**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/09303/2017

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 5 April 2019** | **On 17 April 2019** |

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**VP (INDIA)**
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Ishrat Mahmud, Counsel instructed by Bassi Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals from the decision of the First-tier Tribunal dismissing her appeal against the decision of the Secretary of State for the Home Department ("the Department") to refuse to grant her leave to remain on the grounds of family and private life established in the UK. The First-tier Tribunal did not make an anonymity direction, but as the central issue in the appeal to the Upper Tribunal is the sustainability of the Judge's

findings on the extent of dependency of other members of the appellant's household, I consider that an anonymity direction is appropriate.

## Relevant Background

2. The appellant is a national of India, whose date of birth is 20 June 1946. She last entered the UK on 5 December 2003, with valid entry clearance as a visitor. Her visit visa ran until 28 May 2004, and on 13 May 2004 she applied to extend it. Her application was refused with no right of appeal. The appellant overstayed. She first sought to regularise her status on 25 June 2015 when she applied for leave to remain on the basis of family and private life established in the UK. The application was rejected on 10 August 2015. On 11 November 2015 the appellant made a further application, which was refused on 19 March 2016 with an out of country right of appeal. The appellant applied for judicial review, and the outcome was a consent order made on 19 July 2017 under which the Department agreed to withdraw the decision of 19 March 2016 and to issue the appellant with a new decision within 3 months.

3. On 14 August 2017 the Department gave their reasons for re-refusing the application of 19 March 2016. She claimed to provide care for her daughter, 'R', and for her mother-in-law, 'S'. She had submitted a medical report from a professor at Oxford University Hospital who said that S suffered from severe rheumatoid arthritis; that the disease had left S with very restricted mobility and considerable ongoing pain; and that the appellant provided help with S's day-to-day activities such as washing, going to the toilet and getting out of bed. However, the appellant had provided no evidence that no one else was available to care for R or S in the UK.

4. She also stated that she was currently caring for her granddaughter, 'M', because she had been diagnosed with learning difficulties, an incomplete third nerve palsy, and an ongoing condition of *"Micrencephaly."* However, she did not have parental responsibility for M, as M resided in the UK with her birth parents. So, if the appellant had to leave the UK, M would continue to reside in the UK. The refusal of the application would not separate any children from their birth parents, and it would not obligate M to leave the UK.

## The Hearing before, and the Decision, of the First-tier Tribunal

5. The appellant's appeal came before Judge Fowell sitting at Priory Court in Birmingham on 2 October 2018. Both parties were legally represented. The appellant's solicitors filed a bundle of documents containing the medical evidence that had been submitted with the application. In addition, they served a report from Dr Martine Stoffels, Consultant General Adult and Old Age Psychiatrist, contained in a letter dated 13 August 2018. Dr Stoffels said that she had seen R on 10 August 2018 for confirmation of her diagnosis and current mental state. R had been accompanied by her husband and her mother. Neither she nor her mother (the appellant) was

fluent in English, but R's husband was fluent in both English and his mother language.

6. Dr Stoffels understood that R had become unwell following the birth of her children. She had developed a combination of depressive and psychotic symptoms. In essence, the combination of her symptoms had remained unchanged over the past 30 years. R continued to experience fluctuating periods of mood instability and psychosis. Over the past 30 years she had been under the care of the Mental Health Trust in Oxford, and had been followed up for long periods of time. She had various combinations of medications - usually a combination of an anti-depressant and an anti-psychotic. She had received care in her home, but the various packages were not successful, with barriers including cultural differences as well as the language barrier.

7. Although R had been discharged back to her GP, it was clear that a number of negative symptoms of psychosis remained prominent, and she continued to suffer from her schizo-affective disorder. R struggled mainly from lack of drive, initiation and motivation, to such an extent that she was unable to self-care and was highly reliant upon direct 24-hour care, provided by her immediate family members.

8. R and her husband's home situation was one of high-level dependency from the husband and his mother-in-law (the appellant). In the past 14 years or so, R had become highly reliant on her mother to provide her with daily structure, to ensure adherence to medication and to maintain her current level of physical health. Without the care provided by her family, R would be liable to require 24-hour in-patient care. R's husband had become increasingly reliant upon his mother-in-law to provide support to his wife. He described how, over the years, his ability to provide care had been compromised by his wife's delusional and paranoid beliefs. He also described periods of agitation, irritability, verbal aggression and threats during periods of unsettledness. He had suffered a heart attack a year-or-two ago, which led to his retirement. This had further compromised his ability to provide input into his wife's care.

