Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/09001/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5 July 2021	**On 3 August 2021**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

MARIO BENEDICT FRANSWAH
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Jones, Counsel instructed by Bhogal Partners Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of the respondent on 3 May 2019 refusing him leave to remain on human rights grounds.

2. The appeal has been determined in the First-tier Tribunal but I set aside its decision because it erred in law. My concern was that the decision of the First-tier Tribunal did not show proper consideration of the many issues raised in the papers. I also said, towards the end of my short Reasons for Finding an Error of Law, and after I had indicated that the First-tier Tribunal had erred in law for want of a detailed explanation, that the appellant had "been in the United Kingdom for over half of his life". As Mr Clarke pointed out,

with considerably more tact than the facts warranted, that is just wrong. I do not know why I said that. The claimant has been in the United Kingdom since 2006 and so has now been in the United Kingdom for fifteen years but he was born in 1982 and so has not been in the United Kingdom for over half of his life. Ms Jones confirmed that my finding to the contrary could not be substantiated and had to be seen as an error.

3. The Reasons for Refusal dated 3 May 2019 confirms that the relevant application was made in June 2017. It also sets out the appellant's immigration history. He entered the United Kingdom in 2006 with entry clearance as a student that was valid until November 2009. He made an in time application for further leave as a student and his leave was extended in stages until 20 December 2013.

4. On 19 December 2013 he made a "family and private life" application. That was refused and an appeal dismissed. His appeal rights were exhausted on 13 May 2015. Since then he has not had leave to be in the United Kingdom.

5. On 5 June 2015 he made further submissions that were not treated as a further claim, and on 19 June he made the application leading to the decision complained of.

6. The letter shows that there was not an application based on a relationship with a partner or a dependent child. The Secretary of State considered the "ten year private life route" but found the appellant did not satisfy the Rules. In order to satisfy the Rules he had to show "very significant obstacles" to his integration into India and the respondent found that he could not do that. He was 23 years old when he came to the United Kingdom having spent all his life in India and it was considered reasonable to expect him to return there. He was employable and had some family contacts still in India.

7. The Secretary of State then looked for exceptional circumstances that could lead to a grant of leave outside the Rules. The appellant lived with his parents and sister who had indefinite leave to remain in the United Kingdom and had lived with his grandmother who similarly had leave but she died in 2017. Whilst recognising that there would be grief following the grandmother's death the Secretary of State found no exceptional reason to grant leave.

8. The Secretary of State then looked at the decision made in December 2014 by an Immigration Judge. The gist of these findings was that the appellant had close family ties in the United Kingdom but was an able-bodied and educated man who had ties in India and, having entered the United Kingdom for a temporary purpose which had been fulfilled, should now be expected to return.

9. The Secretary of State acknowledged a letter from the appellant's general medical practitioner. The appellant suffered from ailments that were sufficiently serious to require surgical intervention but nothing that could not be treated easily. There was also an indication that the appellant suffered from anxiety and depression leading to a psychiatrist's report dated 31 March 2019. This considered it to be "essential" that the appellant be offered Cognitive Behaviour Therapy which would not be available in India but the Secretary of State did not accept it was either necessary or unavailable in India. The Secretary of State found no basis for granting the application.

10. There are two bundles before me that I find particularly significant. The first was prepared for the hearing in the First-tier Tribunal on 8 October 2019, and the second

prepared for the hearing in the Upper Tribunal on 5 July 2021. I return to the bundles below.

11. The appellant gave evidence.

12. He adopted his statement dated 8 October 2019 in the first bundle and his statement dated 30 June 2021 in the second bundle and was not asked additional questions. In his statement dated 8 October 2019 he explained that he was born in India. His mother left India for the United Kingdom in March 2003 and his father and sister joined her in 2005. The appellant was not qualified to enter as a dependant because he was over 18 years of age although he regarded himself still as a dependant of his parents. He entered the United Kingdom in 2006 as a student.

