Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/14729/2019**

THE IMMIGRATION ACTS

Heard Remotely at Field House	**Decision & Reasons Promulgated**
On 3 March 2021	**On 19 April 2021**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SANDIP KUMAR BHUPENDRABHAI PATEL
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms C Lindsay, Counsel instructed by Habib Quadri, Solicitor
For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of the First-tier Tribunal dismissing the appellant's appeal against the decision of the respondent on 12 August 2019 refusing him leave to remain on human rights grounds.

2. The appellant is a citizen of India. He was born in 1976. He entered the United Kingdom with permission in 2016 but his leave expired in April 2017 and he remained in the United Kingdom. He applied for asylum in June 2018 but withdrew the application in March 2019. He made a further application that was rejected in May 2019 and then applied for leave to

remain as an unmarried partner on 13 June 2019 leading to the decision complained of which can only be appealed on human rights grounds.

3. I begin by considering carefully the First-tier Tribunal's decision.

4. The judge appropriately, began by identifying the decision complained of and noting that at the time of the application it was the appellant's contention that he was in a durable relationship with his partner who is a British citizen. The judge was satisfied that the appellant married his partner on 4 January 2020 which was shortly before the hearing in the First-tier Tribunal. The judge was clearly aware that she was dealing with the human rights of a married couple.

5. Both the appellant and his present wife have been married before.

6. The judge considered the respondent's reasons for refusing the application. First, the appellant had not satisfied the requirements of the Immigration Rules by proving his competence in the English language. Second, he was not eligible because at the time of making the application Mrs Patel was not his wife and they had not been living together for two years. Further, he did not meet the eligibility requirements because his previous leave had expired on 20 April 2017 and he had been living in the United Kingdom for about two years without permission before he applied for leave. However, the respondent was expressly satisfied that the appellant met the financial requirements of the Rules.

7. The appellant and his wife gave evidence which the First-tier Tribunal Judge considered.

8. The judge found the appellant did not meet the requirements of the Rules because he had not passed his English language test. The judge also found that the papers did not show premarital cohabitation. I disagree with Ms Lindsay that this is in any way relevant. The judge recognised that he was dealing with a married couple. Nothing turns on his apparently correct finding that there was no evidence of premarital cohabitation. The judge did note that the appellant had said in his application form that he speaks English, Hindi and Gujarati "fluently" which contradicted the evidence he gave at the hearing which was that he spoke only a little English and only Gujarati. The appellant relied on his professed limited linguistic ability to support his claim there were significant obstacles in his returning to India.

9. The judge clearly found that there was a genuine and subsisting relationship and that there was now a marriage. She also found that the appellant lived with his wife's adult son and that removing the appellant would interfere with the private and family life of the appellant, his wife and his wife's son.

10. The judge, appropriately, reminded herself of Part 5A of the Nationality, Immigration and Asylum Act 2002. She found that in the event of the appellant's return to India his wife would be in a difficult position. She did not want to go and live in India. She did not like the heat and did not want to leave behind her son or her business which supported the appellant.

She accepted that her departure would create significant problems for the appellant's wife's son.

11. At paragraph 39 the judge made it plain that she did not believe that the appellant could not return to India safely and with reasonable ease. He had built his case on concern about family members and his language abilities. He said that his first wife's family had not come to terms with the divorce and would make things difficult. The judge found that the appellant had lived in India for many years and she found no "insurmountable obstacles" or anything else that presented "very significant difficulties".

12. She found the decision to refuse his claim on human rights grounds to be lawful. Any interference was entirely proportionate.

13. The main reason for giving permission to appeal was it was thought arguable that the judge had gone behind the respondent's acceptance that the relationship was genuine and subsisting and when conducting the proportionality exercise the judge had erred by failing to make clear findings about where the public interest lay, and particularly if it is still in the public interest to remove the appellant and the impact on family life especially if, as was thought to be the case, the appellant could qualify for return.

14. I have considered the papers before me including the extensive grounds and skeleton argument but I find no merit whatsoever in the contention that the judge did not appreciate that the appellant and his wife enjoyed a genuine and subsisting relationship. In a sense that hardly matters because it was clearly accepted that the relationship was one of marriage and in that event the length of the relationship before is not of great importance.

