



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/08233/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 9th August 2019**

**Decision & Reasons Promulgated
On 27th August 2019**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**VIKRAM SINGH
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Rothwell, instructed by 121 Law Associates

For the Respondent: Mr S Walker, Home Office Presenting Officer
Punjabi Interpreter

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Brewer, promulgated on 12 March 2019, dismissing his appeal against the refusal of leave to remain on human rights grounds.
2. On 7 June 2019, I found that there was an error of law in this decision and set it aside. The appeal comes before me for rehearing on the sole issue of whether there are insurmountable obstacles to family life continuing outside the UK.

3. The Appellant entered the United Kingdom on 17 June 2011 on a visit visa and overstayed. He applied for leave to remain in July 2015 and married his British citizen wife on 17 October 2015. His appeal was dismissed in March 2017 and he became appeal rights exhausted on 1 November 2017. On 18 November 2017 he made a further application for leave to remain, which was refused and is the subject of this appeal.

Relevant Law

4. Appendix FM, paragraph EX.2:

“For the purposes of paragraph EX.1(b) insurmountable obstacles means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner.”

5. R (Agyarko) v Secretary of State for the Home Department [2017] UKSC 11 states that the insurmountable test is a stringent test that must be interpreted in a sensible and practical way rather than as referring solely to obstacles which make it literally impossible for the family to live together in the applicant’s country of origin. It held that exceptional does not mean unusual or unique but means circumstances in which refusal would result in unjustifiably harsh consequences for the individual such that the refusal of the application would not be proportionate.

The Appellant’s Evidence

6. The Appellant relied on his witness statement dated 12 February 2019, the expert report of Dr Hussain dated 7 February 2019 and the updated report served on 7 August 2019. The Appellant stated that a lot had changed since he made his statement in February because his wife was now making suicidal attempts. Last week she had taken out a knife and he had been injured when he had to save her. He stated that his depression had become more intense. He was referred to paragraph 17 of the latest report of Dr Hussain and confirmed that if he was required to return to India, he and his wife had plans to commit suicide. He reported to the Home Office every two weeks and he was scared to go because he was scared his wife might do something or that he might be held in detention. He had to explain to his wife every time that he would be back. There was no cross-examination. The Appellant was very distressed at the end of his evidence.
7. The Appellant’s wife, Mrs [JK], gave evidence, relying on her witness statement of February 2019 and the medical evidence from Dr Hussain and Dr Pervez, her GP. She stated that since February her depression had become so bad her husband had taken a knife out of her hand and had cut his finger. That was only last week. She had also gone over on her ankle on Monday and grazed her hand. She confirmed that there was a suicide pact and if her husband had to go back, she would jump in front of a bus

and he would jump in front of a train or find some other way to commit suicide. She could not live without him. She could not go to the Punjab because of she had learning difficulties and serious health concerns. She had trouble learning English.

8. The Appellant's wife's mother gave evidence. Ms Maria Theresa Duffy relied on her witness statement of 30 January 2017 and stated that things had become much worse over the last year. Her daughter had suicidal tendencies because of the pressure and stress of these proceedings. She was always thinking about committing suicide and her family had managed to talk her out of it. However, it was getting worse. Last week [J] took a knife and the Appellant had to forcibly take it from her. She had broken down after that. She was attempting suicide more often recently and Ms Duffy was worried that her attempts would soon succeed and become a reality. The situation was getting worse. The couple were very much in love and the worry that they might be separated from each other and from family in the UK was making the situation worse. [J] was worried about whether she would leave the UK with the Appellant or stay with her family. She did have serious medical issues, but it was her emotional state which gave cause for the greatest concern. There was no cross examination or re-examination of any of the witnesses.
9. In submissions, Mr Walker relied on the refusal letter and referred to the penultimate paragraph of the family policy on insurmountable obstacles, which stated:

"Moving to another country may involve a period of hardship for any person as they adjust to their new surroundings, whether or not they have a mental or physical disability or a serious illness which requires ongoing medical treatment. But independent medical evidence could establish that a physical or mental disability, or a serious illness which requires ongoing medical treatment, would lead to very serious hardship, for example, due to the lack of adequate health care in the country where the family would be required to live. As such, in the absence of a third country alternative, it could amount to an insurmountable obstacle to family life continuing overseas."
10. Ms Rothwell relied on her skeleton argument and submitted that the Appellant and his wife were very close and had a symbiotic relationship based on co-dependency. It was only last week that his wife had attempted suicide and her GP had raised safeguarding issues since 2012. The Appellant's wife struggled to live here in the UK. She could not possibly go to the Punjab. Her father, mother and sister were very concerned and had submitted letters in support of the Appellant's appeal.
11. The Appellant had no family in India and would receive no support on return. His family were opposed to the marriage and it was likely his wife would not be accepted by them. They had no accommodation. The Appellant's wife was seriously ill and cumulatively these factors amounted to insurmountable obstacles.

Conclusions and Reasons

12. The Appellant has a genuine and subsisting relationship with a British citizen and the only issue before me is whether there are insurmountable obstacles to family life continuing outside the UK.
13. I make the following findings of fact. The Appellant's spouse is a British citizen who suffers from a number of health conditions. She is clinically obese and had a gall bladder stone removed in 2016. She suffers from chronic lower back pain, chronic left ankle pain and instability for which she needs to wear a brace, tension headaches, asthma (which worsens with dusty hot weather) and a hiatus hernia. She has a moderate learning difficulty and suffers from panic attacks, anxiety, depressed mood with suicidal thoughts and insomnia. She has a history of self-harming, hitting, punching and biting.
14. There is independent evidence of the conditions from which the Appellant's wife suffers. Her GP states that she is fully dependent on the Appellant for all aspects of her life and would not be able to cope in India, either learning a new language or adjusting to a different environment. There are two reports from Dr Hussain, dated 7 February 2019 and one prepared for this hearing subsequent to my error of law decision of 26 June 2019.
15. I find that the Appellant, his wife and his mother-in-law have given credible evidence of suicide attempts and a suicide pact should the Appellant be returned to India. This evidence was not challenged by the Respondent and is supported by independent medical evidence both from Dr Pervez and Dr Hussain, a consultant psychiatrist, who interviewed the Appellant and his wife on two occasions.
16. I find there are insurmountable obstacles to family life continuing outside the UK for the following reasons: The Appellant's wife has learning difficulties and could not cope with a move to India. She would not be able to obtain the same level of medical treatment and psychological care in India. The Appellant and his wife would be returning without any support because he is estranged from his parents. The Appellant worries about leaving his wife alone. She has attempted self-harm in the past. She has a fear of flying. She suffers from depression and has lost close family members. She has been treated for severe depression and general anxiety and has a tendency to self-harm. The couple would rather commit suicide than be separated and have made a verbal suicide pact.
17. Taking all these factors in the round, I find that there would be unjustifiably harsh consequences, especially for the Appellant's spouse, if the Appellant and his wife were to go to India or if the Appellant returned to India, leaving his wife here in the UK. I find that the Appellant has

satisfied paragraph EX.2 of Appendix FM and his appeal is allowed on human rights grounds under the Immigration Rules.

18. Further, the refusal of leave to remain breaches Article 8. I find that the combination of factors set out above give rise to very exceptional circumstances which would render the Appellant's removal to India disproportionate. Accordingly, I allow the Appellant's appeal on human rights grounds.

Notice of Decision

Appeal allowed

No anonymity direction is made.

J Frances

Signed

Date: 23 August 2019

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal, I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable.

J Frances

Signed

Date: 23 August 2019

Upper Tribunal Judge Frances