



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/33279/2015

THE IMMIGRATION ACTS

Heard at Field House  
On 30<sup>th</sup> June 2017  
And 29<sup>th</sup> August 2017

Decision & Reasons Promulgated  
On 1<sup>st</sup> September 2017

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS JOTHI KALPANA GANDHIRAJ  
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms Z Ahmad (Senior Home Office Presenting Officer)  
For the Respondent: Mr J Metzger (instructed through the assistance of the Bar Pro Bono Unit, a body licensed by the Bar Council)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Secretary of State in relation to a decision of the First-tier Tribunal (Judge Mozalowski) promulgated on 16 November 2016 by which the First-tier Tribunal allowed the Appellant's appeal on human rights (article 8) grounds.
2. For the sake of continuity and clarity I will refer in this Decision and Reasons to Ms Gandhiraj as the Appellant and the Secretary of State as the Respondent

3. The matter first came before me in the Upper Tribunal on 30 June 2017 for a an initial hearing when I found that the First-tier Tribunal had made a material error of law and I set aside the decision whilst preserving the First-tier Tribunal's finding in the Appellant's favour regarding her dishonesty.
4. As the Appellant's representative was not in a position to call evidence on that day I was unable to proceed with the rehearing and so the matter was adjourned to enable him to adduce additional evidence which I gave him permission to do.
5. On 30<sup>th</sup> June I found as follows:-
  - (a) The case before the First-tier Tribunal was relatively straightforward. The Appellant is an Indian national who had come to the UK in 2011 on a Tier 4 Student visa and then in May 2012 was granted a Tier 1 Post-Study Work visa valid until August 2014. Shortly before the expiry of that leave she made an application for leave to remain as a Tier 2 (General) Migrant and that application was eventually refused on 19<sup>th</sup> August 2015. It was that Decision which was under appeal before the First-tier Tribunal. The circumstances of the refusal were that the Appellant had produced a Certificate of Sponsorship said to be from the National Institute of Health and Care Excellence (NICE) but when it was checked it was found that NICE had not issued it. It was therefore a false document. The Secretary of State refused the appeal relying on paragraph 322(1A) of the Immigration Rules which is a mandatory ground of refusal where false documents have been produced. It matters not whether the Appellant is aware or culpable simply that deception occurred or a false document was produced. It is now trite law, particularly with regard to the case of AA (Nigeria) [2010] EWCA Civ 773 that there has to be dishonesty but it does not necessarily need to be that of the Appellant. The Secretary of State therefore had no discretion and indeed it is accepted by the Appellant that the document is false.
  - (b) The Appellant's argument, which was considered in detail by the First-tier Tribunal, was that that document had been supplied to her by an advisor that she had consulted. She had no knowledge that the document was not genuine when it was submitted and it was only later in the day, in fact October 2014, that she discovered the deception. She spoke to the woman concerned who advised her to withdraw her application because it was not a genuine document. She did not do that. She consulted a solicitor. She eventually did notify the Home Office that the document was false in January 2015 and unsurprisingly the application was thereafter refused.
  - (c) The Appellant was unrepresented before the First-tier Tribunal and what has been argued on her behalf in front of me was that by telling the Home Office that the document was false she had effectively withdrawn the application. By informing the Secretary of State that the document was false she was saying that her application could not succeed. It was argued that the application should have been regarded as and dealt with as a human rights application on Article 8 grounds. It was argued before me on her behalf that the appeal was similarly upon Article 8 grounds only.
  - (d) It was nevertheless important for the Judge to deal with the issue of the production of the false document and her behaviour in relation to it because of the impact it would have on any future applications. The Secretary of State had informed the Appellant in the Letter of Refusal that any future applications would be refused on the basis of 320(7B). It was also relevant to any balancing exercise under Article 8. In considering this the Judge accepted that the Appellant was naïve rather than dishonest and that

whilst she did delay before notifying the Home Office the fact is she did inform the Home Office and some months before the Decision was made. The Judge found that there was no dishonesty on her part. That is an important finding for the Appellant in any future applications. It does not mean however that the Secretary of State was not entitled to dismiss or refuse the application on the basis of paragraph 322(1) indeed, as indicated above, she had no choice.

