



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Extempore

Case No: UI-2023-001442

First-tier Tribunal No:
HU/56705/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 1 August 2023**

Before

**UPPER TRIBUNAL JUDGE RINTOUL
DEPUTY UPPER TRIBUNAL JUDGE COTTON**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**ALPESHKUMAR KANUBHAI PRAJAPATI
(NO ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Mr N Kain, Senior Home Office Presenting Officer

For the Respondent: Mr M L Youssefian, instructed by Deccan Prime solicitors

Heard at Field House on 16 June 2023

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge R Sullivan promulgated on 1 April 2023 in which she allowed the appeal of Mr Prajapati against a decision of the Secretary of State to refuse his human rights claim consequent upon a decision to refuse to grant him further indefinite leave to remain.

2. We refer to Mr Prajapati as the appellant for ease of reference but of course he is the respondent in this matter. The appellant here is the Secretary of State.
3. The facts of the case are not really in dispute. They are set out in some detail in the decision of Judge Sullivan, who sets out the history of the appellant's arrival in the United Kingdom in 2009 (clearly no 2029 as she stated in paragraph 3 – that is simply a typographical error).
4. Briefly, and this needs to be said in light of what we intend to say next, the Secretary of State made allegations that the appellant had not been truthful and had in fact been dishonest in his dealings with the Home Office in specific terms dealing with the submissions he had made to the Home Office regarding his income. These are set out at paragraph 29 in the judge's decision.
5. It is in our view important to recall that the Secretary of State's case is the appellant had been dishonest and that accordingly his presence in the United Kingdom was not conducive to the public good. The Secretary of State considered also that not only did he not meet the requirements of the immigration rules as he did not meet the suitability requirements but also that his removal was proportionate in Article 8 terms outside the Immigration Rules. Again, the reasoning for that is set out in the Secretary of State's refusal letter and also in an additional argument served during the proceedings.
6. We note that the Secretary of State was not represented before the First-tier Tribunal and that is a matter which the judge addressed specifically at paragraph 15 of her decision and directed herself to follow the guidance set out in MNM.
7. The judge concluded for the reasons set out in her decision that the appellant had not been honest. She set the reasons out summarising them from [33] to [35] of her decision and concluding "I am satisfied that the Appellant's presence in the United Kingdom is, by reason of his dishonest conduct, not conducive to the public good. In consequence, the Appellant does not qualify under the Rules for leave to remain on the basis of long lawful residence". She then went on to consider whether the appellant's removal would nonetheless be proportionate or not, directing herself at [36] that little weight should be attached to his private life by application of Section 117B(5) of the 2002 Act. She then made findings in respect of the appellant's wife and the difficulties there would be in them going to live in India primarily on account of the significant medical problems that Mrs Prajapati was suffering at the time, and the judge concluded at the end of paragraph 41 by stating "In my judgement the Refusal currently represents a disproportionate interference with the right to respect for family life because, given Mrs Prajapati's ill health, the consequences of the Appellant's removal would for the time being be unjustifiably harsh for her".

8. The Secretary of State sought permission to appeal against that decision asserting that the judge had erred by making a material misdirection in law. It is in particular submitted that the findings reached at paragraph 41, to which we have already referred, are unsustainable for five particular reasons. First, that the assessment is based on the assumption that the couple's family life will cease if the appellant is removed from the United Kingdom. However, it would of course remain extant if the appellant and his wife return to India together, the appellant's wife being an Indian national, and had it not been the case that the United Kingdom had assumed responsibility for her healthcare.
9. Second, it was unclear whether the circumstances described by the Tribunal actually constitute family life.
10. Third, the Tribunal's concerns could be more accurately described as the Appellant's wife's private life problems as they relate to the treatment and consequences of her ill-health problems.
11. Fourth, that given the failure to address the wider factors, it was respectfully submitted that the Tribunal's assessment of unjustifiably harsh consequences was incomplete and needs to be re-assessed.
12. Fifth, and perhaps more importantly, she had found that the appellant's presence in the United Kingdom was, by reason of his dishonest conduct, not conducive to the public good.
13. There was in this case no response by the appellant by way of a reply pursuant to Rule 24 of the Procedure Rules.
14. We heard submissions from Mr Kain on behalf of the Secretary of State and Mr Youssefian on behalf of the appellant. Mr Kain sought to persuade us that the findings were flawed in that the judge had failed properly to assess them in terms of proportionality, in particular referring only to the circumstances in respect of the wife without proper respect being shown to the other factors, in particular the aspect of dishonesty.
15. Mr Youssefian sought to justify the decision of the First-tier Tribunal submitting that it should be borne in mind first that what the judge had said was that at that particular time and in that particular context the removal was unjust and disproportionate, drawing to our attention to the evidence that Mrs Prajapati's medical condition was at that point undiagnosed, complex and the doctors in the United Kingdom had still not resolved the issue at the time, that it was clear that the judge had directed herself properly in line with GS (India) in relation to the medical issues, an approach she submitted was unsaleable and that it could not be considered that the judge was unaware of the timings in respect of the appellant's dishonesty having, as he rightly puts that point out, accepted the previous 35 paragraphs explaining why she thought that the appellant had been dishonest. He submitted further that the judge's decision was in brief entirely adequate and concise and that we should have regard to the