15. In her skeleton argument Ms Lindsay sets out much of Section 117 of the Nationality, Immigration and Asylum Act 2002 and refers, appropriately, to well-known cases including **Chikwamba v SSHD [2008] UKHL 40** and **Younas [2020] UKUT 129**. **Younas**, of course, although a decision of this Tribunal rather than the Court of Appeal, was made after there was a statutory basis for saying that the maintenance of effective immigration controls is in the public interest. I disagree with Ms Lindsay if she was arguing that qualification under the Rules entitles a person to return and therefore extinguishes the public interest in removal. I recognise, as the Tribunal did in **Younas**, that where a person is certain to be granted leave to enter it might be the case that there is no public interest in removing the applicant but the whole case has to be considered. This appeal concerns a person who came to the United Kingdom on one basis and overstayed and made no attempt to regularise his position until he developed a relationship that might have been existing in embryonic form in any event with a person who is now his wife. In other words, at a time when he should have left the United Kingdom and returned to India he was building up his personal life. As crimes against the state go this is probably not very high up the list but it is a cynical attempt to undermine effective immigration control and indulging it is unfair to people who might

have similar desires but respect the law. Whilst it is right to say the appellant has no criminal convictions and can maintain himself when allowed to (this is very likely to be the case) and can maintain himself now by living on his wife because this has been established these are not strong reasons to allow him to stay, they are just not reasons to require him to go. This is also a case where it can only be described as likely that he will satisfy the requirements of the Rules. There is a problem with his language. It may be the case that he was discouraged from applying for a test because the Secretary of State had his passport but there is no indication that he made any efforts to apply and get permission from the Secretary of State. The Secretary of State is capable in appropriate cases of giving an indication that satisfies the test centres but this was not tried here. There is uncertainty about the appellant's command of the English language. He has claimed it was fluent and then claimed he cannot speak English. It may well be a case that he is a person not disinclined to speak English and capable of getting it together if he tried a bit harder. However, this is not a case where it can be said confidently he would satisfy the requirements of the Rules. I cannot agree that there is no public interest here in maintaining effective immigration control by requiring him to follow the approved procedures.

16. Neither can I see any argument there is any great disruption consequent on his removal. Of course the appellant's wife would prefer for him to remain in the United Kingdom with her. She wants to be with him which is why she married him and she has had an unhappy time in her private life which now seems to be turning round. However, she seems perfectly capable of managing on her own, she is not a person with high degrees of dependency and has established a business and a life with her son. The inconvenience and disappointment to her of being separated from her husband whilst he made an application is not analogous, for example, to a mother being separated from a small child. Neither was anything done to suggest that if the process were delayed in India the appellant's wife could not travel to India to be with her husband for a time. Clearly there would be costs involved but she is earning a steady income and there is no basis in the evidence for saying that it would be unaffordable to keep contact by occasional visits if necessary assuming that it is the appellant's intention to make an application and meet the requirements of the Rules.

17. Similarly, her adult son has rights and it seems perfectly plain on the papers that he is more than happy for his now stepfather to be involved in his life but he is an independent adult and there is no suggestion of great disruption even though they live together as a family.

18. Ms Lindsay's grounds refer to the decision of the Court of Appeal in **GM (Sri Lanka) v SSHD [2019] EWCA Civ 1630**. She asserts in her skeleton argument that there is a "six test criteria" set out in **GM (Sri Lanka)** although that is entirely consistent with other parts of her skeleton argument where a list of six items is given and it is asserted that the list is "not closed". Ms Lindsay is right in the sense that the First-tier Tribunal Judge could have done more to set out a balancing exercise. It may well be the case that that is a criticism that could be made of every balancing

exercise ever conducted. There is always more that can be said and sometimes more that could have been said usefully but this is why I spent so much time at the beginning looking at the decision that was actually made.

19. At the risk of being repetitive the judge accepted that he was dealing with a married couple, he accepted that the adult son was part of the family life of all three adults involved. The judge accepted that his leaving would interfere with their private and family lives. The judge found that the appellant had not shown that he can speak English and found it highly likely that an application for entry clearance would be successful. She acknowledged that the appellant's wife does not wish to return to India and although she did not say very much about it she was clearly very unimpressed with the appellant's contention that he could not return because of fear of former family members. She found that the appellant claimed to be able to speak Hindi fluently and he could return to an area away from his former wife's relatives. There is not much more to be said on this point. It was not developed greatly in argument and India is generally a safe country where people can hide and if necessary turn to the state for protection. The judge referred to the "strong public interest in maintenance of effective immigration controls", she described the balance as "very fine" but found that it was in favour of dismissing the appeal. Really, everything that needed to be acknowledged is acknowledged. I can find nothing that ought to have been mentioned that was not at least mentioned. The judge's mind was where it ought to have been, the correct test was followed and the conclusion was reached that the appellant does not like.

20. I find that no material has been established and I dismiss this appeal.

Notice of Decision

This appeal is dismissed.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal Dated 7 April 2021