13. He attended St Mary's University, Twickenham and was awarded a degree in history.

14. He spoke of his close relationship with his late grandmother in the United Kingdom. His grandmother he described as "not British" but she benefited from a "right of abode". His mother was able to enter the United Kingdom to reside by reason of ancestry.

15. He referred in his statement to extending his leave and then his "numerous attempts to regularise my status" although, as indicated above, he had no status because he was an overstayer.

16. His grandmother died in November 2017.

17. He felt that his life was "empty and meaningless" following his grandmother's death.

18. The appellant described himself as a "devout Catholic" and not only attended a local Roman Catholic church frequently but he was an extraordinary minister of Holy Communion at Sunday Mass.

19. He could not imagine how he could establish himself in India where he had no friends. He also found it difficult to sleep and was anxious.

20. His family were in grief following the death of his grandmother and were supporting each other.

21. In his statement dated 30 June 2021 he confirmed matters said in the earlier statement.

22. He explained that he had never been close to his paternal relatives. The appellant's father had three brothers and two sisters. His father's eldest sister was now aged almost 80 years. She is a widow with poor health and was dependent on her children. His father's second sister was unmarried, in her late 70s and in poor health. His father's elder brother had died; the oldest brother was unmarried and retired and in poor health; another brother was married and retired and dependent on his children and none of them were in a position to accommodate the appellant or support him financially.

23. He said he would not be able to maintain the same level of close friendship with his parents, sister and partner if he returned to India. Neither could he give them practical support if he were out of the country.

24. He said that his father and mother were suffering from poor health. His sister also had a condition that presented with spots and blisters and she required support mainly from her mother.

25. He then referred to relationship with his "partner". He named her and identified her as a Filipino national residing in the United Kingdom. They met through a Catholic singles website in 2019 and had become friends. His partner was residing lawfully in the United Kingdom as a skilled worker and had made an application to extend her leave until June 2021. The application was made on 3 June 2021. He explained how during the pandemic he had been in contact with his partner by telephone and it was his intention when permissible to settle down and found their own family together.

26. He was taking Mirtazapine 15 mgs tablets.

27. He referred to the sadness that followed his grandmother's death. He then talked about the comfort and peace he found as a Roman Catholic and his frustration at not being able to do even voluntary work in the United Kingdom. He continued to serve as an extraordinary minister.

28. He described his life in the United Kingdom as being at a "complete standstill" and he could not imagine how he could live in India.

29. He then referred to the mutual support he and other close members of his family enjoyed and his desire to be a productive member of British society.

30. He described himself as "Anglo-Indian" and how the position of Anglo-Indians was declining in India. For example, India no longer had two "Anglo-Indian" members of parliament.

31. He said he would be returning to a country very different from the one that he had left. He believed his future lay in the United Kingdom.

32. He also commented on the COVID pandemic "ravaging through India".

33. He was cross-examined.

34. He confirmed that he had worked for two years in the National Health Service doing mainly administrative work. He also said that he lived with his immediate family in the United Kingdom.

35. He said that it was his intention to marry his current partner and then establish their own family but he claimed not to have discussed with his partner the possibility of going to India and had not investigated the costs.

36. He postulated that landlords would not let property to him as a single man on his own in India but he had produced no evidence to support that claim. He repeated that he had not made any investigations.

37. He was asked about the possibility of working in India. He said he had a history degree. He knew about the Tudor Wars and the Hundred Years' War but did not regard those things as particularly helpful in India. He had ideas about training as a teacher but was rather vague about how they could be effected.

38. He was then referred to a passage in the Decision and Reasons that I set aside. At paragraph 24 the judge recorded that the appellant "said that he came to the UK with the intention of staying here and not going back to India". He was asked if that was correct and he replied, "I must have said it". Mr Clarke pressed the point and asked the appellant if he really did agree that he entered the United Kingdom not intending to return even

though that intention was required by a Tier 4 visa. The appellant replied that he did not intend to overstay. He had tried to establish himself in the United Kingdom lawfully. When it was pointed out that trying to establish a lawful presence by giving a false reason for wanting to enter the United Kingdom could have been thought dishonest he said that he came intending to go back but circumstances changed.

