



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/06042/2017

**THE IMMIGRATION ACTS**

Heard at North Shields  
On 29 June 2018

Decision & Reasons Promulgated  
On 02 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

RRB + 1  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr. R. O’Ryan, Counsel.  
For the Respondent: Mrs. R. Petterson, Home Office Presenting Officer.

**DECISION AND REASONS**

1. The appellant is a citizen of India who made application for international protection. The application was refused and she appealed and following a hearing at Bradford, and in a decision promulgated on 6 February 2018, Judge of the First-tier Tribunal M J

H Wilson dismissed the appellant's appeals on both asylum and human rights grounds. The short background to the appeal is that the appellant entered an arranged marriage, albeit that prior thereto her husband had been both verbally abusive and had made sexual advances to her. Following the marriage, he was both physically and sexually violent. The appellant gave birth to their son in India. At the date of the hearing in the First-tier Tribunal he was 5 years old. Her husband had not wanted a child and following her son's naming ceremony, her husband continued to be abusive and fell out with the appellant's family. He said that if she were to return to her father she would not be allowed to return to the matrimonial home. In January 2014 the appellant entered the United Kingdom as her husband's dependant on his work visa.

2. The violence continued but was not reported to the police. The appellant felt that this would place her in more danger and lacked the courage to report the abuse. In June 2015 the appellant's son was diagnosed as being profoundly deaf. The same year the appellant and her husband visited India and the appellant met with his family and her own family and explained that she wished for a divorce. Both families rejected the suggestion.
3. In November 2016 the appellant reported her husband to the police in the United Kingdom pursuant to assistance she had been given by a health visitor regarding sources of support. Thereafter, on 24 December 2016 she made application for asylum which was rejected by the respondent. Albeit it was accepted by the respondent that the appellant was a member of a particular social group from India and that she had been subjected to domestic violence by her husband in both India and the United Kingdom, it was not accepted that upon return to her country of origin she would be killed by her husband or his family, or that her subjective fear was objectively well-founded, or that there was no sufficiency of protection in India, or that it was unreasonable or unduly harsh for her to relocate in India, or that her son would be at risk in India consequent upon his medical condition. The grounds of appeal stated that the appellant's removal to India was a breach of the Refugee Convention; that her claim engaged the 1950 Convention; and with regard to her profoundly deaf son, who only understood British sign language, he would be unable to communicate or learn the local language in India, or to receive an effective education there. It was further argued that the appellant and her son would face significant obstacles to integration in India and it would not be reasonable or in the best interests of her son to be removed to India and that return would amount to a disproportionate interference with Article 8 rights.
4. The appellant sought permission to appeal which was granted by Judge of the First-tier Tribunal McGinty in a decision dated 5 March 2018. His reasons for so granting were: -
  - "1. The appellant seeks permission to appeal, (in time), against the Decision of the First-tier Tribunal Judge Wilson, who, in a decision and reasons dated 6<sup>th</sup> February 2018, dismissed the appellant's asylum appeal.

2. It is arguable, as alleged within the grounds of appeal that the judge materially erred when considering the Article 8 claim, in failing to take account of the evidence submitted by the appellant regarding the cost of cochlear implants for the appellant's son in India and in failing to make findings whether or not treatment for her son's deafness would actually be available or accessible to him. The other grounds are of less merit, but I allow all of the grounds to be argued".
5. Thus, the appeal came before me today.
6. In his submissions at the outset Mr O'Ryan confirmed that there was no challenge to the judge's decision on the protection claim. The challenge relates to his human rights decision to dismiss the appellant's appeal. Mr O'Ryan relied on and expanded the grounds seeking permission to appeal.
7. Firstly, he submitted that as to findings on health services the judge failed to consider relevant evidence and that the judge's decision is inadequately reasoned. He submitted that some of the judge's findings were based on the more positive aspects of the evidence on provision without taking into account other material that was before the judge. The evidence in question was in the appellant's bundle and the judge was directed to it via Counsel's skeleton argument. That evidence refers to the availability of cochlear implants in "very few centres" in India and goes on to indicate the cost of both surgery and instrumentation.
8. Secondly, it was submitted that the judge failed to make findings concerning whether relevant health services are available and accessible to the appellant's son and that he again inadequately reasoned his decision. It was submitted that whilst there was detailed evidence about the appellant's son's specific needs including complex ongoing care and monitoring with respect to his cochlear implant, the judge's findings about the existence of health services were no more than "general". It was submitted that the judge had failed to consider and make findings as to whether treatment would actually, in practice, be available and accessible to the appellant's son.
9. Thirdly, the judge erred in taking into account "apparent ease" of communication and interaction and had failed to take into account relevant evidence and again inadequately reasoned his decision including allowing procedural fairness to prevail. It was submitted that it was an error of law to consider interaction between the appellant and her son during the hearing and to place any weight at all on this being achieved with "apparent ease". This finding of "apparent ease" was not balanced against the substantial evidence on communication challenges that the appellant's son would face. The judge did not consider that the appellant's son does not speak any Indian languages and only understands English and British sign language. Further, that there is no officially recognised sign language system in India. Mr O'Ryan referred me to evidence from Lauren Hedley, within the appellant's bundle. She is a "healthy child nurse" and he submitted that her evidence was suggestive of the appellant's son being at a "crucial stage" and he likened that to the position of children identified in the authority of **EV (Philippines) & Ors v Secretary of State for the**