9. In summary, R's treatment included medication as well as very high levels of care, provided mainly by her mother. Without this support, it was highly likely that R would become liable for 24-hour inpatient care, which would have a detrimental effect on her mental health.

10. In his subsequent decision, the Judge characterised the thrust of the appellant's claim as being that she was an essential part of the household, providing care for her daughter, R, aged 52, her granddaughter, M, aged 26, and the mother of her son-in-law, S aged 77.

11. The Judge summarised and commented upon the oral evidence he had received from the appellant and her son-in-law, 'K', in paragraphs [9] to [19] of his decision. The appellant was asked if her son-in-law could manage without her. She answered that he had to go out to work.

12. In contrast, K said that he had had a heart attack last May, and so had retired. The Judge commented: "*Despite this, he said that he could not take over full-time care. I was not able to get any real understanding of why not.*"

13. In closing submissions on behalf of the Department, the Presenting Officer submitted that most of the medical evidence was over 2 years old - the exception being the letter from Dr Stoffels. However, she was not R's GP or consultant, and there was nothing to indicate that she had seen R's medical records. Nor was there any evidence from the local authority to confirm the support given to the family. The family did not appear to have engaged with the authorities at all. She referred the Judge to the Home Office Guidance on Carers, which was to the effect that entry clearance was not to be granted to provide long-term care, but only for a 3-month period, and she submitted that the same approach should be adopted here. R had the support of her husband who had been able to manage on his own before the appellant had returned to the UK from India in 2003.

14. On behalf of the appellant, Counsel submitted that the rights of all the family members should be considered. It was clear from Dr Stoffel's report that R needed 24 / 7 care, otherwise she might have to be an inpatient. Although the appellant had been in the UK illegally for a long period of time, there were compelling factors which should be given some weight. The care that the appellant was providing reduced the burden on the state, and hence reduced the public interest in her removal.

15. In his findings, the Judge began with a detailed consideration of the report of Dr Stoffels. The Judge commented as follows at paragraph [32]:

> "This report therefore shows that [R] as withdrawn and very passive, but at the same time she is no longer in need of specialist care or support, is under the treatment of her GP and her condition is stable on medication. This has not quite matched the picture presented of someone who will let the food fall out of their mouth and will not cook a meal or leave the sofa. Even the appellant's witness statement did not suggest that [R] needed any personal care, so [she] is clearly able to dress and wash herself without prompting. Equally, she does not appear to have any mobility problems."

16. The Judge went on to discuss the previous medical reports, which he considered were "*sparse*" given the length of treatment. The Judge noted a letter dated 9 July 2014 which the family's GP had written to the solicitors at their request. The GP said that they had seen very little of M over the last few years, so was unable to comment on M's level of mobility or assistance from another care-giver. M had not taken any regular medication and had recently been well. R was a 48-year-old woman with a history of depression for which she had received medication at the time. She was currently taking medication for low mood. She had a history of deficient anaemia, but had not been seen in their practice since March 2013. There was no mention on her notes of any physical disability or any requirement for care.

17. The Judge's conclusion at paragraph [36] was that an exaggerated picture of the situation had been put forward. M had learning difficulties, but there was no evidence that she required any care. Her school report from Year 7 said that she could count from 1-20 and was an enthusiastic participant, with good relations with staff and other pupils. Of more significance, according to the representations made with the application, was that M was now working as a Nursery Assistant - "*a fact entirely unmentioned in the evidence presented."*

18. At paragraph [37], the Judge said that the exaggeration made it very difficult to place any weight on the information provided about R. Putting to one side what had been said by her husband to Dr Stoffels, R was receiving medication and her condition was stable. The medical care she required was provided by her GP, whom she saw rarely. The Judge accepted that she did not speak English and was dependent upon her husband to take her to appointments and on other excursions, but there was no medical explanation for the paralysing degree of inactivity attributed to her. If this were the case, a much more active psychological intervention would be called for. The accompanying support given to her by the appellant may well be a considerable help to her, but the Judge did not accept that she needed 24-hour care as suggested, or anything approaching that degree of support.

19. The Judge said that this view was borne out by the contents of a Registrar's letter from July 2015, which he went on to quote. The Judge commented at paragraph [39] as follows:

> "Even that information, relayed by [K], indicates that his mother-in-law was playing a supporting role to his care. The reference to him struggling to manage on his own makes very little sense otherwise, especially given that the appellant had by that time been living in the family for 12 years. Since then his wife's condition had improved and she is not now in need of any treatment beyond her medication."