39. He could not explain why the GP records did not say more of his role as a carer. He also suggested that if he had returned to India he would have been killed by the recent Coronavirus.

40. The appellant accepted that he had had treatment from the health service. He was asked if he had paid for that treatment and found the question hard to answer. I asked him simply if he had paid or had not paid and he replied that he did not know.

41. He accepted that the Roman Catholic church had a presence in India but said that he would find it hard to strike up new friendships.

42. He did not expect he would have any support from his father's family. They had just not shown any interest. They had disapproved of the marriage between his parents.

43. The appellant's mother, Geraldine Franswah, gave evidence. She adopted her statements of 8 October 2019 and 29 June 2021.

44. In her first statement Mrs Franswah confirmed that was settled in the United Kingdom as of right because of ancestry and she was later being joined by her husband and daughter and later still by the appellant.

45. She said it was the appellant's intention after obtaining his BA (Hons) in history to study for a PGCE. He obtained work when that was permissible, when that was no longer permissible he worked in a voluntary capacity for a different organisation but gave that up when he was told that was no longer allowed. She was concerned that his life was on hold.

46. She said that when he applied for his "UK ancestry dependant" visa he was still under the close supervision of his parents and had no funds of his own. She described him as a level-headed person. He had some skin problem which required treatment and was showing signs of stress.

47. She said there was no one for him in India now and he would be completely on his own. She postulated that he would not be able to manage or find anywhere to live or get work.

48. Then she talked about the appellant's close relationship with her mother, his grandmother.

49. Mrs Franswah then explained how she had blood pressure and other problems and had recently been admitted to hospital in an emergency.

50. She continued to work because the family needed the money. They would be better off if the appellant were able to work and contribute.

51. She said that the appellant's father had medical problems as well. They wanted the appellant to be in the United Kingdom to help support them.

52. Her most recent statement included much that was in her previous statement.

53. She insisted that she did not have a close relationship with the appellant's paternal relatives.

54. Family members were also still grieving following the death of her mother in November 2017. She confirmed that she was on lifelong medication for her circulation and heart problem.

55. The family in the United Kingdom supported the appellant financially as they had done through his time at university.

56. Mrs Franswah had been subject to furlough during lockdown and her husband was expecting to retire next year and they were worried about the financial strain. She rejected the contention that family members in the United Kingdom could send money to the appellant in India. They do not have money to give. She did not want to go to India presently because she was frightened of COVID. She could not preserve the close relationship she enjoyed with her son if he moved to India.

57. In answer to supplementary questions she confirmed that she could not enter sooner than she did because of family responsibilities. She made much of the other relatives entering the United Kingdom as a right.

58. In answer to questions in cross-examination she confirmed that although she had poor health that was not the reason she had been unable to work. She had been subject to furlough. She confirmed that she was not aware there were any enquiries being made of how the appellant might establish himself in India or how they might manage without him if he left to establish his own family as he talked about doing.

59. The appellant's father gave evidence. He is Mr Newton Benedict Franswah. Again, he had made a statement in relation to the first hearing dated 8 October 2019 and a further statement dated 29 June 2021.

60. In his first statement he explained that the appellant was still a young man in need of help when he came to the United Kingdom.

61. The appellant applied for a dependant visa but that application was refused. Indeed, his application for leave as a student was unsuccessful but "his case came up in the UK which he won" which I assume means that a decision refusing him leave was appealed successfully.

62. He talked about the close relationship the appellant enjoyed with his late grandmother.

63. Mr Franswah then said that he was "getting old" and suffered from a variety of diseases including high blood pressure, high cholesterol, diabetes and gout. His wife was suffering from problems too. There was a lot of stress. The appellant's sister was particularly close to him.

64. He pleaded that the appellant be allowed to remain.

65. In his more recent statement he emphasised the shock of his mother-in-law's death and gave more details of his own and his wife's health problems. The family were suffering huge financial strain exacerbated by his wife being made redundant.

