Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/06577/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 9 May 2016	**On 20 May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

SUKHJIT KAUR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K McCarthy (counsel) instructed by Hammersmith & Fulham Law Centre
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Hanes promulgated on 22 February 2016, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 10 October 1979 and is a national of India. On 17 May 2012 the appellant and her two children entered the UK as visitors. They have not returned to India, but remained in the UK as over-stayers. The appellant claimed asylum on 13 July 2014. The respondent refused the appellant's claim on 22nd August 2014. The appellant appealed against that decision, and in a decision promulgated on 28 October 2014 her asylum claim was dismissed but the appellant's appeal was allowed on humanitarian protection & article 3 ECHR grounds.

4. The respondent successfully appealed against the decision promulgated on 28 October 2014. In a decision dated 15th February 2015 the Upper Tribunal remitted this case to the First-tier.

The Judge's Decision

5. In a decision promulgated on 22 February 2016, First-tier Tribunal Judge Hanes ("the Judge") dismissed the appeal against the Respondent's decision on all grounds.

6. Grounds of appeal were lodged and on 6 April 2016 Judge Landes gave permission to appeal stating inter alia

> *"2. I consider that it is arguable that the judge erred in departing from the findings of Judge Nicholls so far as charitable support from other Christians is concerned, as set out in ground one. Judge Nicholls did indeed have evidence in the form of letters from the appellant pastor. Whilst it may be that the financial support (as opposed to the emotional and practical support) which would be provided by the congregation is not significant to Judge Hanes' ultimate conclusions, it is not self-evident from her findings. The Judge appears to have had more material to enable her to depart from Judge Nicholls findings in respect of family support, but it is arguable as set out at paragraph 4i grounds that the evidence given was not in fact inconsistent on the point of contact with the mother*
>
> *"3. I find it difficult to see how ground 2 is arguable. By her indication that she had insufficient evidence that there were charitable institutions who would provide support to a person in the position of the appellant, the Judge was not suggesting that this was a source available to the appellant, rather to the contrary, that she could not consider this source was potentially available to her.*
>
> *"4. I do not consider that the Judge made speculative findings about the appellant accessing AVR. The appellant can be assumed to act reasonably in the event that she becomes appeal rights exhausted and the Judge explained clearly and cogently why she found that AVR would be available to the appellant. Nevertheless as set out at para 10 and 11 iii grounds it is arguable that the availability of AVR*

does not address Judge Nicholls finding that the appellant would have little likelihood of being employed at a reasonable income level or indeed his finding at [32] about the difficulties she would have as a single woman with children finding accommodation and employment (compare 11(iii)).

"5. Although I have made adverse comments on parts of the grounds, I do not restrict the grounds which may be argued bearing in mind the decision in Ferrer"

The Hearing

7. (a) Ms McCarthy for the appellants moved the grounds of appeal. She reminded me of the procedural history of this case, and drew my attention to the second paragraph of the Judge's decision, the last two sentences of which record that the case was remitted to the Judge to give consideration to the availability of support charities in India and the impact that the assisted voluntary return scheme could have on the appellant's case. She told me that the remaining findings of Judge Nicholls were preserved.

(b) Ms McCarthy told me the Judge failed to apply the principles in Devaseelan 2002 UKIAT 00702 because the Judge had departed from Judge Nicholls findings of fact at [14] & [15} of his earlier decision. She told me that the Judge's findings that assistance would be available to the appellant from her pastor in India and the congregation of the church there amount to nothing more than speculation. She was critical of the Judge's finding at [14] of the decision, that the appellant would have support from her mother. She argued that none of those findings are supported by the evidence placed before the Judge, and that those findings fly in the face of the preserved findings of Judge Nicholls. She told me that the Judge's findings are tainted by irrationality.

(c) Ms McCarthy moved on to the second ground of appeal and told me that the Judge had failed to make findings on a material matter. She told me that the central issue in the appellant's case is that she faces destitution if she returns to India, yet the Judge made no findings on submissions made that there are no charitable institutions in India to which the appellant can turn for assistance.

