



**Upper Tribunal**

**(Immigration and Asylum Chamber)**

Appeal Number: HU/20928/2018

HU/20933/2018

HU/20936/2018

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 15 May 2019**

**Decision & Reasons**

**Promulgated**

**On 31 May 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SYMES**

**Between**

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

Appellant

**and**

**SANGEETHA [T]**

**GEORGE [P]**

**[N P]**

**(ANONYMITY ORDER NOT MADE)**

Respondents

**Representation:**

For the Appellant: Ms S Cunha (Specialist Appeals Team)

For the Respondent: Ms F Shaw (for AAN Joseph Solicitors)

**DECISION AND REASONS**

1. This is the appeal of the Secretary of State against the decision of the First-tier Tribunal of 6 February 2019 to allow the appeals of Sangeetha [T], George [P] and [NP], citizens of India, born

respectively 19 May 1976, 7 December 1967 and 20 June 2002, those appeals having been brought against the refusal of 28 September 2018 of their human rights claims.

2. The applications to remain on human rights and exceptional grounds giving rise to these proceedings were made on the basis that Sangeetha's leave as Tier 2 migrant had been revoked; she was pursuing reconsideration via the Pre-Action Protocol letter process. Furthermore, she suffered from Tuberculosis diagnosed on 1 August 2018, possibly as a consequence of the aggressive breast cancer she had suffered from since 2013 which had required a mastectomy and monthly hormone treatment via Letrozole and Tamoxifen, scheduled to continue until 2024. [N] was at a crucial stage of his education as he was studying for his A levels. The applications were refused on the basis that the Secretary of State believed that the medical treatment would be available in India, that the medical report indicated her TB was not infectious, and that [N] could transfer his studies to the Indian education system where he could adapt with the support of his parents.
3. The First-tier Tribunal noted the evidence given before it, which included the fact that the Appellant stated she had investigated the cost of hormone treatment in India which came to nearly a thousand pounds a month, which would be beyond the family's means; she and her husband had sold all their assets in India to come to the UK. Sometime after her arrival here she was diagnosed with cancer. Dr Vitta had written a letter of 29 January 2019 recording that Sangeetha had gone through a horrendous experience with her breast cancer, with ongoing treatment and complications, leaving her with complex health needs requiring MDT involvement.
4. The First-tier Tribunal accepted the evidence it had received as credible, and considered the appeal under the Immigration Rules, finding that the family would not face very significant obstacles to integration given they had spent their formative years there. However, considering the case outside the Rules, the family was well integrated into British life, spoke English, and were financially independent having never been a burden on the taxpayer. Overall it would be disproportionate to expect them to leave given the virulent breast cancer which required ongoing treatment: this made the case one not of choice but reality. It would be unjustifiably harsh to expect the family to return to India, and it would be appropriate to grant some form of limited leave so as to permit Sangeetha to continue to engage with her medical treatment regime without the treatment break that relocation to India would necessarily entail.

5. Grounds of appeal contended that the First-tier Tribunal had erred in law:
  - (a) In finding the consequences of the family's departure to be unjustifiably harsh notwithstanding having concluded there being no significant obstacles to integrating in India;
  - (b) Accepting the family's evidence absent independent confirmation of the costs of medical treatment in India, and failing to evaluate the availability of alternative medications or to assess the consequences of a change of healthcare regime;
  - (c) In finding that the family had not been a burden on public funds, in failing to take account of Sangeetha's reliance on the National Health Service.
6. Permission to appeal was granted on 15 April 2019 by the Upper Tribunal.
7. Before me Ms Cunha explained that the Secretary of State would not pursue the point on the costs of NHS care, on the basis that the husband and wife had paid taxes whilst present lawfully, which represented an appropriate contribution to public funds. However, the Home Office appeal was still pursued, on the basis that inadequate reasons had been given for why it was that the Appellant's return would be unduly harsh, particularly bearing in mind that there was no corroboration of the cost of health treatment. If Sangeetha could access medical treatment financially then she would not face any problems in finding work.
8. Ms Shaw submitted that the Appellant would not be fit to work on a return to India without reliable treatment; and she had given oral evidence of making enquiries in India which had revealed the cost of the injections she needed every 28 days as being a thousand pounds. The Home Office Guidance of 11 April 2019 did not reference medical issues as relevant to the "very significant obstacles to integration" question, and thus it was unsurprising that an adverse finding had been made on private life *within* the Rules but that the appeal nevertheless succeeded outside the Rules, where the health issues had greater resonance.

### **Decision and reasons**

9. It seems to me that the First-tier Tribunal was entitled to come to the conclusions which it did. Indeed, its reasoning is unsurprising, and essentially to the effect that it is unjustifiably harsh to expect a woman with serious ongoing cancer problems receiving a course of treatment in the United Kingdom to relocate to India where she would be unable to afford the essential treatment.

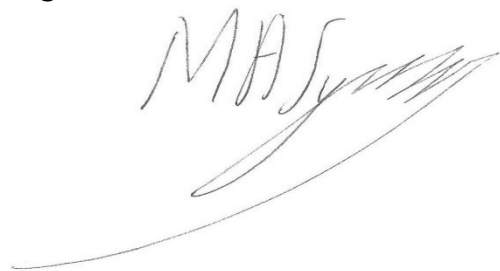
10. Ms Cunha was doubtless correct not to pursue the point on the recourse to NHS treatment following the unanticipated development of a serious illness. Migrants lawfully present in the UK will have paid the NHS surcharge as well as contributed towards the country's finances via income and other tax payments.
11. There is no tension between the appeals' success outside the Rules but failure within them. The Rules are only the starting point, albeit that they comprise the embodiment of public policy objectives that combine such that only a "compelling" case can succeed outside them. It is clear the First Tier Tribunal was aware of this; indeed it cited and applied the Secretary of State's own preferred term that encapsulates that notion, the "unjustifiably harsh" benchmark.
12. As to the ground of appeal challenging the reliance on oral evidence for satisfaction as to the cost of medical treatment, one sees, not infrequently, refusal letters where the Secretary of State puts a fully researched case as to the availability of medical treatment in the country of origin. However, here there is nothing more than a bare assertion that the relevant treatment would be available, with no consideration whatsoever of the impact on the Appellant of the inevitable change in her medical support arrangements or of the question of the affordability of any medication. In those circumstances I do not consider the First-tier Tribunal needed to do more than decide whether it accepted the Appellant's own evidence that she had researched the available medical treatment and would not be able to afford it without working to an extent that would be unrealistic given her state of health. It found that evidence to be credible. That was a conclusion properly open to it.
13. In these circumstances I uphold the decision below.

## **Decision**

The appeal is dismissed.

Signed

Date 24 May 2019

A handwritten signature in black ink, appearing to read 'M.A.S. Symes', with a long, sweeping underline that extends across the width of the signature area.

Deputy Upper Tribunal Judge Symes

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