- (e) There was some discussion with Mr Metzger about whether I should consider whether the Judge had made an error of law in going on to find that, absent the Appellant's dishonesty s.322 should not have been applied because it was not referred to in the grounds. I find that I should consider it because it is an obvious point and an obvious error in that the Judge misapplied the law. However, given Mr Metzger's argument that in reality this was an Article 8 appeal only, it is immaterial. The Judge found that she could not succeed under the Rules and that is plainly right because she did not have an offer of employment; there was no job with NICE and therefore she could not possibly have succeeded.
- (f) The Judge then went on to consider Article 8. He set out at paragraph 29 the law and he set out correctly that Article 8 is not a general dispensing power and there have to be compelling reasons to look at Article 8 outside the Rules. He referred himself to Huang [2007] UKHL 11 and Razgar [2004] UKHL 27 and then proceeded to consider the matter. He did not explain what it was about the case that led him to consider Article 8 outside the Rules and the first time any compelling circumstances are mentioned is at paragraph 35 where he found compelling circumstances to allow the appeal. However, I agree with Mr Metzger's submission that if there are compelling circumstances to justify allowing the appeal, there must be compelling circumstances to consider Article 8.
- (g) However, I do find the Judge's approach to Article 8 to be flawed and indeed bordering on the perverse. The Judge paid lip service to Section 117B of the Immigration and Asylum Act 2002. Section 117 is an important factor that the Tribunal is required to take into account. It makes clear, and it is accepted by Mr Metzger, that the public interest in the maintenance of immigration control is in his words a crucial factor and it can only be outweighed by something compelling. The only compelling circumstances that the Judge referred to which Mr Metzger relied upon are
- (1) She has a rich and extensive private life in the UK and
  - (2) A person should be encouraged to deal honestly with the Home Office and that assists in the maintenance of immigration control.

The latter point I find to be a point without merit. Of course a person should deal honestly with the Home Office; that is an expectation and they should not be rewarded for doing so. Not to deal honestly with the Home Office is a very serious matter, but persons should not be praised for acting lawfully in the same way as a person should not be praised for not breaking the law. That leaves only her private life.

- (h) The other factors in Section 117B to be considered are:- that she speaks English, which is a neutral matter.
- (i) The next matter is whether she is financially independent. Mr Metzger argued that she was and the Judge was right to find that she was on the basis that there was every possibility that she would find employment. It may be that at some point in the future

she would be financially independent if given leave to remain; however the fact remains that at the date of the hearing she was not financially independent. As the Judge pointed out she was dependent upon her friends. It is quite clear from the case of Rhuppiah [2016] EWCA Civ 803 that financial independence requires a person to be financially independent of others. That is made clear in paragraphs 63 and 64 of Rhuppiah. I therefore reject Mr Metzger's argument that the fact that she will find employment means she is financially independent. The requirement does not permit future expectation; it is a present requirement.