**Home Department [2014] EWCA Civ 874** and argued that the judge had failed to provide reasoning in this regard.

10. Fourthly, it was submitted that the judge had failed to consider or adequately reason his finding that young children adapt more easily. Moreover, the appellant had been deprived of an opportunity to address this issue.
11. Finally, it was submitted that the judge had failed to consider that there was no evidence that the appellant's son was "incapable of learning another sign language". It was not suggested that the appellant's son was "incapable" of learning a language, nor was it suggested that reasonableness of removing him to India, or his best interests, turned on such. Evidence at the hearing, coupled with submissions, focused on difficulties the appellant's son would face. Such difficulties, not inability, it was submitted, contributed to whether it would be reasonable to remove the appellant's son to India and to his best interests.
12. Mrs Petterson opposed the appellant's appeal and began by relying on the respondent's response to the grounds of appeal under Rule 24 and dated 23 March 2018. She submitted that in short, the First-tier Tribunal Judge directed himself appropriately and that the majority of the grounds of appeal focused on the appellant's son being deaf and the possibility of him obtaining cochlear implants. The First-tier Tribunal Judge found that he had already had an implant in the United Kingdom and that the appellant was highly educated and would be able to obtain employment. The judge took all pleaded matters into account. The grounds also assert that the judge was wrong to assess why the appellant's child would be able to adapt to India with the assistance of his mother and place weight on whether the child could learn sign language other than in English. In so doing the judge has not erred in his approach to the evidence. Further, the criticism of the judge for not reciting the totality of the evidence does not amount to a material error and it was not necessary for him to recite every single item prior to coming to his conclusions.
13. I find that there is here no material error of law whatsoever.
14. Firstly, I find the judge has considered the totality of the evidence that was before him. It was not required of him to refer to each and every item. He records at paragraph 3 of his decision that he has taken into account "all of the documents contained in the hearing file consisting of the appellant's and the respondent's respective bundles, the latter of which contained a number of copy appellant documents". He also considered additional material submitted at the hearing including Counsel's skeleton argument along with various letters in support of the appellant. Indeed, the judge also records that if he has not made mention of any particular document in his decision it does not indicate that he has failed to consider it or give it appropriate weight in reaching that decision. In expanding the grounds of appeal Mr O'Ryan referred me to two letters from Lauren Hedley. Contrary to his submission I do not find the judge erred in not taking them into account. He has plainly done so on any reading of the totality of his decision. Indeed, direct references are made to Lauren Hedley's letters. Moreover, the appellant's son has had a cochlear implant in the United Kingdom. This is not

disputed and is referred to at paragraph 9 of the judge's decision. The issue of the cost therefore of a cochlear implant in India is redundant.

15. Secondly, the judge has not, as asserted, failed to consider evidence regarding the appellant's son's specific needs. Mr O'Ryan highlighted, for example, professional advice on a child's needs from a teacher of the deaf, being a letter written by Gill Hammond at page G21 of the respondent's bundle wherein she highlights the provision the appellant's son will need in the future including highly specialist ongoing support to address the significant delay in his communication and to make progress in an educational setting. Again, this is evidence that the judge took into account recognising, as he did at paragraph 23 of his decision, the submissions that the appellant's Counsel at the hearing made regarding the mainstay of the appellant's human rights claim being her son's profound deafness and the ongoing medical care and attention required, which it was submitted would not be available in India in the way that it is in the United Kingdom. The judge in fact went on to remind himself of the need to assess the child's best interests taking into account, as he did at paragraph 35 of his decision, the authority of **EV (Philippines)**. The judge was entitled to conclude that at the time of the hearing the appellant's son was 5 years of age, having come to the United Kingdom when he was 22 months. The judge concluded that he was not at an advanced stage in terms of his education and then carried out an analysis of the specific needs of the appellant's son considering his hearing impairment.
16. Thirdly, it is asserted that the judge erred in considering "apparent ease" of communication and interaction. This is recorded at paragraph 32 of the judge's decision. Even if it was an error, I do not find it material. The judge has adequately reasoned his findings and set this observation into the context of his own overall findings on this issue as evidenced at paragraph 35 of his decision. It was open to the judge on the evidence to find (paragraph 32) that there would likely be a learning process for the appellant's son in India and that there was no evidence that he was incapable of learning another sign language. This was just one of many factors that the judge considered and in so doing it does not give rise to procedural unfairness. Contrary to the grounds the judge factored into his overall analysis the fact that the appellant's son does not speak any Indian languages and only understands English and British sign language.
17. Fourthly, the judge has not erred in concluding at paragraph 32 of his decision that there is an expectation that young children adapt more easily to new environments than adults. Again, contrary to the grounds, this does not fail to take into account the appellant's son's particular circumstances which, on any reading of the decision, the judge was acutely aware of. It is asserted within ground 4 that the appellant was not given an opportunity to address this issue. There is no evidence of this and indeed I note that the grounds were drafted by Counsel who appeared at the first hearing but there is no witness statement from her to this effect.
18. Finally, contrary to the final ground, the judge has taken into account the difficulties of the appellant's son which contributed to whether or not it would be reasonable for

him to be in India and what amounted to his best interests. The judge has carried out a Section 55 analysis which is subsumed within his consideration of Article 8.

19. These grounds amount to no more than a dispute with findings that were open to be made on the evidence. The judge has carefully analysed the totality of the material that was put before him, both written and oral, before coming to his decision. That decision has been adequately reasoned and contains no material error of law.

**Notice of Decision**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision but order that it shall stand.

An anonymity direction is made.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 30 July 2018.

Deputy Upper Tribunal Judge Appleyard