



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/03728/2020

THE IMMIGRATION ACTS

Heard at Field House
On 1 November 2021

Decision & Reasons Promulgated
On 23 November 2021

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

MR SIKANDER SINGH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L Singh, Solicitor Advocate instructed by DSL Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This has been a remote hearing using Microsoft Teams. A face to face hearing was not held because it was not considered to be practicable and all issues could be determined in a remote hearing. I did not experience any difficulties as a consequence of the hearing not being in person.
2. The appellant is a citizen of India, born on 23 December 1996. On 4 December 2019 he applied for leave to remain in the UK on the basis of his private life. On 24 February 2020 his application was refused. He appealed to the First-tier Tribunal where his appeal came before Judge of the First-tier Tribunal Harris (“the judge”). In

a decision promulgated on 6 May 2021 the judge dismissed the appeal. The appellant is now appealing against that decision.

3. The appellant's case, in summary, is that he came to the UK as a child in 2011, on a visa to play cricket (with his ticket paid for by his cricket coach), without his father's permission, and remained thereafter. He claims that since 2014 he has been living with his paternal uncle (and his uncle's family). He claims that he has lost contact with his family in India and that he had a very difficult relationship with his father, particularly since the death of his mother in 2008. The appellant also claims to suffer from mental health problems.

Decision of the First-tier Tribunal

4. The appellant relied on a report by Georgia Costa, a psychologist. The report noted that the appellant had not seen a GP or received any treatment for a mental health condition. However, based on an assessment of the appellant, Ms Costa concluded:

"In my opinion, Mr Singh seems to have been suffering from a depressive illness as a result of the situation he finds himself in. In order to formally evaluate the level of depression, I assessed him using PHQ-9 and his scores confirmed that he has a moderate to high level of depression."

5. Ms Costa stated that she advised the appellant to see a GP in order to obtain a referral for talking therapy. She also noted that it may be that there is some medication which would assist him. She concluded her report by stating:

"Mr Singh needs a great deal of help and support but he is fortunate enough to have a strong support network around him in the UK which has become a "replacement family". If he were removed from this structure there is a risk that his mental health would significantly deteriorate and he may entertain suicidal thoughts and even act on them as this loss would trigger his previous traumas. He is well-integrated in life in the UK and feels safer and more secure here than he did in India."

6. The judge considered whether the appellant's removal from the UK would breach Article 3 ECHR. The judge noted that the appellant did not give any evidence about his health, mental or otherwise, or about any suicidal thoughts or behaviour and that the evidence relied upon by his representative to support the Article 3 claim consisted of the report by Ms Costa.

7. The report was considered in considerable detail by the judge in paragraphs 25 - 31 of the decision. In paragraph 25 the judge accepted that Ms Costa had the necessary expertise to provide evidence. In paragraph 26 the judge noted that Ms Costa saw the appellant over a video link and had been provided with documentation about his circumstances. In paragraphs 27 - 29 the judge summarised Ms Costa's opinion, including her view that the appellant has been suffering from a depressive illness and that there is a risk that he may entertain suicidal thoughts if returned to India. With respect to the risk of suicide the judge found at paragraph 30:

"I note that the description here is that of a risk but not a high or imminent risk. I also observe that there is no prognosis on the likely timescale that suicidal ideation could

arise for the appellant in such circumstances. In addition there is no comment on whether medical treatment might ameliorate suicidal ideation in the appellant. These matters weigh against the appellant demonstrating his case on suicide risk under Article 3 on return to India. It is noticeable that in his oral and written evidence the appellant has not himself commented about the issue of suicide risk to add to his case. The only evidence before me on the issue is what is contained in the opinion of Ms Costa. It would appear that there has been little or no suicidal ideation by the appellant prior to now. It is not said that the appellant is currently suicidal."