- (j) Section 117B(4) relates to a person being here unlawfully which she has not been and therefore that does not count against her and is another neutral point.
  - (k) Section 117B(5) relates to private life and says that little weight should be attached to a private life built up while a person's stay is precarious. It has been established that any leave which requires renewal is precarious as this Appellant's leave was. Mr Metzger argued, quite rightly, that little weight does not mean no weight and he argued that the amount of weight to be attached varies with the quality and extent of the private life in question and he argued that as her's is particularly rich, significant weight should be attached to it. She has built up a lot of friends, a large network, she does charity work for the temple; however there is nothing particularly unusual in that. It is inevitable that over several years spent in the United Kingdom a person will build up contacts and relationships and I do not find anything unusual in that particular private life and whilst some weight has to be attached to it that weight has to be little.
  - (l) There is nothing else in this case that could lead to the appeal having been allowed. All she can argue is her private life to which little weight should be attached and the fact that she speaks English. Against her is the fact that she is not financially independent, she does not meet the requirements of the Rules and I accept the argument raised by the Secretary of State, relying on the case of Gurung [2012] EWCA Civ 62, that the Judge appears to have taken a liking to this Appellant and to have been looking for ways to allow the appeal. The reasons for allowing the appeal are scant in the extreme and as I have said bordering on perverse. The Judge has given wholly inadequate reasons for allowing the appeal and for that reason I set aside the Decision.
  - (m) I am prepared to preserve the finding in the Appellant's favour regarding her dishonesty.
  - (n) Having preserved a finding it is not appropriate to remit the matter to the First-tier Tribunal. Mr Metzger was not in a position to proceed with a rehearing today as he sought and was granted permission to adduce additional evidence.
6. For the resumed hearing Mr Metzger had produced on the Appellant's behalf a bundle of evidence and a bundle of authorities. He also helpfully provided a skeleton argument. The first section of the bundle of evidence was the evidence that was before the First-tier Tribunal and the second section was new evidence.
  7. It is helpful to set out a chronology in this case
  8. The Appellant was born in India on 17 March 1973. She was educated to degree level in India obtaining a first class degree in physics from the University of Kerala in 1993. She commenced a Master's degree but did not complete it due to getting

married. She married in a love match against her parents' wishes and her daughter was born in 1995.

9. In 1999 she started work in India and worked continuously until she left to come to the UK with a student visa in January 2011 leaving her 16-year-old daughter living with her parents. By this time she was divorced from her husband. They had parted in 1996. Divorce proceedings were commenced in 2000 and she was finally divorced in 2008.
10. The Appellant's leave to enter the United Kingdom was on the basis that she was going to study for an MBA at the University of Northampton and she graduated from that with distinction in March 2012. Between June 2011 and June 2014 the Appellant worked for a number of organisations, in particular as a customer relationship manager at the Nationwide Building Society and Barclays Bank, as a multiagency safeguarding hub administrator for Northampton County Council and as a lecturer in mathematics at Northampton College.
11. In August 2012 she was granted leave to remain as a Tier 1 post study migrant and in August 2014 she submitted an application for further leave to remain to work for NICE. That was the application which upon refusal was the subject of the appeal before the First-tier Tribunal and it was the sponsorship letter supposedly from NICE which was fraudulent.
12. As I indicated in my earlier decision, recited above, the Appellant subsequently informed the Home Office of the difficulties with the sponsorship letter with the inevitable result that the application was refused under paragraph 322 of the Immigration Rules.
13. In addition to her studies and her employment the Appellant has also volunteered for a number of organisations in a caring capacity and has also assisted and cared for other people in the United Kingdom. There are considerable number of supporting documents, statements and letters praising her as a good, honest caring person who is an asset to the community.
14. In terms of witness evidence I had statements from the Appellant dated 11 October 2016 and 17 August 2017. I had witness statements from Mr Richard Lazaro, Mrs Joyce Ball, Mr Joe Pratt, Mr Navid Kamal, Dr Jacob Devadason, Mrs Sylvia Goodlad and Mr Geoffrey Adu-Amponsah. All the witnesses' statements were dated August 2017. I heard oral evidence from the Appellant, Mr Lazaro, Mrs Ball, Mr Kamal Dr Devadason and Mrs Goodlad.
15. In her evidence the Appellant explained the provenance and relevance of two letters, one from Grangemore Properties and one from a company called K Veg. The Appellant explained that she had recently started work for Grangemore Properties on a part-time basis, although she could become full-time. She currently works three days a week for a salary of £15,600 per annum. She has only recently taken up that employment and therefore there are no payslips available.