66. He said how at a previous hearing his daughter had said she could send £10,000 and that he could send £10,000 to the appellant in India to help him obtain a teaching degree and to

reintegrate in life but those funds were no longer available. He was worried about how the appellant could establish himself. He was worried about how his daughter would cope without her brother. His relatives were not supportive. He had visited India in 2010 to attend his elder brother's funeral. His late brother was the only family member who supported him. The others were not interested and were themselves aging.

67. He was visibly distressed. I assured him that I would read the statements in evidence-in-chief and I confirm that I have read them although I have not found it helpful to set them out herein. In answer to supplementary questions he confirmed that the family in India would neither be inclined or able to help.

68. He was cross-examined. He did accept that there were some relatives in India and he was in contact but they would not support the appellant in the event of his return.

69. The appellant's sister gave evidence. She is Farina Ann Franswah. She made a statement dated 8 October 2019 and a further statement dated 29 June 2021.

70. Ms Franswah explained in her first statement that she was close to the appellant, her brother, and how she was concerned that he had "lost his spark" with all his immigration problems. This was repeated in her more recent statement. She had said how she had been extremely ill during the pandemic and how the appellant had done much to look after her physically as well as emotionally. She was worried about her parents own declining health.

71. She had now formed a serious relationship and hoped to move in with her partner later during the year. They wanted to live independently. She was reluctant to move out because her parents depended on her and her brother and also earn money.

72. She accepted that she had previously offered to find £10,000 to help the appellant establish himself in India if that were necessary but felt that was not an offer she could keep open. She needed such funds as she had for her own family plans and also to support the parents whose circumstances were going to decline.

73. In answer to supplementary questions she confirmed that she had little to do with her relatives on her paternal side in India. There would be brief courtesy conversations at Christmas but that was all.

74. She was cross-examined.

75. She confirmed that she had said that there were some links between her and her paternal relatives but not much. She said she could not support him anymore financially.

76. Mr John-Paul MacNamara gave evidence adopting letters dated 24 September 2019 and 24 June 2021. The two letters say essentially the same thing.

77. Mr MacNamara is a law lecturer at City University and a part-time practising barrister. He gave evidence by video link interrupting his holiday in Wales in order to give that evidence. He gave it from his parked motorcar.

78. He describes the appellant as a "good friend" and that he has known the appellant for at least seven years through the Roman Catholic church.

79. He spoke of the appellant's personal qualities in glowing terms exhibited by his committed membership of the church community and also the Catenian Association which he described as a "Catholic male fraternity".

80. He was also concerned how the appellant would cope with COVID virus in India but he had no special expertise in COVID in India.

81. He thought the Catenian Association did have a presence in Goa but probably not throughout India.

82. The bundle prepared for the hearing before me contains several supportive letters which I have considered.

83. Ms Bernadette Paul sent two letters. The first is dated 24 June 2021. She writes of the integrity and work ethic that are manifest in the appellant and his family and says how they are respected in the local community. The second is dated 25 September 2019 and makes essentially the same points although refers to there being a huge toll on his mental health.

84. There is a letter from the Right Reverend Paul Hendricks, the Titular Bishop of Rosemarkie. The appellant worships at a church within Bishop Hendricks' episcopal area and he confirms that the appellant is an extraordinary minister. He makes the point that this role has strict admission criteria and is only available to people who have shown their aptitude to suitability. He confirms that the appellant's parents are becoming more dependent on the appellant and although he presumes that the appellant will be capable of finding work in India he will be without support.

85. There is a similar letter from the Reverend Simplicio D'Souza who identifies the appellant as a worshipping member of the parish and again writes appreciatively of the appellant's commitment to the parish and his personal humility, kindness, gentleness, genuineness, dedication and support.

