



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001709

First-tier Tribunal Nos: HU/57335/2021
IA/16633/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 4 August 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**R K
(ANONYMITY ORDER MADE)**

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Alexander Swain (Counsel)

For the Respondent: Ms Amrika Nolan (Senior Home Office Presenting Officer)

Heard at Field House on 3 July 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Coutts, promulgated on 18th April 2023, following a hearing at Hatton Cross on 16th January 2023. In the determination, the judge allowed the appeal of the Appellant, whereupon the Respondent subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female, a citizen of India, who was born on 16th April 1984. She appealed against the decision of the Respondent dated 12th November 2021, as well as the supplemental decision of 15th August 2022, refusing her leave to remain in the UK.

The Appellant's Claim

3. The Appellant's claim is that she came to the UK on 8th December 2009, with valid entry clearance as a student, until 13th December 2012. She thereafter renewed her application which was granted by the Respondent until 2nd November 2014. However, on 20th June 2013, the Respondent curtailed the Appellant's leave to remain here on the basis that she had cheated in an ETS speaking test on 21st November 2012. This being so, the Respondent maintained that the Appellant's earlier application to extend her leave to remain in the UK had been claimed on a fraudulent basis.
4. The Appellant, however, vigorously denied that this was the case and maintained that she did not cheat in the ETS speaking test. As the judge observed, she can recall the procedure for signing in at the centre, the number of students, the format of questions and the length of speaking, listening and writing exams". Indeed, as the judge also pointed out, "in support of her proficiency in English, she produces evidence of her attendance at educational institutions, her IELTS certificates and her employment in the United Kingdom" (at paragraph 9).
5. Nevertheless, the curtailment of her leave not only stopped the Appellant from being able to progress with her life and career in the United Kingdom (at paragraph 10), but that it also left her in a position where she "endured an abusive relationship with a partner with whom she was in a customary relationship of marriage" so that after its breakdown "she was rendered homeless" and remains in a temporary accommodation (at paragraph 11). In addition to this, the Appellant had previously suffered domestic abuse from her in-laws in India and had been divorced there without her knowledge so that she was now estranged from her own family because they considered her to have brought shame upon them (at paragraph 12). The judge concluded that because the Appellant fears that if she returns to India that her family, her mother and brother, will force her into another marriage, as they had indeed done previously, in order to satisfy the family's honour (paragraph 13), she had a human rights claim. She had lived in the UK now for over thirteen years and had an established private life", and she had a "close relationship with a Mrs Sandeep Kaur and her children and also a Mrs Pandeep Kaur and her children" (paragraph 14).

6. At the appeal hearing the judge heard oral evidence in English from the Appellant and recorded how “her evidence is set out in the Record of Proceedings and I have had careful regard to it in its entirety” (paragraph 3). The judge also heard oral submissions from both sides, together with Mr Swain’s two skeleton arguments and the Respondent’s review (at paragraph 4). The judge then proceeded to set out the Appellant’s case in detailed numbered paragraphs (see paragraphs 6 to 18), which was followed by a detailed recital of the Respondent’s case (see paragraphs 19 to 24). The judge then set out the law, drawing specific attention to the Immigration Rules, and to paragraph 276ADE of HC 395, but also pointing out how the Respondent Secretary of State had “considered whether there were exceptional circumstances present under Article 8 of the ECHR” (paragraph 25). Regard was also had by the judge to the Respondent’s Country Policy and Information Note on India, with respect to gender-based violence against women (paragraph 27). The burden and standard of proof was correctly set out (paragraph 29) and it was emphasised how it was for the Appellant to discharge the burden of proof.
7. The judge then proceeded to give his reasons. It was pointed out how the Appellant “gave her evidence in an open and straightforward manner and that she was a credible witness” (paragraph 30). The judge noted how, “her evidence in relation to the domestic violence and family abuse she experienced was compelling” (paragraph 31). It was then expressly stated by the judge that, “I do not repeat the details here but they appear in the appellant’s supplementary witness statement of 6th July 2022 and in her oral evidence” (paragraph 32).
8. On the basis of that evidence, as pointed out by the judge, it was concluded that, “If the appellant were to return to her home area in India then it is likely that she will experience a repeat of the behaviour that was targeted against her previously”, and that,

“There is no reason to think that her former in laws will not continue to demand the dowry money from her that they say is owed or that her family, her mother and brother, will not continue to claim that the appellant has brought shame upon their family for being divorced, thereby putting the appellant at risk of another forced marriage.” (Paragraph 33).
9. Against that background, the judge proceeded to say that “the only realistic option for the appellant if she were to return to India would be to internally relocate away from her home area” (paragraph 34). Consideration was then given by the judge to the background country information which suggested that it was possible to internally relocate in India as a single lone female, “but that this is not without issues such as the registration in a new locality and with the accessing of basic services” (paragraph 35). Given this, the judge observed that this issue must be considered “in the light of the appellant’s individual situation” (paragraph 36). In this regard, the judge pointed out how,

“The evidence shows that the appellant has repeatedly been a victim of domestic violence, is presently suffering from mental health issues for which she is taking medication and is receiving counselling, has no friends remaining in India and has no family to whom she can turn to for assistance with her relocation away from her home area”, so that “she is therefore vulnerable.” (Paragraph 37).
10. At the end of the recital of the matters above, the judge proceeded to conclude that, “taking everything into account, I find that there would be very significant

obstacles to the appellant's reintegration in India" (paragraph 38) and that the appeal would be allowed. Under the heading "notice of decision", the judge then recorded that "the appeal is allowed on human rights grounds".