16. The K Veg letter offers her employment, conditionally upon her resolving her immigration status, as marketing manager at an annual salary of £28,000. Neither of those companies are currently approved sponsors.
17. The Appellant produced a document from the Home Office sent to Grangemore Properties confirming she has permission to work. I pause at this point to note that this is rather surprising given that she has no leave to remain. Nevertheless the document originates from the Home Office.
18. The Appellant was unable to tell me which of the two employments she would undertake if her appeal is successful. She did however say that her real aim/dream is to obtain a PhD which she will fund through employment. It is also her dream to make her family proud and for them to forgive her for marrying against their wishes.
19. She said that her rent is £300-£350 per calendar month and that she has never relied on anybody else for financial support nor has she accessed state benefits.
20. In cross-examination the Appellant said that prior to coming to the United Kingdom in 2011 she lived alone with her daughter. She confirmed that her daughter lived with her parents after she came to the UK but said that she did not now know where her daughter is living. She said that she is applying to go to university abroad but was unable to tell me where her daughter lives. With regard to contact with her daughter she said that she has tried to have contact but does not hear from her and last spoke to her some four months ago. She did not establish during that conversation where her daughter was living. She was unable to say when her daughter stopped living with her parents. She also said that she was not in contact with her parents and last spoke to them in 2013 when she went to visit them and they did not make her welcome. She then mentioned that her daughter's father still lives in the same place and he sees her.
21. In addition to last seeing her parents in 2013 she was asked if she spoke to them on the telephone and she said that she did not. She last tried in March when she rang their home phone number but the call was not answered. She said that she tried again with the same result.
22. When asked if she had left friends behind in India in 2011 when she came to the UK she said that she did not. She said that she had had to struggle to earn to support her daughter. She was estranged from all of her relatives and had no friends. She said that despite spending 20 years in India as an adult she had no friends because she had to work immediately and had no social contact. When asked whether she could work in India she said she could not because she has never worked in the business field in India. She said numerous people in India have MBA qualifications and they are therefore worthless.
23. She was asked whether she could keep in contact with her friends in the UK from India but she said not because most of them are not on social media and it would not be easy.

24. She also said, when asked about her daughter, and her daughter living in India without her that she had laid good foundations for her daughter who was doing well in her education and that it was all right for her daughter to live independently. She said that her daughter could live independently but she herself could not.
25. With regard to her volunteer work in the UK she was asked whether she could do volunteer work in India but said there were no volunteers in India; there was no opportunity to do voluntary work.
26. In answer to questions from me as to who looked after her daughter when she went to work, she said that in 1999 when she started work she only worked school hours and she told me that at weekends she locked her daughter in the house. After considerable probing she then said that she left her daughter at day-care.
27. In re-examination by Mr Metzger the Appellant said she became estranged from her parents in 1994 when she left them to get married. Her husband left after two years.
28. She said that when she came to the UK she wanted to equip herself with something which will mean she will be respected in India and no longer have to suffer the stigma of divorce. She wants to accomplish something to make her parents see that she is doing well and is happy. She said it would hurt her to leave the people she has come to become fond of in the UK.
29. She was asked again why she cannot find employment in India and she said that she is a woman; that age is a barrier and that anybody can get an MBA and therefore they are not worth anything. She said however that a PhD is valuable.
30. I asked the Appellant why, if it is the case that an MBA is worthless in India because everyone get them, she came to the UK to study for an MBA. Her answer was that she wanted to study for a PhD but a Master's degree was a prerequisite.
31. I next heard evidence from Mr Lazaro who adopted his witness statement to the effect that he has assumed a paternal relationship with the Appellant and sees her as a daughter. He saw her, he said, practically every day until recently when he moved to Gravesend. He still sees her every week or so and talks regularly to her on the phone. He said that he never helped her financially. He said he believed she has a daughter in India but was not sure whether she was in contact with her. He said that she had a problem with her family who have cut her off. He does not know whether she is in touch with her daughter.
32. I then heard from Mrs Ball who adopted her statement and was then cross-examined. She said that she had seen the Appellant a few times when she lived in Northamptonshire but that she has not lived there for four years. She said that she used to meet the Appellant in Northampton for shopping trips but that now they communicate by email and talk on the telephone, possibly twice a week. In relation to the Appellant's family in India she said that she has a daughter with whom she is in contact occasionally. She said she thinks that the daughter is studying and therefore very busy and that the relationship is sometimes okay and sometimes strained as it often is with daughters. She said that she herself had spoken to the

daughter via social media some years ago. She said that the Appellant's relationship with her parents is very good and that she speaks very highly of them and told Mrs Ball about the family and what is happening. She wasn't aware that the Appellant had visited her parents in 2013.