8. The judge noted that the appellant had not provided any country background evidence about healthcare in India; whereas the respondent provided a CPIN which, in the view of the judge, established that necessary medication and treatment would be available. The judge concluded that the appellant's removal would not breach Article 3 on health grounds.
9. The judge then turned to consider Article 8 ECHR. The judge firstly considered paragraph 276ADE(1)(vi) of the Immigration Rules (very significant obstacles to integration). The judge directed himself to the guidance in *Kamara* [2016] EWCA Civ 813 at [14] where it is said:

"The idea of integration calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

10. The judge gave multiple reasons for finding that the appellant would not face very significant obstacles to integration. These include:
 - (a) The evidence regarding the appellant's mental health did not establish that there would be a real risk of serious harm because of depression or suicide.
 - (b) The appellant claimed to have suffered from serious back pain but the evidence did not support that it was sufficiently serious to prevent him working; or that there would not be appropriate treatment available.
 - (c) Although the appellant had been living outside of India since the age of 14, and has not resided in India for approximately a decade, he had spent "a number of formative years of his childhood in India". The judge stated in paragraph 45:

"I accept also that the appellant has never lived as an adult in India but I also take into account that it is common for young adults to draw on childhood experiences in their adult lives."
 - (d) The evidence of Ms Costa did not show that the appellant would not be able to psychologically cope with adapting to India. In paragraph 46 the judge stated that Ms Costa's report "focusses on mental health issues not general psychological matters arising from the appellant's time in the UK".

- (e) The appellant's uncle, with whom the appellant resides, maintains family contacts in India. The judge found that the appellant's uncle would be able to alert this family to the appellant's return thereby affording him the opportunity of reviving ties with his family.
- (f) The appellant would be able to resume contact with friends, in particular from his old cricket club in India.
- (g) As a committed Sikh, the appellant would be able to develop relationships within a religious community.
- (h) The appellant's uncle would be able to provide him with financial support. The judge noted, in this regard, that the uncle's evidence was that he saw and treated the appellant as a son.
- (i) The appellant, who has some experience in the construction industry, would be able to obtain work in that field.
- (j) The appellant had not submitted evidence regarding the cost of living and accommodation in his home area in India and there was no evidence to establish that he would be unable to support himself, in particular with the assistance of his uncle.
- (k) The appellant's extremely volatile relationship with his father would not hinder Gration because the appellant did not need to have contact with him.

11. In paragraph 53 the judge concluded: :

"Weighing up the oral and documentary evidence before me, I consider there may well be obstacles that the appellant has to overcome to re-integrate into India but, even taking into account his mental health vulnerability, I am not satisfied that it is demonstrated that he would be unable to overcome any such obstacles or that overcoming the obstacles would entail very serious hardship upon the appellant. I am not satisfied it is demonstrated the appellant would face very significant obstacles to integration in India."

12. The judge then considered Article 8 "outside the Rules". As part of the proportionality assessment, the judge had regard to the relevant considerations in Section 117B of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). The judge found that sections 117B(2) and (3) did not weigh against the appellant. Applying sections 117B(4) and (5) of the 2002 Act, the judge found that, in the light of the appellant's immigration status whilst in the UK, only little weight could be attached to his private life.
13. The judge also noted that the appellant's removal would effect his cousins, to whom he acts like an older brother. The judge found that the appellant has not taken on anything approaching a parental role and that the appellant's return to India is "not at odds with the childrens' best interests".

Grounds of Appeal and Submissions

14. The grounds of appeal make several arguments. These are as follows:
- (a) It was speculative for the judge to state in paragraph 45 that the appellant would be able to draw on his childhood experiences in India, given that the appellant's evidence was that he has lost contact with, and would not be able to obtain support from, his father and siblings.
 - (b) The judge erred by stating in paragraph 46 of the decision that there was not expert evidence showing that the appellant would be unable to cope in India, when this is what the evidence of Ms Costa showed.
 - (c) It was speculative for the judge to find that the appellant would be able to establish, or revive, ties with family in India, when his evidence was that he did not have any such ties.
 - (d) It was speculative for the judge to find that the appellant would be able to revive friendships from his old cricket club when he had been out of India for over ten years and there was no evidence indicating that he would be in a position to revive ties.
 - (e) The judge did not provide adequate reasons for finding the appellant would be able to return to his home village and revive contacts in that locality.
15. Permission was granted by First-tier Tribunal Judge J M Holmes. The grant of permission states:
- "It is arguable that the judge on the one hand failed to address the medical evidence before him that related to the appellant's mental health, and on the other hand relied upon his own speculation on the appellant's ability to rely upon acquaintances from childhood without giving him the opportunity to address that speculation in evidence. Arguably the appellant was deprived of a fair hearing of his human rights appeal."
16. Mr Singh gave succinct submissions. He stated that he relied on the grant of permission by First-tier Tribunal Judge Holmes, and submitted that there were three distinct errors of law in the judge's decision:
- (1) The judge failed to address the evidence of Ms Costa about the appellant's mental health;
 - (2) the judge speculated about the appellant being able to revive contact with family and/or friends; and
 - (3) as a consequence of the foregoing the appellant was deprived of a fair hearing.
17. Mr Tufan submitted that it is plain from the decision that the judge engaged comprehensively with Ms Costa's report. He drew attention to the detailed consideration of the report in the section of the decision considering Article 3 ECHR. He also noted that Ms Costa is a psychologist, not a doctor; and stated that the report