Grounds of Application

11. The grounds of application state that the judge failed to consider whether the Appellant had engaged in ETS fraud. Instead of considering the "suitability" provisions of the Immigration Rules, the judge moved directly to the "eligibility" provisions. The judge therefore wrongly ended up allowing the appeal on human rights grounds.
12. On 17th May 2023 permission to appeal was granted by the First-tier Tribunal on the basis that the judge had made no findings on the question of ETS fraud which was important in the overall assessment of the Appellant's credibility. The judge had allowed the appeal largely by accepting the Appellant's narrative account and then concluded that the Appellant would encounter very significant obstacles in integration on return to India. The outcome may well have been different if the ETS issue had gone against the Appellant on consideration.

The Hearing

13. At the hearing before me on 3rd July 2023, Ms Nolan, for the respondent, submitted that one only has to look at the judge's findings (at paragraphs 30 to 38) to realise that it was not even clear whether the judge had allowed the appeal on Article 8 grounds, because at the end of that account the judge states that, "I find there would be very significant obstacles to the appellant's reintegration in India" (paragraph 38). This, however, was a formulation that was directly attributable to paragraph 276ADE of the Immigration Rules. It was not something to be found within the broader ambit of human rights law. Secondly, the judge plainly had to consider, given the allegation of ETS fraud against the Appellant, whether she satisfied the "suitability" provisions before dealing with the "eligibility" provisions but this had not been done. It was a material error of law. Thirdly, in what was a short determination there was a lack of adequate reasoning by the judge. Whatever evidence it was that the judge heard had not been referred to in the determination. And yet, the judge had concluded that, "the background evidence suggests ..." (at paragraph 35, without that background evidence being set out). Fourth, even in relation to the appeal being allowed, under paragraph 276ADE, if the judge had stated that, "She is in contact with her mother by telephone or WhatsApp on a weekly basis and sometimes her brother" (paragraph 15), then it was difficult to know why she could not relocate back to India where she had a mother and a brother that she was in contact with. All in all, it was simply not possible to know why the Appellant had won and the Respondent had lost.
14. For his part, Mr Alexander Swain relied upon his Rule 24 response. He submitted that the Appellant had been a victim of the most debasing domestic abuse by her family and by her in-her laws in India. This had been confirmed in her first witness statement of 17th March 2023. It was also set out in her supplementary witness statement of 6th July 2022, together with her oral evidence, given at the hearing before Judge Coutts. In summary, the Appellant

had been forced into an arranged marriage against her will in 2014. Her in-laws regularly threatened to kill her. The reason was that they demanded a further dowry. They threatened to bury her in a ditch.

15. On top of this, the Appellant's husband consistently humiliated her in public by having an open affair with another woman, and was an habitual drug abuser. The Appellant was also threatened with torture by in-laws and forced to donate blood to her husband's grandfather against her will. Her in-laws then only agreed to her returning to the UK if she gave them further money and while in the UK they demanded a further 2,500,000 rupees from her. Before she left for the UK they threatened to sell the Appellant's jewellery which had been given to her by her family on her wedding day. The Appellant was then divorced from her husband without her prior knowledge. It did not end there. The Appellant's own mother frequently told the Appellant that should she return to India her in-laws would kill her. She had also brought shame onto the Appellant's own family by being divorced, so that were she to return back, the family would force her into a further coerced marriage without her consent.
16. Mr Swain submitted that in these circumstances it was open to the judge to find that the Appellant's account of her marriage in India was consistent and credible. The judge also had regard to the Appellant's Counsel's supplementary skeleton argument of 25th July 2020, which confirmed the prevalence of domestic abuse in India, and which was consistent with the Appellant's own subjective evidence.
17. Mr Swain significantly pointed out that the Appellant's account of how she was domestically abused from the start of her marriage in 2014, was a entirely different aspect of her appeal. When she gave evidence in relation to the allegation of cheating in an ETS test in 2012, it was then that this evidence came out and the judge was entitled to accept the Appellant's consistent and truthful evidence about her treatment in India and the likely future prospect of it continuing were she to return back there. In addition, the objective evidence, referred to in the supplementary skeleton argument, also confirmed the existence of gender-based violence so that single, divorced women, were especially vulnerable.
18. The judge was therefore entitled to form the view that there were "exceptional circumstances" which justified a finding that the removal of the Appellant to India would be contrary to her Article 8 rights. In the circumstances, the fact that the ETS test had not been determined by the judge was academic. Even if the Appellant had cheated, which she had consistently denied, this was a test taken eleven years ago and there was no public interest in her removal, in the face of gross mistreatment, that she had undergone at the hands of family members on both sides, and which prospect still awaited her upon return to India were she to be removed.
19. Mr Swain went on to explain that the graphic nature of the domestic violence suffered by the Appellant was quite unusual to hear even in this jurisdiction. When the Appellant's appeal was first heard in June 2022 she had given evidence of this domestic abuse and Judge Harris adjourned the hearing to say that this was a new matter which required further consideration. The appeal was then heard in January 2023 by Judge Coutts and such was the lurid nature of the details of domestic abuse as recounted by the Appellant that the hearing almost came to a halt, as she explained how in her arranged marriage, her in-laws regularly beat her and demanded more and more dowry. In the United Kingdom