33. In re-examination when she was asked what discussion she had with the Appellant about her family in India, Mrs Ball said that the Appellant told her about her sister who is going through a medical condition and about her father who has been ill.
34. I then heard from Navid Kamal. He adopted his statement as his evidence in chief and was cross-examined. He knows the Appellant as a customer in the supermarket where he works and he sees her almost every second day when she shops. He has occasionally communicated with her by text as well but has never met her outside of his work environment.
35. I next heard from Dr David Devadason. He adopted his witness statement and was cross-examined. He said that he meets the Appellant more than twice a week in church but does not see her otherwise than at church. In terms of the Appellant's personal life he was only able to say that he knows that she is from India and came to the UK to study. His relationship with her is purely on a faith basis.
36. I then heard from Mr Sylvia Goodlad. She adopted her statement as her evidence in chief and was cross-examined. She said that she used to see the Appellant quite a lot as they went to the same gym and swimming. They met three years ago. Now she said the Appellant texts her mainly and invites her to church. They communicate regularly by text and telephone calls and the last time she had seen the Appellant was the previous week. Mrs Goodlad was asked about her comment that the Appellant is a proud mother of a lovely daughter and she confirmed that to be the case. She said that the Appellant speaks to her daughter regularly and to her parents on a weekly basis. With regard to her parents she specifically confirmed she is in contact with them and that her relationship with them is very affectionate and empathetic. She said that the Appellant cares about her parents and does not like being away from them but has chosen to be in the UK. She said the Appellant had told her that she speaks to them very often because she likes to keep in touch.
37. Mr Metzger relied on that oral evidence the documentary evidence and to other statements from Mr Pratt and Mr Adu-Amponsah who did not give oral evidence.

### **Submissions**

38. In her submissions Miss Ahmed challenged the Appellant's credibility. She submitted that she was evasive with regard to some of her evidence and her evidence about her relationship with and contact with her daughter and parents conflicted with that of Mrs Ball and Mrs Goodlad. The Appellant had painted a very different picture in court from the one she had painted to her friends.
39. She referred me to the authority of SS (Congo) [2015] EWCA Civ 387, paragraphs 31 to 33 which indicates that the starting point is the Immigration Rules. She also



referred me to Miah (section 117B NIAA 2002 – children) [2016] UKUT 00131 (IAC) and the IDIs.

40. She noted that the Appellant spent the first 38 years of her life in India; that she was educated there to graduate level and was employed there for over 10 years. She has her parents there and a daughter and she submitted she must have friends as well.
41. Miss Ahmed submitted that the Appellant's skills and qualifications in the UK, including an MBA, would assist her to obtain employment in India and she would be able to integrate well into India on return. She argued there were no very significant obstacles to the Appellant integrating back into Indian society.
42. Miss Ahmed accepted there was some stigma attached to divorced women but those did not amount to very significant obstacles, particularly considering this particular Appellant's resourcefulness, personality and history.
43. In terms of whether there are compelling circumstances to consider Article 8 outside the Immigration Rules she submitted that all the Appellant had was her relationship with her friends which was not compelling and the contact she has with them currently can be equally well exercised from India. She has managed to keep in contact with her family in India, including with her daughter and if that is satisfactory it certainly would be satisfactory for friends.
44. In terms of section 117B she pointed out that the fact that the Appellant can speak English and is currently financially independent are neutral factors but it counts against her that her leave in the UK has always been precarious.
45. Mr Metzger added to his skeleton argument by making oral submissions. He helpfully conceded that the Appellant could not meet the requirements of the Immigration Rules as a Tier 2 migrant. However he did not concede that there were no very significant obstacles to her integration into India bearing in mind that this Appellant is a particular kind of woman. She is someone who married against her parents' wishes and divorced with the stigma that attaches to that. Women do not have equal status in India and she does not have a good relationship with her family. The very significant obstacles would be the stigma of divorce and having no support structure.
46. He then dealt with the question of whether there were compelling circumstances to consider Article 8 outside the Immigration Rules and referred to paragraphs 53 and 54 of Rhuppiah [2016] EWCA Civ 803 which indicate that there needs to be "compelling circumstances", not "very compelling circumstances" as in deportation appeals.
47. He did not dispute that her status has always been precarious nor did he dispute that the language and financial matters were neutral if satisfied for the purposes of section 117B.
48. He submitted that the only reason the Appellant's application to the Secretary of State failed was because she had been deceived. He submitted that if she were to make a fresh application it would probably succeed based on the evidence.

