evidence established that the couple were in a genuine and subsisting relationship and the claimant's wife was expecting their first child. The FtTT accepted the claimant's wife was the sole carer of her father who suffered from Parkinson's disease and had been so for a considerable period [36]. The FtTT was satisfied that the claimant had been resident in the UK since 1991; had not left since entry and that credible explanations had been

given for the lack of documentary evidence [37]. The FtTT acknowledged the claimant's "poor" immigration history, but was satisfied that he had lived in the UK for 23 years. The FtTT was thus satisfied that all of the requirements of paragraph 276A-D were met and consequently allowed the appeal. The FtTT considered Article 8 and found that, whilst having regard to the public interest provisions in section 117B of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"), removal would be a disproportionate interference with family and private life. The FtTT took into account the claimant's immigration history and the inability of the claimant's wife to travel to Bangladesh. The FtTT gave weight to the settled status of the claimant's wife and the fact that the couple were expecting a child together. Accordingly, the appeal was allowed on human rights grounds.

7. The respondent applied for permission to appeal which was granted by First-tier Tribunal Judge Ransley on 22 April 2015 on all grounds.

Decision on Error of Law

8. The respondent's grounds in support of the application for permission to appeal challenge the decision of the FtTT under the Rules and on Article 8 (ECHR) grounds. In respect of the former, it is argued that the FtTT failed to reason its finding that the claim was credible and, in particular, the finding that the claimant had been resident in the UK for a period of 23 years. In respect of the latter ground it is argued that the FtTT failed to have proper regard to the provisions of section 117B of the 2002 Act, noting that no reasons had been provided as to why the FtTT placed weight on a relationship formed whilst the claimant was in the UK unlawfully. Mr Tufan relied on those grounds and amplified them at the hearing.

9. Mr Hasan submitted that the FtTT allowed the appeal under the Rules on the basis that it was satisfied the claimant had been in the UK for a period in excess of 20 years. In referring to the Judge's consideration of Article 8, he submitted that the Judge looked at the circumstances as a whole and accepted the claimant was married a British citizen. The Judge considered section 117B of the 2002 Act and made reference to relevant jurisprudence. He submitted that the circumstances were exceptional and that the Judge referred to the Immigration Rules at para. [38].

10. I am satisfied that the respondent's grounds are made out and that the FtTT materially erred in law. The FtTT deals with the appeal under the Rules in brief terms at [33 to 38]. Two of these paragraphs deal with uncontentious matters and in essence the FtTT's consideration appears at

[37] and [38]. At [37] the FtTT concludes that notwithstanding the lack of documentary evidence corroborating the period of claimed residence that, *"I find that the appellant has provided me with satisfactory and credible explanations for his inability to provide sufficient documentary evidence to substantiate this part of his claim."* It was in respect of that conclusion that the FtTT accepted the claimant had been resident in the UK for over 23 years [38], which was the very basis upon which the appeal was allowed under the Rules. The FtTT's statement at [37] is conclusionary and must be supported by adequate reasons. I find that no reasons are given as to why the FtTT so concluded. It is not clear what explanation(s) the FtTT considered were credible and why. Whilst it is not incumbent on the FtTT to spell out in great detail the evidence relied upon, there is a duty to give reasons which discloses the rationale as to why that conclusion(s) was reached. The FtTT failed to discharge that duty. That conclusion was material to the FtTT's decision to allow the appeal under the Rules and I am satisfied that the FtTT thus erred in law.

11. At the hearing Mr Tufan made the additional point that it was not clear under which Immigration Rule the FtTT allowed the appeal, and that, if it was pursuant to paragraph 276B of the Rules, then the FtTT failed to consider the discretionary element of that Rule. Whilst that contention was not pleaded in the grounds and, whilst it is clear that the FtTT allowed the appeal with reference to paragraph 276A-D of the Rules, I find that there is an obvious error in that, the FtTT failed to consider the requirements of paragraph 276B(ii) of the Rules and thus failed to recognise that the Rules require an assessment to be undertaken of the public interest.

12. I am satisfied that these errors impact upon the FtTT's decision to allow the appeal on human rights grounds as the claimant's ability to meet the requirements thereof is relevant to the assessment of proportionality. Of further relevance is the duty to have regard to the public interest considerations identified in section 117B of the 2002 Act. I have little difficulty in reaching the conclusion that the Judge's consideration of the proportionality of the decision by applying Section 117B of the 2002 Act (as amended) is flawed. That is because the Judge by mere reference to the provisions does not demonstrate at [42] that the requirements have been given full effect, in particular, with reference to section 117B(4): see Forman (ss 117A-C considerations) [2015] UKUT 00412 (IAC).

13. For all the above reasons, I am satisfied that the decision shows errors on points of law such that it should be set aside and re-made. Having regard to the provisions of paragraph 7.2 of the Practice Statements for the First-tier and Upper Tribunal by the Senior President of Tribunals dated 25th September 2012, I am satisfied that the nature and

extent of fact-finding necessary in order for the decision to be re-made is such, having regard to the overriding objective in Rule 2, that it is appropriate to remit the case to the FtTT for a rehearing on all issues.

Decision:

The making of the decision of the FtTT did involve the making of an error on a point of law. I set aside the decision. By agreement of the parties the appeal is remitted to the FtTT for a de novo rehearing. It is a matter for the FtTT to make the appropriate directions for the hearing of the appeal in due course.

Signed: Dated:

Deputy Upper Tribunal Judge Bagral