



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001802
First-tier Tribunal No:
HU/57351/2022
IA/10405/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 July 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

KHUSHBOO JOLLY
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. S. Hingora, Counsel instructed by Zenith Lawyers LLP
For the Respondent: Mr. E. Terrell, Senior Home Office Presenting Officer

Heard at Field House on 6 July 2023

DECISION AND REASONS

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Dempster, (the "Judge"), dated 19 April 2023, in which she dismissed the Appellant's appeal on human rights grounds. The Appellant is a national of India who applied for further leave to remain based on her private life under Article 8.
2. Permission to appeal was granted by First-tier Tribunal Judge Scott on 19 May 2023 as follows:

"The in-time grounds of appeal allege that the Judge erred in failing to give adequate reasons on a material matter, namely the social stigma that the appellant would face on return to India, on account of her mental health.

Whilst the Judge referred to the submissions on social stigma in respect of the appellant's mental health at [39] of the decision, it is arguable that she failed to have regard to this when making findings in respect of whether the appellant would face very significant obstacles or in the Article 8 proportionality assessment."

The hearing

3. The Appellant attended the hearing. I heard submissions from Mr. Hingora and Mr. Terrell. I reserved my decision.

Error of law

4. The grounds assert that the Judge failed to factor the Respondent's CPIN into the proportionality assessment. The Appellant had submitted that there would be social stigma attached to her mental ill health in India, and had cited the Respondent's CPIN India: Medical and Healthcare Provision. It was asserted that the Judge had not taken this into account, focussing instead on the availability of treatment for mental health conditions in India. It was submitted that this failure materially undermined the assessment outside the immigration rules. The Judge should have reconciled the Appellant's mental health conditions, and how presenting those conditions to a society that stigmatises them, would impact the Appellant.
5. Further it was submitted that the Judge had failed to take into account that the Appellant "was receiving counselling for unwanted and predatory sexual behaviour from her landlord in 2018 and manager at her workplace". It was submitted that this had a material impact on the assessment regarding the Appellant's ability to live in a society that held prejudicial social stigma towards women with reference to the CPIN India: Women fearing gender-based violence.
6. I have carefully considered the decision. At [35] and [36] the Judge records the submissions of the Appellant's representative. At [35] it states that the Appellant's representative "submitted that healthcare for people with mental ill-health was poor and that a social stigma attached to people who suffered from psychiatric conditions." There is reference to the CPIN India: Medical and Healthcare Provision. At [36] it there is reference to the submission that the Appellant would suffer social stigma as a single woman in India, with reference to the CPIN India: Women fearing gender-based violence. It was submitted that the Appellant's "gender alone would inhibit her ability to integrate."
7. The Judge considered the Appellant's mental health at [39]. She states:

"There was no doubt that the appellant had been very close to her father and I accept without hesitation that she has experienced on-going trauma following his death which included her association between that country and a parent she no longer had and that she has had some counselling and was about to embark upon a course of CBT. However, there was no evidence that the appellant could not continue this treatment in India. Mr Saddique pointed in general terms to the paucity of treatment for mental ill health in India and the stigma that would attach. However, I have considered the relevant CPIN. Whilst it is acknowledged that resources in India for the treatment of mental ill-health are limited, nevertheless there have been advances in the provision of such care (see for example, para.11.3.1.). Mr Saddique could not identify any evidence that established the treatment the appellant intended to avail herself of in the UK would not be available to the appellant in India. Indeed, I note that the appellant has had online counselling with Dr Sawhani who appeared to be based in India."

8. There is no reference in this paragraph (which goes on to consider Dr. Sawnani's letter) to any social stigma that the Appellant might face. While the Judge refers to the fact that the Appellant's representative made reference to the stigma, she does not proceed to address this submission. She states that she has considered the "relevant CPIN" but then considers only those parts of it which refer to the availability of treatment. She does not make reference to the parts of the CPIN which address social stigma. I was referred by Mr. Hingora to section 11.8 of this CPIN, in particular 11.8.2, 11.8.4 to 11.8.6, 11.8.8 and 11.8.9. The CPIN had been included in the Appellant's bundle.
9. The grounds further submit that the Judge did not take into account that the Appellant was receiving counselling for unwanted and predatory sexual behaviour and the impact of this on the assessment of the Appellant's ability to live in a society "that holds prejudicial social stigma towards women". The Judge considered the difficulties that would be faced by the Appellant as a single woman in India at [41]. She referred to the CPIN but found "that the external evidence relied on came nowhere close to the submission that this appellant would be unable to integrate to India by virtue of her gender alone". However, there is no reference in this paragraph to the fact that the Appellant was receiving counselling for predatory sexual behaviour. There is reference to the evidence of this at [27]. While there is no reference to this in the submissions as recorded at [36], the skeleton argument at [19] specifically refers to the Appellant's experiences of being preyed upon.
10. Having made her findings, at [42] and [43] the Judge considers whether the Appellant meets the requirements of paragraph 276ADE(1)(vi). The only reference in these paragraphs to the Appellant's mental health is at [43] where she states:

"I accept without hesitation that the appellant had struggled to accept her father's death and associates India with her loss of him. Nevertheless, there was no evidence that the treatment the appellant was about to start in the UK could not be provided in India to enable her to come to terms with her loss."
11. This is about the availability of treatment rather than social stigma, and with no reference to gender. In the assessment outside the rules, under the heading "Factors which weigh in the balance as to why removal would be a disproportionate interference with the appellant's Article 8 rights" the Judge makes no reference to any social stigma that the Appellant might encounter on account of her mental health.
12. I find that the Judge has failed to consider the issue of social stigma, which was a factor referred to by the Appellant's representative in his submissions, and which was backed up by external evidence in the form of the Respondent's CPIN. The Judge has failed to take into account this part of the CPIN, focusing on the availability of treatment. Further in her consideration of gender, she has failed to address the evidence of the Appellant receiving counselling for unwanted sexual predatory behaviour. I find that the failure to address these factors is an error of law.
13. In relation to materiality, the issue before the Judge was the Appellant's return to India, and her mental health problems were central both to consideration of paragraph 276ADE(1)(vi) and to the proportionality assessment. Given this, I find that the failure to consider these aspects is a material error.

14. I have found that the decision involves the making of a material error of law. I find that there are no findings that can be preserved, given that these errors impact the assessment of paragraph 276ADE(1)(vi) and the consideration of proportionality outside the immigration rules. Taking into account the case of Begum [2023] UKUT 46 (IAC), and giving careful consideration to the exceptions in 7(2)(a) and 7(2)(b), I consider that the extent of the fact-finding necessary means that it is appropriate to remit this appeal to be reheard in the First-tier Tribunal.

Notice of Decision

15. The decision of the First-tier Tribunal involves the making of material errors of law.
16. I set the decision aside. No findings are preserved.
17. The appeal is remitted to the First-tier Tribunal to be reheard.
18. The appeal is not to be listed before Judge Dempster.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
21 July 2023