49. He submitted that it was important to examine the quality of the Appellant's private life. She came to the UK to achieve her goals to win respect from her family and to obtain a PhD. Those matters would give her good standing to succeed in India and part of her private life is the realisation of her educational aspirations.
50. He submitted that when she came to the UK she developed a deeper private life in terms of the very close relationships she has, particularly with Mr Lazaro which is a father/daughter relationship. He referred to the comment in the Appellant's witness statement that her friends in the UK are like family. He asked me to attach weight to the comment in her statement that it would be harder for her to leave her friends in the UK than it was to leave India.
51. He referred me to the various contributions she had made as a carer for Mr Samuel and also in wider society working for the Gurdwara and various charitable organisations and church.
52. He asked me to find that she was credible and that when I considered the evidence carefully I would find that it was not in conflict because she does hold her family dear and her friends would not necessarily be aware of how she is perceived by her family.
53. In terms of section 117 he argued that the only matter that counted against the Appellant was the public interest in immigration control which he argued was outweighed by the extremely rich and compelling private life that she has. He argued that she is an impressive character who has made a significant positive contribution to UK society and urged that her appeal be allowed and she be granted a reasonable period of leave to allow her to make a fresh application to the Secretary of State.

## **Findings**

54. As I made clear in my error of law decision there is something of a mountain to climb for an Appellant to succeed purely on private life grounds. Statute, in the form of section 117B of the Immigration and Asylum Act 2002 instructs me to find little weight should be attached to a private life built up when an Appellant's status is precarious. There is no doubt, indeed it is accepted, that her status has always been precarious. She could have had no expectation when she came to the UK in January 2011 that she would be permitted to remain indefinitely.
55. While I have no doubts about the sincerity of the various witnesses and am satisfied that they came to court with genuine intentions of supporting the Appellant, of whom they are clearly fond, in her application to remain in the UK. However, I am less impressed by the evidence of the Appellant herself.
56. It appears clear to me that she has manufactured a rift in her family relationships in order to aid her appeal. She was extremely evasive in answering questions about the circumstances of herself and her daughter while she was still in India and about her

daughter's situation since. On the one hand her evidence was she worked so hard and for such long hours that she had no social life at all in India and therefore no friends but on the other hand that she only worked school hours. However another contradiction then arose in that she said when she was at work she locked her daughter in the house. It was only after considerable probing that she changed her evidence to say that she left her daughter at day-care. I find I can attach no weight to her evidence about that as it was so contradictory and evasive. It seems to me far more likely that when she went to work her parents looked after her daughter.

57. Nor do I accept that the Appellant had no friends in India. She lived there until she was 38 years of age, always in the same place. She worked there for 10 years and would have had numerous colleagues. It is simply not credible that she acquired no friends and acquaintances in that time, particularly given the number she has acquired in the UK.
58. Based on the oral evidence I am very far from satisfied that the Appellant is estranged from her family. It is quite clear from the evidence of Mrs Ball and Mrs Goodlad that she is in regular contact with both her parents and her daughter. She talks about them to her friends and is clearly up-to-date with her family's situation. Also, in addition to her parents she has a sister in India.
59. It is not credible that, if she were estranged from her family since 1994 as claimed, she would have left her daughter in their care when she came to the UK and nor is it credible that they would have agreed to have her. Additionally, to obtain leave to enter as a student she must have satisfied the Entry Clearance Officer that she had funding. If her situation was as dire as she paints there is no-one who could have supported her.
60. The Appellant's evidence was also contradictory about living independently in India. Her evidence to me was that it was all right for her young 21-year-old daughter to live completely independently but that she as a 38-year-old, highly educated woman could not. That makes no sense, particularly as her evidence was that she lived alone with her daughter without help or support from 1996 until 2011.
61. Her claim that she could not work in India or live there as a divorced woman is also without credibility as her evidence is that she did precisely that for 9 years as a separated woman and 3 as a divorcee.
62. The Appellant also claimed that despite having previously worked for 10 years in India and being a first-class university graduate in physics and having an MBA from the UK and worked in various roles in the UK she would be unable to secure employment in India. That makes no sense and is wholly incredible. Nor do I accept that her UK obtained MBA would be worthless in India. If that were true one wonders why she came to the UK to study for one.
63. Her claim that there are no volunteers and no voluntary work in India is wholly incredible.