86. There is also a letter from the Vicar General's office signed by Monsignor Matthew Dickens. He refers to the appellant as someone of "impeccable character and good standing". I find this a little concerning. The appellant is not of impeccable character. He is an overstayer on an immigration application and it troubles me that Monsignor Dickens either does not appreciate that or does appreciate it and thinks that it is consistent with an impeccable character. I have reservations about the reliability of Monsignor Dickens' opinion which does not seem to be thought through although I appreciate that the positive points are confirmed by other sources.

87. There is also a letter from the appellant's partner. She clearly sees him as a potential husband but their relationship has not yet developed to that stage.

88. There is a letter from one Etienne Hoffland dated 24 June 2021. The writer knows most the appellant's parents and confirms that their health is declining and expresses concern about how the appellant would cope in India particularly in the light of the COVID crisis. There is a similar letter from Grace Montagni dated 24 June 2021 and she writes appreciatively and respectfully of the appellant, commenting especially on his humour.

89. There is a manuscript note from Helen Philip-Watson dated 23 June 2021. It is not clear how she is able to comment on the appellant not having links in India but she supports his

application to remain commenting on his "good character" and his willingness to work and support members of the community.

90. A Mr J F McConway introduces himself as a retired science teacher and director of a small property company. He is a member of the international Catenian Association and speaks well of the appellant's trustworthiness and integrity and expresses his belief that he would be an asset to the community.

91. One Karena Ann Martinz writes as the appellant's aunt and godmother. She refers to his work in the Roman Catholic church and to her sister's family being "very close". She too expressed the view that in the event of the appellant's return to India he would be returning on his own with no one to support him. He also had a role to play supporting his family in the United Kingdom and his parents are showing declining health.

92. There is a letter from the appellant's great-aunt, Maria Virginia Rosebud Julian which describes the appellant as a "very responsible young man" and that he was someone to turn to in the event of a family emergency. He had been very supportive during the pandemic crisis.

93. The bundle includes documents relating to the appellant's family ancestry and also financial documents but I do not consider anything there to be a matter of dispute. The point of these documents is they tend to show that the appellant's close relatives are living responsibly within their means and have manageable debts but are not sitting on substantial funds that could be made available to support the appellant or for any other purpose. There are various "medical documents" tending to confirm various ailments of the appellant and his immediate family but nothing that amounts to really serious health difficulties.

94. I have been informed by the material under the heading "Current news articles re Anglo-Indian minority in India". Clearly there is a move in Indian society to take away the special representation allowed in certain circumstances to members of the Anglo-Indian community at the time of Indian dependence in 1947. This is not an asylum claim and it has not been suggested the social conditions in India are such that a person such as the appellant cannot safely return there. I found the material of peripheral relevance to this claim.

95. I have considered too the "Appellant's Bundle". I see no merit in commenting on the witness statements that are not considered above or the general supportive letters. It is perfectly plain that there are several people who think sufficiently of the appellant to go out of their way to express the view that they would like him to remain in the United Kingdom.

96. I must look particularly at a psychiatric report by Dr Paul Courtney dated 31 March 2019. Dr Courtney is a consultant psychiatrist with the Hampshire Partnership NHS Foundation Trust. His most relevant qualifications are his membership of the Royal College of Psychiatrists which was awarded in 1988 and his 22 years' experience as a consultant psychiatrist. His report includes an appropriate direction about his duties and he describes the appellant as a 36 year old single man who has lived in the United Kingdom for almost thirteen years. He has not suffered mental health problems until 2014 when his application for permanent leave to remain in the United Kingdom was refused. The

appellant says that he has no family to support him anywhere in India and he is worried about his duty to support his parents in the United Kingdom. In Indian culture it is the duty of the son to look after the parents. He has experienced "substantial stress" in relation to his application for leave and his depressive symptoms were exacerbated after the death of his grandmother. The appellant has prescribed an antidepressant Mirtazapine. The appellant appeared tense throughout the interview but spoke clearly with no thought disorder or sign of psychosis. He had suicidal thoughts at his lowest.