20. At paragraph [42], the Judge held that the appellant's evidence was also not free from "*this sort of exaggeration",* as when she had said that K had to go out to work every day and so K could not provide any care to R: "*This is plainly untrue and has been so for months."*

21. The Judge went on to reach the following conclusion at paragraph [42]:

> "All that can be said with any confidence therefore, (and I find on balance) is that the appellant has been living with her daughter's family for 15 years, mostly illegally, and she helps and supports her daughter and [S]. This does not seem to me to go beyond normal emotional ties in any respect and so I do not find that there is family life, for the purposes of Article 8, with her daughter or granddaughter, or [S], who of course is only a relative by marriage. Support could be provided by Social Services."

22. At paragraph [43], the Judge said that for the same reasons he did not accept that the appellant's son in India was abusive to the appellant or

would not allow her to return. She clearly still owned the family farm there, and there was nothing to show that her house in India had changed hands.

## The Application for Permission to Appeal

23. Counsel settled the application for permission to appeal. He pleaded that various findings of fact made by the Judge between paragraphs [36] and [42] were irrational or unsustainable.

## The Grant of Permission to Appeal

24. On 28 December 2018, First-tier Tribunal Judge Feeney granted the appellant permission to appeal on all grounds raised.

## Discussion

25. Although a number of grounds of appeal are advanced, all of them relate to the Judge's findings on the extent to which M and R were dependent on the appellant, with the exception of the last one, which relates to his finding on family life.

### The finding on family life

26. Mr Whitwell acknowledged that the Judge's finding on family life was *"surprising".* But he did not concede that it was a perverse finding, and he did not accept that the finding was material to the outcome of the proportionality assessment.

27. I consider it is strongly arguable that, on the facts found by the Judge, the appellant should be treated as having established family life with the other members of the household in which she has been living for the last 15 years. On the other hand, the Judge's finding to the contrary has to be understood in the context of his earlier finding that the appellant was not the main carer for R, M or S, but only played a supporting role. The Judge's clear finding was that the other members of the household were principally dependent on K.

28. But even if the Judge ought to have characterised the appellant as having established family life on the facts found by him in paragraph [42], I do not consider that this error was material to the outcome of the proportionality assessment.

29. As recognised by Ms Mahmud in her skeleton argument, the outcome of this appeal turned entirely upon the question of whether there were sufficiently compelling reasons for the appellant being granted Article 8 relief outside the Rules, "*namely the detrimental effect on the health conditions of [R] and [M], if the support which the appellant had been providing was withdrawn."*

### The findings on dependency

30. The findings of fact made by the Judge in the section immediately preceding his conclusion at paragraph [42] have a common theme, which is that the appellant's continued presence in the household is not essential to maintaining the health of either R or M, whose respective conditions have been exaggerated by the appellant or by her son-in-law. K.

31. Having reviewed the evidence, I consider that the allegations of irrationality or unsustainability in respect of the findings made in paragraphs [36] to [41] are no more than an expression of disagreement with findings that were reasonably open to the Judge for the reasons which he gave.

32. It was open to the Judge to attach considerable weight to the fact that M was now working as a Nursery Assistant - a fact which had not featured in the evidence given by the appellant. The Judge did not add the caveat that M was limited in what she could do in this capacity, but his failure to add this caveat does not deprive the fact of her working as a Nursery Assistant of its evidential significance.

33. It is pleaded that the Judge misdirected himself in law in rejecting Dr Stoffel's conclusions about R, when he is not himself a mental health expert. However, the Judge was not purporting to reject Dr Stoffel's conclusions on the basis of superior medical knowledge, but on the basis that Dr Stoffel's assessment was in part based upon matters of which Dr Stoffels did not have personal knowledge. Dr Stoffels was entirely reliant on K as her source of information as to the family's domestic situation.

34. In addition, the Judge engaged in the legitimate exercise of juxtaposing the opinion formed by Dr Stoffels following a single consultation, with information from other medical sources, including from the family's GP, who had been treating R and M over a long period.

35. It was thus open to the Judge to disagree with the opinion of Dr Stoffels that the appellant's absence from the household would have the dire consequences envisaged by Dr Stoffels, which was that R would need to become an inpatient.

## Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

## Direction Regarding Anonymity

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 their 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 14 April 2019

Deputy Upper Tribunal Judge Monson