the Appellant had embarked upon another relationship, while still being married in India, and had suffered domestic violence there also.

20. The plain fact was that paragraph 276ADE of the Immigration Rules was not the only line of enquiry for the judge. He was also considering Article 8 of the Human Rights Act because this had been expressly considered by the Respondent Secretary of State (see paragraph 25 of the determination), as an additional line of enquiry. This being so, the judge was entitled to allow the appeal under broad Article 8 considerations and to say that the appeal was allowed on human rights grounds, which is exactly what he did. As for the question that the Appellant has been in touch with her mother and brother, this only showed how she was trying to speak to them about her plight but was being constantly rebuffed by them and told that she has brought shame on the family and would be married off again if she arrived back in India. These matters were expressly referred to by Mr Swain in his skeleton argument and his supplementary skeleton argument, neither of which had been referred to by the Respondent in its consideration of the documentation.

No Error of Law

21. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision. My reasons are as follows.
22. First, and most importantly, the evidence that the Appellant gave in relation to her domestic abuse is not challenged by the Respondent at any stage. At the hearing before Judge Coutts the Respondent was represented but there is no indication of this evidence having been challenged.
23. Second, as far as the allegation of ETS fraud was concerned, not only does the Appellant deal with this in detail (at paragraphs 17 to 20) in her witness statement, but the judge also observes how the Appellant is adamant that she did not cheat, because she can recall the procedure for signing in at the centre, the number of students, the format of the questions and the length of the speaking, together with listening and writing exams (at paragraph 9). There is no challenge to this, and indeed the Respondent provided no evidence to make good these allegations. There is now a long list of decisions that require more than a bare allegation to be made with respect to ETS fraud in this way: see **Shen [2014] UKUT 236**, **SM and Qadir [2016] UKUT 00229**, **Ahsan [2017] EWCA Civ 2009**.
24. Third, the evidence of domestic abuse had arisen quite independently of the allegation of ETS fraud, and indeed quite inadvertently, when in June 2022 the Appellant began giving graphic details of her abuse, leading to the hearing being adjourned. It has been well set out in the Appellant's own witness statement as well. That being so, the judge was entitled to state that, "I do not repeat the details here but they appear in the appellant's supplementary witness statement of 6 July 2022 and in her oral evidence" (paragraph 32). This is especially so given that this account is uncontested.
25. Fourth, the judge had found that that, "the only realistic option for the Appellant if she were to return to India would be to internally relocate away from her home area" (paragraph 34), but which was something that she could not do, "in light of the appellant's individual situation" (paragraph 36), so that she "has no family to

whom she can turn to for assistance with her relocation away from her home area”, and that “she is therefore vulnerable” (paragraph 37). It is in these circumstances that the judge ends the determination with the observation that, “in the circumstances, it is unnecessary for me to consider the other matters before me” (paragraph 40) before venturing to conclude that “the appeal is allowed on human rights grounds”. It is significant, therefore, that the appeal here is not allowed on the basis of paragraph 276ADE, but expressly allowed on broad human rights grounds alone.

26. Indeed, the judge makes it clear that “it is unnecessary for me to consider the other matters” (at paragraph 40). The issues raised in this appeal could have been more clearly dealt with by the judge below, and to the extent that this has not been done, this is on account of the judge having erred on the side of brevity (normally a virtue) but which in this appeal could have seen benefit in separating the Article 8 human rights issues from the Immigration Rules issues, so as to avoid any potential ambiguity.
27. That said, a closer analysis does show that the judge allowed the appeal on human rights grounds alone and was entitled to do so on the basis of Article 8, because of the uncontested facts before him. There is no public interest served in requiring a vulnerable witness to give evidence yet again of the domestic abuse that she has suffered, especially as the Respondent failed to provide any evidence in relation to the allegation eleven years ago of the alleged ETS fraud, which the Appellant was well able to properly deal with in her witness statement.
28. In the light of the conclusions I have come to, on the various aspects of the Respondent’s grounds, I am satisfied that there is no error of law in the decision of the judge below in any respect.

Notice of Decision

29. There is no material error of law in the original judge’s decision. The determination shall stand.

Satvinder S. Juss

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24th July 2023