64. I entirely reject her claim that she would be unable to maintain contact with her UK-based friends from India. She no longer lives in the same area as either Mr Lazaro or Mrs Goodlad and her communication with Mr Kamal apart from seeing him when she shops where he works is carried out by modern means of communication. If the Appellant has felt able, indeed happy to conduct a relationship with her immediate family and her young daughter by modern means of communication then there is no reason why she should not do the same with her friends.
65. I am also concerned about the Appellant's credibility with regard to her financial situation in the UK. Whilst she is now working, it was claimed that the evidence demonstrated that a future application for a visa to enable her to work would succeed. That is not an inevitable conclusion. Both employers relied upon confirm that they are not sponsors. She has no conditional offer of employment from someone who is.
66. Her credibility is further damaged by her claim before me that she has never been financially dependent upon anyone. She was financially dependent upon her friends when the matter came before the First-tier Tribunal and that remained the case when she appeared before me in June.
67. Pulling all the strands together therefore looking firstly, as I must, at the Immigration Rules the only one that is applicable is paragraph 276 ADE. I conclude that it does not avail the Appellant. The relevant part is paragraph 276 ADE (vi), namely that there would be very significant obstacles to her integration in India. Clearly based on my findings above there would not. She is highly educated; she has a family; she has a daughter; she speaks the language; she has been in the UK for 6 years but was in India for 38 and she is able to secure employment.
68. In terms of whether there are compelling reasons to consider Article 8 outside the rules I find there are none in this case. I accept of course that "compelling" is different from "very compelling". However compelling means something quite forceful, quite significant. In this case the Appellant can point to nothing other than relationships and acquaintances that she has made in the United Kingdom and the contribution which she has made to various charitable organisations and people. Whilst that is very creditable, it is nothing out of the ordinary and is not a reason to afford her a right to stay. Compelling circumstances would be something over and above the private life a person would build up purely by the reason of being in the UK for a significant period of time. There are no health issues or other matters which could possibly persuade me that there are compelling reasons to consider Article 8 outside the Rules.
69. Even if I were to consider Article 8 outside the Rules and proportionality, the Appellant could not succeed. Section 117 of the Immigration and Asylum Act 2002, which I am required to take into account, instructs that the maintenance of immigration control is in the public interest. I am instructed to attach a little weight to the Appellant's private life because her status has always been precarious. While there may be cases where a person's private life might outweigh the public interest in

the maintenance of immigration control, such as perhaps very severe physical or mental health difficulties this case is a very long way from that.

70. For all of the above reasons I find that the decision of the Secretary of State to refuse leave to remain and remove the Appellant to India is entirely proportionate. Despite the large amount of documentation and witness evidence nothing at the resumed hearing has increased the value or significance of the Appellant's private life above what was considered in the First-tier Tribunal which I have found would not have warranted the appeal being allowed.

### **Notice of Decision**

The Secretary of State's appeal to the Upper Tribunal is allowed such that the Appellant's appeal against the Secretary of State's decision is dismissed.

Signed

Date 31<sup>st</sup> August 2017

Upper Tribunal Judge Martin

### **Fee Award**

The Appellant's appeal against the Secretary of State's decision having been dismissed, there can be no fee award

### **Anonymity**

There has been no application for an anonymity direction and I can find no justification for one.

Signed

Date 31<sup>st</sup> August 2017

Upper Tribunal Judge Martin