



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

Appeal Number: IA/28670/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20<sup>th</sup> May 2015**

**Decision & Reasons Promulgated  
On 29<sup>th</sup> May 2015**

**Before**

**LORD MATTHEWS, SITTING AS AN UPPER TRIBUNAL JUDGE  
DEPUTY UPPER TRIBUNAL JUDGE FRANCES**

**Between**

**GUNJEET KAUR  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No Legal Representative

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of India born on 20<sup>th</sup> October 1973. Her appeal against the Respondent's decision dated 10<sup>th</sup> June 2013 to refuse leave to remain and to remove her from the UK was dismissed by the First-tier Tribunal under paragraph 276ADE of the Immigration Rules and Article 8 of the European Convention on Human Rights on 10<sup>th</sup> September 2014.
2. The Appellant entered the United Kingdom on 9<sup>th</sup> September 2009 as a student with leave to remain until 28<sup>th</sup> January 2013. On 28<sup>th</sup> January 2013 she applied for leave to remain on the basis of her family and private life

in the UK. The application was refused because she did not meet the requirements of paragraph 276ADE(iii), (v) and (vi). Her health problems could be treated in India and therefore the decision did not breach Article 3.

3. The Appellant appealed out of time but an extension was granted because the Appellant raised arguments under the 1950 Refugee Convention in her grounds of appeal. In fact generic grounds of appeal were submitted including citing a flagrant disregard of the 1950 Refugee Convention.
4. The Appellant did not attend the appeal before the First-tier Tribunal, which was adjourned to enable the Appellant to submit a witness statement and medical evidence. There was then a request that the appeal be determined on the papers as the Appellant was too unwell to attend the hearing.
5. First-tier Tribunal Judge K Henderson found that there was no evidence of family life and very little evidence of private life save for letters relating to the Appellant's medical conditions. There was no evidence that these conditions were life-threatening and the Appellant could not receive treatment in India. The judge considered Article 8 and concluded that the refusal of leave to remain and the decision to remove was proportionate in all the circumstances.
6. Permission to appeal was sought three months out of time. First-tier Tribunal Judge R A Cox extended time and granted permission on 10<sup>th</sup> February 2015 on the following grounds:

"I have carefully considered the decision in relation to the grounds. The grounds do not initially inspire confidence because [4] to [10] seem to bear little relationship to the decision I have read, a point rather confirmed by a reference to a judge other than Judge Henderson at paragraph 10. I ignore those paragraphs. However, paragraph 3 does relate to the decision in hand and, I find, has a kernel of arguable merit. Put simply, there is reason to think that the judge failed to take proper account of and deal with material evidence, namely the Appellant's witness statement. In that statement the Appellant had described a history of domestic violence from her estranged husband in India resulting in the injuries from which she still suffers (hence the health issues referred to above) and her continuing fear of risk to her life from her husband and his father (a police officer). The Appellant also raised issues about lack of safe accommodation and means of support in India, exacerbated by her medical problems. None of this is mentioned in the decision, even though at [19] the judge rightly refers to 'the limitations of Article 8 in private life cases that are far removed from the protection of an individual's moral and physical integrity'. It does appear that the judge missed the point that such integrity was at the core of the Appellant's case. No doubt she was not assisted by having to deal with the matter on the papers, the Appellant apparently being unable to attend an oral hearing for medical reasons. It may be that an international protection application would be a more appropriate vehicle for the Appellant's case but the fact remains that there was an arguable material error of law in the judge's decision in not considering and making a finding on a material issue."

7. The Appellant attended the hearing before us today unrepresented. She submitted a covering letter and further documents relating to court action being taken by her in India for the recovery of items and for the recovery of maintenance.
8. In submissions, the Appellant relied on the letter and the documents. Mr Jarvis submitted that even if the First-tier Tribunal Judge was unaware of the statement dated 12<sup>th</sup> May 2014, in the context of the appeal, such evidence would not have made any difference to the judge's decision. The Appellant was represented at the appeal before the First-tier Tribunal and the grounds were particularised and there was no attempt to amend those grounds to include a refugee claim or protection claim. The judge therefore was limited to dealing with the appeal on Article 8 grounds.
9. Considering the evidence in the statement dated 12<sup>th</sup> May 2014, taken at its highest, it did not reach the high threshold such that the Appellant would be unable to continue her private life if she returned to India. The case was in fact never put forward on that basis and the judge was not obliged to look for further grounds. The findings on the core aspects of the Article 8 claim were lawful.
10. In response to questions from the Panel, the Appellant stated that she had never seen the first statement, dated 27<sup>th</sup> January 2013, which had been submitted by her previous solicitors, Malik and Malik. She had only signed the last page, the statement of truth. She confirmed her signature on the second statement, dated 12<sup>th</sup> May 2014, and said that she was aware of the contents.

#### Discussion and Conclusions

11. The judge states at paragraph 5 of the decision that correspondence was received on 13<sup>th</sup> May 2014 requesting that the case be decided without an oral hearing as the Appellant was not well and unable to appear at the Tribunal. This letter enclosed the second statement dated 12<sup>th</sup> May 2014 and a skeleton argument, but the judge makes no reference to the enclosures. At paragraph 11 the judge states: "I have read through the statement provided by the Appellant. I have also read the documents that she has provided in support."
12. Since there were two statements before the judge it is not clear which statement the judge is referring to in paragraph 11. It could well be that she was unaware of the second statement on which the Appellant now relies, even though she was aware of the covering letter enclosing the second statement. The issue therefore is whether the judge could have come to a different conclusion if she had taken into account the evidence in the second statement of 12<sup>th</sup> May 2014.
13. We accept Mrs Kaur's explanation that she had not seen the first statement and there is a letter from her to her previous solicitors on the court file requesting the return of documents. She changed solicitors and the second statement was submitted on her behalf.
14. The difficulty in this case is that appeal before the judge was advanced on private life and Article 8 grounds. Therefore, the issue for the judge was

whether the evidence before her was such that the Appellant's removal to India would endanger her moral and physical integrity in breach of Article 8.

15. The issue of domestic violence was raised at a late stage and the documentary evidence which was before the judge was contradictory. The Appellant did not give evidence and she has not made a claim for asylum or humanitarian protection. The evidence in the second statement did not amount to exceptional, compelling or compassionate circumstances such as to render the decision to remove the Appellant disproportionate.
16. Having seen the evidence in the second statement and taking it at its highest, we are of the view that there was insufficient evidence to conclude that the Appellant would be at risk of domestic violence on return to India or that her removal would endanger her moral and physical integrity. The documents submitted today were not before the judge and did not advance the Appellant's case in relation to domestic violence in any event.
17. The Appellant has not made an asylum or humanitarian protection claim and it is open to her to do. We are of the view that the evidence in the second statement of 12<sup>th</sup> May 2014 was insufficient, in itself, to enable the judge to conclude that the Appellant was in need of international protection.
18. We find that there was no error of law in the First-tier Judge's decision because looking at all the evidence in the round, the judge's conclusion that the private life factors relied on by the Appellant were outweighed by the public interest was a finding which was open to her. We find that the evidence in the second statement could not have lead to a different conclusion. Accordingly we find that there was no material error of law in the decision dated 10<sup>th</sup> September 2014 and the appeal is dismissed.

**Notice of Decision**

Appeal dismissed.

No anonymity direction is made.

Signed

Date 28<sup>th</sup> May 2015

Deputy Upper Tribunal Judge Frances

We have dismissed the appeal and therefore there can be no fee award.

Signed

Date 28<sup>th</sup> May 2015

Deputy Upper Tribunal Judge Frances