ought not to have been given significant weight because it was based entirely on what Ms Costa had been told by the appellant.

18. Mr Tufan argued that the decision did not contain speculation; and, in any event, this line of argument missed the point, which is that the judge engaged with the guidance in *Kamara* about what “integration” entails and made clear findings explaining why the appellant would be an “insider” in India.

Analysis

Ms Costa’s evidence

19. Mr Singh submitted that the judge failed to address the evidence of Ms Costa about the appellant’s mental health. This is plainly not the case, as in paragraphs 25 –31 of the decision Ms Costa’s report was considered in detail (see paragraph 7 above).
20. The judge accepted Ms Costa’s opinion that the appellant suffers from depression (at a moderate to high level), and that there is a risk that on return he may entertain suicidal thoughts and act on them, but for sustainable (and unchallenged) reasons found that adequate healthcare provision and support would be available. It was open to the judge, based on consideration of Ms Costa’s report alongside the objective evidence about healthcare provision in India, to find that there was not a real risk that the appellant would commit suicide on return.
21. The grounds submit that the judge erred in paragraph 46 by finding that Ms Costa’s evidence did not establish that the appellant would be unable to cope with adapting to life in India in the light of the time he has spent in the UK. I disagree. Ms Costa’s evidence concerned the appellant’s mental health condition and how a return to India may impact on this; she did not (and was not qualified to) address whether (and, if so, to what extent) a young man from India who came to the UK as a teenager would face difficulties adapting to and coping with life upon return to India. The judge was therefore correct to state in paragraph 46 that there was no evidence on this specific point.

Speculative findings of fact

22. In paragraph 45 the judge made an observation that it is common for young adults to draw on their childhood experiences. The grounds state that this was speculation because the appellant has lost contact with his father and siblings. However, the judge’s finding that the appellant would be able to draw on childhood experiences did not depend on the appellant having contact with his father and siblings. In paragraph 45 the judge was doing no more than pointing out that, as the appellant had lived in India until he was 14, it is likely he would have a familiarity with the country based on his experience as a child. This distinguishes him from a person who left their country as an infant (who, typically, would have less familiarity with it) and a person who left his country as an adult (who, typically, would have greater familiarity with it). This is a relevant – and obvious – point, and I do not accept that it involved any speculation.

23. It was also not speculative for the judge to find that the appellant would be able to revive family ties in India. The evidence before the judge was that the appellant's uncle maintains contact with family in India and that the appellant has a very close relationship with his uncle. It was not speculative for the judge to find that the appellant's uncle would endeavour to assist the appellant and would, through his connections, introduce him to family members.
24. Likewise, it was not speculative to find that the appellant would be able to revive ties with his former cricket club. The appellant's evidence was that his coach had assisted him greatly (even paying for his ticket to travel to the UK). It was not speculative to find that there is a likelihood that the relationship could be revived. Nor was it speculative judge to find that the appellant would be able to build relationships through participation in Sikh religious life, given his commitment to the Sikh faith.
25. For these reasons, I reject the argument that the judge erred by speculating.

Deprived of a fair hearing

26. Mr Singh relied on the statement in the grant of permission that arguably the appellant was deprived of a fair hearing. However, the grounds do not identify any arguable unfairness and Mr Singh did not advance any argument before me as to how the hearing was unfair. I therefore do not accept that there is a distinct "unfairness" ground of appeal.

Notice of Decision

27. The appeal is dismissed.
28. The decision of the First-tier Tribunal did not involve the making of a material error of law and stands.

Signed

D. Sheridan

Upper Tribunal Judge Sheridan

Dated: 19 November 2021