97. Dr Courtney recommended a change of antidepressant medication and a course of Cognitive Behaviour Therapy.

98. There are far fewer psychiatrists in India than in the United Kingdom. Dr Courtney anticipated that drugs would be available for the appellant's treatment but not the Cognitive Behaviour Therapy that he considered necessary. He concluded that the appellant would not get adequate treatment for his mental illness if returned to India.

99. There is also a report from Dr Roger Ballard dated 28 June 2015 that was included in the bundle prepared for the First-tier Tribunal. Dr Ballard describes himself as a social anthropologist and has appropriate qualifications and experience. He was particularly concerned with the relationship between the appellant and his late grandmother which clearly is now of minimal relevance but he also commented on the relationship within the entire family. His findings, which of course do not bind me, are interesting. He spent some time looking at the ancestry links between the appellant and his close relatives and the United Kingdom and he noted that the appellant was an "odd man out" (paragraph 3.3) which makes sense only as a reference to his not having entitlement to live in the United Kingdom.

100. Under his conclusions beginning at paragraph 5.2 and paragraph 55 (I find the numbering a little eccentric) Dr Ballard said that:

> "I had little doubt that their collective objective was to reunite the collectively in the UK. In doing so they took advantage of the patrial status of the appellant's grandmother, mother and maternal aunt. However, they did so step by step: the appellant's mother laid down the initial beachhead in the UK, after which the other members of the family applied for, and in due course were granted, entry certificates to the UK in conformity of the Immigration Rules – with the exception of the appellant, whose application was refused on the grounds that his age was such that he fell outside the Rules".

101. Dr Ballard then expressed the view that there was "little doubt" that the appellant regarded himself as an integral member of the extended family and that is how they regarded him.

102. When I undertake an Article 8 balancing exercise it is for the appellant to prove the facts on which he seeks to rely on the balance of probabilities. I must decide if the decision interferes with the identified private and family lives and if it does then it is for the respondent to justify that interference.

103. It is then for me to carry out an exercise where I balance any interference in the private and family life of the appellant and his relatives against the public interest in maintaining a fair system of immigration control. I can be guided by the Immigration Rules because it is very hard to see any public interest in removing someone who actually satisfies the

requirements of the Rules entitling them to remain and I must have regard to paragraph 5A of the Nationality, Immigration and Asylum Act 2002 because Parliament requires that.

104. There are certain features of the case that are obvious. The appellant does feel an unjustified sense of grievance because, unlike his other relatives, he does not have a right to live in the United Kingdom arising from his ancestry. In my judgment this is something that is an important aspect of the case but not one that assists him. British nationality law can be exceedingly complicated but it is quite clear that people who claim British nationality by descent can do so only for a limited number of generations, typically three. Descendants of British nationals do not all have the right to return to the United Kingdom. Parliament decides which people have such rights and Parliament has decided that this appellant does not. I must think extremely carefully before treating him as if he did.

105. It is perfectly plain that the appellant has established private and family life in the United Kingdom. Mr Clarke saved me some trouble by accepting that family life had been established between the appellant and his parents and sister but, as I indicated in the hearing room, my concern is whether there is a "private *and* family life" under the European Convention on Human Rights at Article 8. These are not two separate ideas. The word "and" is conjunctive and I am required to look at the nature of the relationships established and then decide what weight should be given to them. Relationships at the "family life" end of the continuum broadly are entitled to more weight than relationships at the "private life" end of the continuum but it is only extremely close human relationships such as between husband and wife or life partners and parents and minor children that ordinarily attract considerable weight.

106. The elements in the private life are essentially the appellant's contribution to the community.

107. I found Mr MacNamara's oral evidence a convenient summary of the various supportive letters and statements that a before me. Mr MacNamara is not an expert on the covid crisis in India and I attach little weight to his concerns about that but it speaks volumes of the appellant that Mr MacNamara was willing to interrupt his holiday to speak up for the appellant who is clearly held in high regard.