(d) Miss McCarthy told me that the Judge's findings that the appellant can benefit from AVR are speculative and that the Judge failed to take account of the appellant's repeated declarations that she will not apply for AVR because she does not want to return to India. In any event, Miss McCarthy told me that AVR does not equate to a solution to the appellant's problems and even if the existence of AVR was relevant, it would do no more than delay the appellant's slide into destitution. She told me that the appellant's case clearly engages article 3 ECHR. She urged me to set the decision aside and substitute my own decision allowing the appellant's appeal.

8. Mr Duffy, for the respondent, told me that the decision does not contain errors, material or otherwise. He told me that the appellant relies on a fallacious argument when addressing AVR. He argued that the fact that the appellant does not want to return to India, and so will not apply for assistance, does not mean that assistance is not available to the appellant. He took me to [18] and [19] of the decision where (he told me that) the Judge adequately considered and discusses the benefits of AVR. The appellant has previously lived in India as a single parent with her two children. He urged me to dismiss the appeal and allow the decision to stand.

Analysis

9. The first ground of appeal is that the Judge did not apply the guidance given in Devaseelan. The Judge concludes [2] of the decision by recording

> *"at the hearing, both representatives agreed (although not clearly stated in the decision of Designated Judge Digney) of the findings of judge Nicholls in all other respects were preserved (including the dismissal of the asylum claim)."*

10. Between [5] and [9] the Judge sets out the preserved findings of Judge Nicholls. The Judge commences her own findings of fact at [13], and, in doing so correctly rehearses the guidance given in Devaseelan. At [14] & [15] the Judge clearly explains that her findings in relation to assistance available from other Christians in India differs from the findings of Judge Nicholls, and explains why. In doing so the Judge follows the guidance in the case of Devaseelan. It is incumbent on the First-tier Judge to make findings of fact. In this decision that is exactly what the Judge has done. In this case the Judge has quite correctly taken the findings of fact of Judge Nicholls as a starting point, and then explains that her findings differ because of the evidence placed before her.

11. In the grounds of appeal it is argued that the Judge departed from the guidance given in Devaseelan "*without good reason*". That is not the case. The Judge manifestly takes guidance from Devaseelan, and then explains how and why she reaches her findings of fact.

12. Having challenged the Judge for making findings of fact, the second ground of appeal moves on to criticise the Judge for "*failing to make findings on a material matter*". The second ground of appeal drives at [16] of the decision and is succinctly put

> *"7. However, at the same paragraph no finding is made on A's submissions that there are no other charitable institutions in India who will provide support to A and her children."*

13. The second ground of appeal is misconceived. The Judge (correctly) makes findings of fact on the basis of evidence presented, not on the basis of submissions. The second sentence of [16] is

> *"There was insufficient evidence provided to me of other organised charitable institutions who would provide support to someone in the position of the appellant and her children (with a male child over the age of 5)."*

A fair reading of the decision makes it clear that the Judge approached this case on the basis that neither women's shelters nor other accommodation provided by a charity would be available to the appellant.

14. The third ground of appeal levels an accusation that the Judge's findings on the availability of AVR are "*speculative*". The argument advanced is that the appellant wilfully refuses to apply for AVR, so that its availability is irrelevant. There is no merit in that argument. The Judge considered the options available to the appellant. AVR is an option available to the appellant. The fact that the appellant declares an intention to ignore available assistance is irrelevant. If the appellant closes her eyes to AVR, it does not mean that it no longer exists.

15. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

16. There is nothing wrong with the Judge's fact finding exercise. In reality the respondent's appeal amounts to little more than a disagreement with the way the Judge has applied the facts as she found them to be. The appellant might not like the conclusion that the Judge has come to, but that conclusion is the result of the correctly applied legal equation. There is nothing wrong with the Judge's fact finding exercise. The correct test in law has been applied. The decision does not contain a material error of law.

17. The Judge's decision, when read as a whole, sets out findings that are sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

18. No errors of law have been established. The Judge's decision stands.

DECISION

19. The appeal is dismissed. The decision of the First-tier Tribunal stands.

Signed Date 17 May 2016

Deputy Upper Tribunal Judge Doyle