



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/17540/2019 (V)

THE IMMIGRATION ACTS

Heard at Field House  
Via Skype For Business  
On 12<sup>th</sup> March 2021

Decision & Reasons Promulgated  
On 21<sup>st</sup> April 2021

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MRS RAJ BHATIA  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Hassan instructed by S Satha & Co Solicitors  
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission the determination of First-tier Tribunal Judges Haria and Moon promulgated on 4<sup>th</sup> March 2020. The appellant is a citizen of India born on 12<sup>th</sup> October 1937 and applied for leave to remain on human rights grounds but was refused by the Secretary of State on 11<sup>th</sup> October 2019. She entered the United Kingdom on 8<sup>th</sup> March 2013 as a visitor, and promptly, on 14<sup>th</sup> August 2013 applied for leave to remain but was refused on 10<sup>th</sup> September 2013. Her application on 17<sup>th</sup> September 2013 was again refused on 19<sup>th</sup> December 2013 with no

right of appeal. On 1<sup>st</sup> September 2015 she was served with a notice as an overstayer, and on 16<sup>th</sup> September 2015 the appellant submitted an application for leave to remain outside the Immigration Rules on compassionate grounds; this application was refused some four years later by the respondent on 11<sup>th</sup> October 2019 and is the subject of this appeal. It would appear that the respondent was making attempts to secure updated medical information from the appellant.

2. Judges Haria and Moon dismissed the appeal, and the appellant made an application to appeal on the ground that there was a failure to consider material evidence. It was submitted at paragraph 4 of the grounds, that the judges had failed to engage with and consider material evidence that went to the heart of the appeal. At paragraph 5 the judges were said to have misunderstood the evidence relating to the appellant's son Basudev, and at paragraph 32 stated that "the issue is whether there has been a deterioration in the condition of Basudev since 2013 that would make it more difficult for his wife to care for the appellant".
3. However, the evidence before the judges was that Basudev was looked after by nurses. He had no wife. That was the evidence in the respondent's bundle as acknowledged at paragraphs 31 and 64 of the determination. It was also the oral evidence of Mr Raj Bhatia that his brother was looked after by nurses (paragraph 64). There was no suggestion anywhere that Basudev had a wife. At paragraph 6 of the grounds it was stated that the question as to whether Basudev had a wife was not asked at the hearing and it was not put to the witness that Basudev's wife could care for the appellant. Had the question been asked the Tribunal would have been informed that Basudev's wife was deceased, and he was cared for full-time by nurses.
4. At paragraph 7 of the grounds it was stated that the Tribunal heard the applicant's grandson's wife looks after the appellant. The misunderstanding was material and went to the heart of the appeal.
5. At paragraph 8 of the grounds it was asserted that an error also arose because at paragraph 64 the Tribunal stated there was "*no witness statement or any other evidence before us as to the appellant's daughter Anju and her circumstances and why she would not be able to assist the appellant*". However, the respondent's bundle contained a letter from Anju dated 9<sup>th</sup> September 2015 which set out her circumstances. The failure to consider this constituted a material error of law and further, as stated at paragraph 9 of the grounds, a declaration from Anju was handed in on the day of the court hearing.
6. At paragraph 10 of the grounds it was advanced, thirdly, that the judges misstated the applicant's circumstances since 2013. At paragraph 39 the judges set out the factors which had changed as being that the appellant was now incontinent, her mobility was reduced, and she was now depressed. This was a significant misstatement given that all the doctors had carried out home visits and consistent evidence was that the appellant's health had deteriorated to such an extent that she required full-time care and the evidence was that she had not left home for the

previous two years and these constituted very significant obstacles to her integration in India.

7. At paragraph 11 of the grounds it was further contended that the judge had materially erred in failing to adequately consider the appellant's medical evidence. The First-tier Tribunal stated at paragraph 25 that Dr Dhumad took all the evidence from the appellant's family but given the appellant's inability to speak it was submitted that it was an error to give less weight to the report on account of the informants and Dr Dhumad additionally applied his own expertise. The Tribunal was referred to the determination of the Upper Tribunal in **RR Sri Lanka v Secretary of State for the Home Department** [2010] UKUT 000274.
8. On 28<sup>th</sup> April 2020 First-tier Tribunal Judge Boyes granted permission for ground 1 specifically at paragraphs 8 and 9 of the grounds only in relation to the evidence supplied by the daughter Anju which was not taken into account by the First-tier Tribunal Judges because it stated that even if the judges did, for example, make an error with regards to the wife it was immaterial and irrelevant.
9. In a decision dated 29<sup>th</sup> August 2020 Upper Tribunal Judge Sheridan extended the grant of permission and found that all grounds of appeal were arguable.
10. I am not persuaded that there was any error of law in relation to the assessment of the appellant's health conditions. The Tribunal quite clearly took into account all of the medical evidence including the elderly medical evidence but made specific reference to the updated evidence of Dr Sadherua, a locum GP from Yeading Court Surgery based in Hayes dated 27<sup>th</sup> January 2020 and specifically identified the twelve conditions detailed in the letter. The Tribunal gave sound reasoning for its approach to the assessment of the medical conditions of the appellant and it was open to the Tribunal to make the conclusions it did at paragraph 29.
11. That said, the key issue in this matter was whether the support and care required by the appellant would be available to her on her return, and at paragraph 64 the judges had this to say:

*"64. The appellant's health, her cognitive limitations and her vulnerabilities render her dependent upon the care and support provided by others. Dr Dhumad states at paragraph 8.4 of his report that the appellant needs social care by her family in the UK but he has not explained why her family in India are not able to care for the appellant. Dr Dhumad has taken into account the background recorded at paragraph 5 of the report in particular paragraph 5.3 where he records the following:*

*'Her son told me that he has a brother and a sister, both in India, his brother is disabled and bedbound, paralysed from the waist. His sister is moving to Canada, He told me there is no one to look after his mother.'*

*However, Dr Dhumad has not taken into account that appellant's son Basudev Bhatia who lives in India currently receives 24 hour care from*

*nurses. Whilst the appellant's daughter may have plans to move to Canada in the future we have to assess the evidence as at the date of the hearing. There is no witness statement or other evidence before us as to the appellant's daughter Anju and her circumstances and why she would not be able to assist the appellant.*

*Dr Dhumad at paragraph 8.6 of his report specifies the support required by the appellant as '...support during the day and during the night to attend to medication routines, personal care routines, to meet fluid and nutritional needs, to offer comfort and reassurance, to maintain a safe and hygienic environment and to access medical support as or when necessary.'*

*On the evidence we find that the support and care required by the appellant would be available to her on her return to India from a combination of her daughter, her son's wife and from nurses or carers and that any necessary financial support for any nurses or carers required could continue to be provided by Rajinder Bhatia as it is now. Having considered all the evidence including the appellant's particular circumstances, for the reasons given we are unable to find that there are compelling or exceptional circumstances in this case for leave to be granted outside the Immigration Rules. Taking all of the above facts and factors into account and performing a balancing exercise we find that the removal of the appellant to India would not be unjustifiable harsh and would not amount to a disproportionate interference with her right to respect for her family life".*

12. Critical to an assessment was the evidence of those said to be caring for the appellant.
13. I inspected the Record of Proceedings and file and pointed out at the hearing that contrary to the grounds of application for permission to appeal, there appeared to be no statement or letter before the Tribunal to enable it to assess whether the appellant's daughter Anju, in her particular circumstances, would be able to assist the appellant. Ms Hassan, however, advised that on the day of the hearing she had handed the clerk a letter/statement from Anju which clearly had not found its way to the First-tier Tribunal.
14. Without an updated statement before the First-tier Tribunal (although one was subsequently sent through to the Upper Tribunal post the hearing before me), I consider that the First-tier Tribunal's treatment of her evidence stemming from 2015 together with the observation that there was no updated witness statement as at the date of hearing, on the face of it, adequately addressed the evidence of Anju. However, the updated statement remains an issue. I find there may have been a procedural irregularity unbeknown to the judges themselves amounting to an error of law. Mr Kotas made clear he did not question Ms Hassan's explanation that a statement from Anju had been handed to the First-tier Tribunal clerk. Counsel perhaps may wish to ensure in future that anything handed to the clerk on the morning of the hearing is indeed forwarded to the judge as intended.
15. Mr Kotas also conceded at the hearing the Tribunal proceeded on the basis that Basudev had a wife and that was an error of fact. There was no evidence to the effect

that Basudev had a wife and the phrasing of the finding at the last paragraph on page 13 of the determination clearly indicated that the judges found that support and care would be available “from a combination of her daughter, her son’s wife and from nurses or carers”. The son’s wife did not exist and the finding was based on an error.

16. In all the circumstances, I therefore find that was a material error of law and the matter should be remitted to the First-tier Tribunal owing to the nature and extent of findings to be made. Notwithstanding my observations above, owing to the medical condition of the appellant, which was said to be deteriorating, I set aside the determination as a whole and preserve no findings.

No anonymity direction is made.

Notice of decision

The Judges erred materially for the reasons identified. I set aside the determination pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Signed *Helen Rimington*  
Upper Tribunal Judge Rimington

Date 12<sup>th</sup> April 2021.