108. The appellant has done some work when he could although that is not an option open to him now and he has given himself to the Roman Catholic church. Here I need to express myself carefully. Certainly, work done for a religious organisation should not be seen as particularly worthy or weighty and the contrary was not suggested. The point is that the appellant has made a contribution to the community outside his immediate family and has clearly been respected for what he has done. That is important and does put him in a stronger position than if he had simply lived selfishly but it does not amount to much. His contribution is real and sincere but it is not exceptional. He will be missed if he leaves but the church will carry on without him.

109. His parents and his sister value him and his parents are to some extent dependent on him because he is a responsible adult and a loving son and gives them assistance as they are facing up to the infirmities that come in later life. They are not "old people" and they are certainly not incapable of looking after themselves. There is no evidence to support such a finding. The appellant's departure would aggrieve them because they would miss him personally and would inconvenience them because he helps them but this is not weighty.

I make similar observations about his sister but she was quite frank about the fact that she had intentions of forming her own family unit, something which in the ordinary course of events would not surprise anyone, and it must not be assumed that brothers and sisters remain dependent upon each other or emotionally close throughout their lives. They have a healthy relationship between adult siblings and there is every reason for that to continue and enrich their later lives but again it is not a reason to allow the appellant to remain in the United Kingdom. This is not a heavy point.

110. I do not see any difficulties in the appellant re-establishing himself in India. The evidence on an earlier occasion that there would be a substantial premium available from the family to help him start has been retracted and it may well be that that money is no longer available. I do not know. If I have been told the whole truth about their circumstances then it is not. However, the appellant is in apparently good health and has lived most of his life in India and has the advantages of a degree from an English university and of having lived in the United Kingdom where he has developed his language skills so that he speaks English to a very high standard. I do not believe that he cannot find employment in India that would be suited to his abilities. He has very marketable skills.

111. Neither do I accept that he would face extreme social isolation. I accept that he has no close relatives in India and that his relatives there are aging. They will have no inclination to assist him and if they do help it will of minimal value given reluctantly. I do not make my decision in the belief that the appellant will find a strong or even useful network of family support awaiting him in India.

112. It is a feature of the case that the appellant is an active member of the Roman Catholic church and the Roman Catholic church has a large presence in India. It seems to me plain that the appellant could establish himself in India at a place where he would be able to find a church community that would support him and welcome him and assist him settle in.

113. I have seen no informed evidence to suggest that returning the appellant to India now would be too dangerous because of the covid crisis. Plainly he would have to address the risks of infection but, as Mr Clarke pointed out, the medical records show that the appellant has a second "covid vaccine" on 9 June 2021. There is no evidential basis before me to support the contention that I should give great weight to risks of infection from the covid virus.

114. I found Dr Paul Courtney's evidence to be of limited value. Dr Courtney is plainly well qualified and experienced and his evidence is entitled to respect. However he said nothing to suggest that removing the appellant would subject him to the kind of serious decline in well being that is necessary to support an "article 8" claim. Undoubtedly it would be best of the appellant to remain in the United Kingdom and access therapy and treatment easily but he is not entitled to that.

115. I accept that the appellant has excellent English and, save for overstaying, has respected the law in the United Kingdom. I also find it likely that if he were entitled to work would get a job quickly and would progress in a carer. Allowing him to remain would not be burdensome to public funds but these things are not strong reasons in favour of permitting him to remain.

116. In short, I can think of little reason to say that the interference with the appellant's private and family life consequent on his removal from the United Kingdom would be disproportionate.

117. There is an additional dimension to this. Mr Clarke submitted that removal or refusal was particularly important because the appellant had contrived to evade immigration control by coming into the United Kingdom on one pretext intending to remain. The main evidence for this is this is what the appellant said on an earlier occasion and his efforts to backtrack from that before me were not impressive. Further, the contention that the appellant intended to establish himself in the United Kingdom is wholly consistent with Dr Ballard's findings. I also ask myself, rhetorically, why the appellant remained if it had been his intention to return? Nothing has been said that persuades me that he arrived in the United Kingdom intending to return but changes his mind.

118. People cannot be allowed to make their own rules. Parliament has approved a set of Immigration Rules and the European Convention on Human Rights is not intended to be an easy way round provisions of immigration control.