decision of the Court of Appeal in Riley v Sivier [2023] EWCA Civ 71 pointing out this was a case in which the judge had heard all the evidence.

16. In response Mr Kain sought to draw our attention again to the absence of any particular findings with regard to the appellant suffering if the wife were to remain in the United Kingdom.
17. We begin our assessment of the challenge to the decision by bearing in mind what was said by the Supreme Court in HA (Iraq) at paragraph 72 and also in Riley v Silver at paragraph 13. We consider it relevant to note, in the light of that guidance, that it is for the Secretary of State to show that there were some serious flaws in the judgment that calls for a change to the result of a rehearing. It is also important to bear in mind that this is an experienced judge sitting in a specialist Tribunal. Her decision deserves to be accepted unless it is quite clear that she has misdirected herself and we are enjoined not to rush to find misdirections where we might have reached different conclusions or expressed ourselves differently. Nor should we assume that the Tribunal misdirected itself simply because it does not set out every step in its reasoning.
18. We turn next to the individual grounds as set out in the grounds of appeal. As previously identified, we consider that the judge has directed herself properly in light of GS (India), there is no indication that she was unaware of the established law that if an applicant does not meet the requirements of the Immigration Rules that there has to be some very compelling reason why that decision is disproportionate and indeed by referring to unjustifiably harsh consequences in her decision the judge indicates that she has had due regard to the law. It is also clear that she has regard to reading Section 117B of the 2002 Act and we consider that there is significant merit in Mr Youssefian's point that the judge would not have been unaware of the appellant's misconduct having reached for detailed reasons a conclusion that he had been dishonest immediately before proceeding to consider proportionality.
19. Dealing with the grounds raised in turn, as regards ground 1 we do not consider that the judge approached her assessment on the basis that family life would cease. It is established law that mere separation does not mean that family life ceases. The judge considered the situation in the round and considered also the difficulties that at that point the appellant's wife would have if separated from her husband. It is true that she is an Indian national and she has indefinite leave to remain in the United Kingdom but equally it follows that from having indefinite leave to remain in the United Kingdom she is entitled to be treated by the National Health Service and it is not in reality a choice to travel to India given the particular circumstances of her case as found by the judge giving proper and sustainable reasons.
20. Dealing with ground 2 it is difficult to understand what the Secretary of State means by suggesting that the circumstances found do not actually constitute family life. One might have thought that a husband's support

for his wife who was undergoing medical tests and was in some significant pain suffering as a result of her medical conditions is precisely what is meant by family life between husband and wife. It is sufficiently clear why in the particular circumstances of this case and at the particular time that the decision was reached that the appellant's wife's medical condition required treatment in the United Kingdom, it being unresolved here. It does not necessarily follow that the treatment could be received in India in the same way and there would be given the change in doctors stress on the wife.

21. Ground 3 fails for similar reasons. While requiring medical treatment it is part of a private life, but that treatment does not exist in a vacuum. Equally the effect on the other party to that marriage is significant and it is an artificial distinction to make in such cases between family and private life, and the judge has, we consider, dealt adequately with that and reached a conclusion which is both sustainable and justified.
22. Thus, and bearing in mind that we have already dealt with ground 5, we consider that the judge did in this case, albeit in brief form, but in the context of all the evidence being set out as so far as is necessary, conclude that on the facts of this case the consequences of removal would be unjustifiably harsh at that point. There was in our view a complete assessment of all relevant matters. Whether or not the decision is one which necessarily have made or whether we disagree with it not the point. The point is it is a decision reached by the judge on the facts of the evidence before her and one which she was manifestly entitled to reach. The reasoning behind it is sustainable and for these reasons we find that the decision of the First-tier Tribunal did not involve the making of an error of law and we uphold it.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Signed

Date: 13 July 2023

Jeremy K H Rintoul

Judge of the Upper Tribunal