



First-tier Tribunal
(Immigration and Asylum Chamber)

Appeal No. [REDACTED]

THE IMMIGRATION ACTS

Heard at Hatton Cross
On 4 October 2023

Decision & Reasons Promulgated
7 October 2023

Before

JUDGE OF THE FIRST-TIER TRIBUNAL SWEET

Between

[REDACTED]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Susheel Bellara, Counsel
For the Respondent: None

DECISION AND REASONS

1. The appellant is a citizen of India, born on 13 July 1986. He appeals against the decision of the respondent dated 6 December 2022 to refuse his application for leave to remain in the UK which was made on 18 November 2022.
2. The refusal letter set out the appellant's immigration history. He first arrived in the UK on 1 July 2006, with entry clearance as a student valid until 30 September 2009. He was granted an extension of that leave until 31 July 2012. He made unsuccessful

[REDACTED]

applications for EEA resident permits through sponsorship of a British citizen, which were refused in January and March 2020 respectively. His application for leave to remain under family and private life on 8 June 2022 was refused on 14 June 2022, but he was given leave outside the Immigration Rules to remain until 8 November 2022 in line with his spouse's leave.

3. The respondent accepted that the appellant had a genuine and subsisting relationship with his partner, but did not accept that there were insurmountable obstacles, as defined in EX.2 as being very significant difficulties which would be faced by him or his partner in continuing their family life together outside the UK in India, and which could not be overcome, or would entail very serious hardship for himself or his partner. Nor were there very significant obstacles under Paragraph 276 ADE(1)(vi) of the Immigration Rules in respect of his integration into the country to which he would have to go if required to leave the UK. Nor could he succeed under GEN.3.2 of Appendix FM, in respect of Article 8 ECHR rights, because it would result in unjustifiably harsh consequences for himself, his partner, a relevant child or another relevant family member. The appellant and his family would be returning to India as part of a family unit. The respondent had taken into account its obligations under Section 55 of the Borders, Citizenship and Immigration Act 2009, in respect of taking the best interests of a child into account.
4. The appellant gave notice of appeal on 16 December 2022.
5. Both Counsel and the two witnesses appeared by CVP following application after the abortive hearing on 15 August 2023. Both the appellant and his spouse, Asha Rani, a citizen of India, born on 22 November 1986, gave evidence in accordance with their respective witness statements. They also provided further evidence regarding the circumstances of his spouse's graduate employment and their two young children.
6. I then heard submissions on behalf of the appellant, which included reliance on the skeleton argument of 21 February 2023. Counsel rightly pointed out that the private life requirements (in respect of applications made after 20 June 2022) are now set out in Appendix PL of the Immigration Rules rather than under Paragraph 276ADE. I also take into account the HO Response of 13 March 2023.
7. The burden of proof is on the appellant, and the civil standard of the balance of probabilities applies. It was submitted on behalf of the appellant that the only issue in this case was that the appellant was seeking leave to remain in the UK from 11 November 2022 to 11 November 2024, which were the dates of his spouse's leave under the Graduate Route. She has now obtained full-time employment as an executive housekeeper at Strand Palace Hotel, Central London, which commenced on 18 September 2023. Her leave expires on 11 November 2024, and I consider it would be disproportionate for the appellant to have to leave to return to India if he was not granted the same length of leave. They married in the UK on 17 February 2020, and have two young children, both born in the UK: [REDACTED] born on 16 August 2020, and [REDACTED] born on 3 November 2021. If the appellant had to return to India, he could no longer carry out childcare in respect of their two young

children, and his spouse would have to cease her employment. In my view, this would be wholly disproportionate.

8. Therefore, to the limited extent that the appellant be granted the same leave as his spouse, namely until 11 November 2024, this appeal is allowed. They both indicated in oral evidence that their intention was to return to India once her employment has ceased.

Decision

9. Appeal allowed.

10. As I have allowed the appeal, I make a full fee award.

Signed

Dated: 7 October 2023

CJ Sweet

Judge Sweet
Judge of the First-tier Tribunal