119. The Convention provides both an overarching guide and a backstop to prevent a disproportionate interference with people's private and family lives. There is nothing disproportionate about the refusal here. The appellant does not satisfy the Rules. He has no strong reason to remain in the United Kingdom. His family life is the family life of an adult capable of living independently. The appellant has shown no significant obstacles in the way of his establishing himself in India. He just prefers to live in the United Kingdom and that counts for almost nothing.

120. I have gone through all of the papers and have commented on much but not everything before me. I can only come to one conclusion and that is that although refusing the appellant leave to remain does interfere with his private and family life and the private and family life of his close relatives, and indeed to some extent people who he knows mainly through church, none of these things count for very much against the imperative to maintain immigration control. The appellant is not entitled to live in the United Kingdom and has not established a human right that trumps the requirements of the Rules. In all the circumstances I dismiss this appeal.

Notice of Decision

121. This appeal is dismissed.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 21 July 2021

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU 09001 2019

THE IMMIGRATION ACTS

Determined without a hearing at Field House
On 9 April 2021

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE PERKINS

Between

MARIO BENEDICT FRANSWAH
(anonymity direction not made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

REASONS FOR FINDING ERROR OF LAW

1. The parties did not respond to directions suggesting that the Upper Tribunal could decide if the First-tier Tribunal erred in law and I prepared a draft decision in October 2020. I decided not to promulgate that decision until I had read the judgement in **The Joint Council for the Welfare of Immigrants v The President of the Upper Tribunal (Immigration And Asylum Chamber) [2020] EWHC 3103 (Admin)** which was then much anticipated. I have seen nothing in that judgement that causes me to change the substance of my draft.
2. The appellant is a national of India who was born in 1982. He appeals a decision of the First-tier Tribunal dismissing his appeal against the decision of the Secretary of State on 3 May 2019 refusing him leave to remain on human rights grounds.
3. Permission to appeal was given by the First-tier Tribunal. The judge who gave permission noted that the gist of the complaint was that the First-tier Tribunal's decision was

reasoned inadequately and also that no proportionality assessment had been conducted and there was a failure to apply "anxious scrutiny." I am doubtful that the "anxious scrutiny" point could add anything but the appellant is clearly entitled to a decision that is reasoned and where the proportionality assessment has clearly been carried out lawfully.

4. I have come to the conclusion that that these qualities are not in this decision. Certain aspects of the evidence are reflected in the grounds. It may be that the judge has considered them. He certainly said that he has considered all the evidence but there is some correspondence which might be thought to warrant a particular mention and there is an expert report by one Roger Ballard which I am satisfied needs specific mention.

5. That said the appellant must not assume that I am saying that the report is particularly helpful to his case. Much of it concerns the appellant's relationship with his grandmother who, sadly, has since died, much of it is a criticism of the decision of a judge who decided a similar application previously and whose decision was not set aside and the writer of the report accepts expressly that he does not have a legal understanding of the phrase "private and family life".

6. This appellant has not established strong relationships which can sometimes assist a person whose leave to be in the United Kingdom has expired but he has been in the United Kingdom for over half of his life and I am satisfied that at the very least a proper balancing exercise ought to have been carried out.

7. The Directions suggesting a decision with a hearing did not consider remaking the decision. It is not open to me to determine the appeal without a hearing.

8. I have decided to set aside the decision of the First-tier Tribunal. It will be heard again in the Upper Tribunal.

9. It seems to me that the evidence is not particularly controversial and that the points of dispute will be the relevance of the evidence to the Article 8 balancing exercise. This is not a case that has been characterised by past accusations of dishonesty. It seems to me eminently suitable for disposal at a remote hearing where the appellant can give evidence and call evidence. It is likely that the appeal will be listed for a remote hearing. If either party objects to that then the objection must be made forthwith when it can be considered.

Notice of Decision

10. The First-tier Tribunal erred in law. I set aside its decision and I direct that the case be determined again in the Upper Tribunal.