



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001944

First-tier Tribunal Nos: HU/51048/2022
IA/04261/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 25 August 2023**

Before

**UPPER TRIBUNAL JUDGE McWILLIAM
DEPUTY UPPER TRIBUNAL JUDGE McCARTHY**

Between

**SW
(ANONYMITY ORDER MADE)**

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr A Chakmakjian of Counsel, Reiss Edwards Solicitors
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

Heard at Field House on 6 July 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of her family 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. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant, SW, is a citizen of India. Her date of birth is 10 February 1954.
2. We have decided to anonymise the Appellant. Having weighed up the competing interests of the Appellant (her rights under Articles 3 and 8 of the ECHR) against the need for open justice, we conclude that that the former outweighs the latter. We have applied Guidance note 2022 No. 2: Anonymity Orders and Hearings in Private issued by UTIAC on 4 February 2022.
3. On 10 June 2023 First-tier Tribunal Judge Mills granted the Appellant permission to appeal against the decision of the First-tier Tribunal (Judge O'Garro) to dismiss her appeal against the decision of the SSHD on 7 February 2022 to refuse her application under Articles 3 and 8 of the ECHR.
4. We find that the First-tier Tribunal materially erred in law. We find that the error infects all the findings. We set aside the decision of the First-tier Tribunal dismissing the Appellant's appeal and remitted the case to the First-tier Tribunal for a fresh hearing.¹ We communicated our decision to the parties at the hearing and gave brief reasons. We now set out our reasons in full.

The Background

5. The Appellant was granted entry clearance as a visitor which was valid from 3 August 2016 until 3 August 2018. She entered the UK on 12 March 2018. On 1 August 2018 she applied for leave to remain (LTR) under Article 8 ECHR. The application was refused by the SSHD on 16 April 2019. The Appellant appealed against the decision. Her appeal was dismissed by the First-tier Tribunal on 26 June 2019. Her appeal rights were exhausted on 19 September 2019. The decision of 7 February 2022, which is the subject of this appeal, followed further submissions made on the Appellant's behalf.

The Hearing Before the First-tier Tribunal

6. The Appellant has mental and physical health problems. She has been diagnosed with, amongst other things, depression. Her case before the First-tier Tribunal was that she is dependent on her United Kingdom family who care for and support her. She is unable to rely on her elderly sisters in India for care. The lack of support from the Appellant's United Kingdom based family will cause the Appellant's health to deteriorate. In order to support her case the Appellant relied on a medical report from Dr Balu of 20 September 2020 (there was up to date evidence from Dr Balu confirming that the situation had not changed). There was also a report from an Independent Social Worker (ISW), Peter Horrocks, of 30 September 2020. There was no challenge to the expertise of either expert by the SSHD.
7. Dr Balu's evidence is that the Appellant fulfils the diagnostic criteria for depressive disorder with moderate to severe depression without psychotic symptoms. There is evidence of severe pathological grief which has led to depressive symptoms. Dr Balu's main findings can be summarised.

- (i) The precipitant of the Appellant's episode of depression is the loss of her husband, the history of multiple losses, physical health issues, loneliness,

¹In deciding whether to remit to the First-tier Tribunal, we had regard to *Begum (remaking or remittal) 2023 UKUT 00046*

lack of family support in India could worsen her condition. The prolonged nature and severe degree of the Appellant's depressive symptoms with thoughts of self-harm makes it exceptional. The Appellant has been prescribed antidepressant medication. The Appellant has been gradually deteriorating over the last two years with a deterioration in the last few weeks leading to a couple of unsuccessful suicide attempts in July 2020. She has all the risk factors which put her at high risk of completed suicide. She is at high risk of completed suicide without adequate supervision, support and treatment.

- (ii) The Appellant would need adequate and regular medical supervision and psychiatric care as the medications will most likely affect her physical health and may interact with other medications. She will need specialist psychological treatment like CBT for anxiety and depression. Occupational therapy assessment is recommended to assess the Appellant's level of disability and suggest ways to adopt her environment and support system to offer her a better quality of life.
- (iii) It is important that the Appellant has a safe environment where she feels supported and comforted. She is culturally conditioned to seek comfort in the company of close family members. She is comfortable when living with her son and his family. She feels safe and supported. Being with her children gives her purpose and a sense of safety. She has good family support from her brother and children in the United Kingdom which helps her immediate care and prevents further deterioration of her mental health. She is well cared for in a suitable living environment by her son and her family. She feels safe when her son or grandchildren help her to do things. She has the assistance of her granddaughter who prompts her and helps her take her clothes off to bathe and then stays in the room until she has finished bathing. The protective factors identified include her grandchildren and the opportunity to be with her children in the UK. Being with her family not only makes her feel safe and supported but also gives her purpose to carry on living. The Appellant has a "wonderful support system in place in the UK in the form of her children who are able and willing to support her". "Her family support and relationships in the United Kingdom are extremely important to maintain her mental well-being without which she can quickly deteriorate and even die prematurely."
- (iv) Remaining in the United Kingdom will allow more protective factors such as adequate emotional support of her family, particularly her children and grandchildren which can positively impact her prognosis. Her prognosis was significantly worse in a place like India where she will not have family support and no purpose to carry on.
- (v) Presuming that there are adequate treatment facilities and medication available in India she will need extensive support in the place where she lives. Her condition has a poor prognosis due to the static risk factors. The Appellant is anxious and not confident about trusting strangers to administer medications. Her motivation for self-care and confidence in her self-care capabilities are low. The prognosis of her current mental health condition remains poor given the multiple risk factors and few protective factors. She will struggle to carry out all her activities of daily living without support. She would need support with cooking, cleaning and washing her clothes etc. She would need assistance with self-care and taking her

medication and other prescribed treatments regularly. Her difficulty in self-care and the input of her family in helping her with activities of daily living has been reported by her and her family. She took an overdose with an intention to commit suicide and needs more closer supervision by her family. Even if her children were to visit her frequently in India, it would never be similar to the care, affection and support she would receive if she was living with one of them. Her depression and cognitive abilities then will not allow her to satisfactorily connect with her family in a meaningful way. Given her difficult mental health conditions she will deteriorate even further and have a higher risk of completed suicide. It is not about adapting or adjusting to a new way of life. It is more about her inability to learn, engage and develop due to her mental health issue which will continue to deteriorate without the care, comfort, support and safety.

2. The ISW's view was that the implications of the Appellant's mental health condition are such that they overwhelm her physical functioning and undermine her abilities to meet her own practical care needs. In terms of her emotional and practical dependence on her United Kingdom family the Appellant has to be considered as totally dependent. Her mental health difficulties impact on her physical functioning and it is only the presence of family members who ensure that she takes her medication and that she eats and that all aspects of her practical needs are met. The Appellant lacks the capacity to care for herself or to live independently.
3. Judge O'Garro's findings can be summarised as follows:-
 - (i) Dr Balu made good and practical recommendations that should have been put in place by the Appellant's children. There was no evidence that Dr Balu's recommendations in his report have been acted upon which "calls into question the genuineness of the Appellant and her children's wish to improve the Appellant's mental health and her quality of life, here in the United Kingdom, during the process of these proceedings."
 - (ii) There is insufficient material to find that everyday tasks such as cooking, bathing, dressing, visiting the toilet and feeding herself cannot be done by the Appellant. It is more likely than not that the Appellant does not require long-term personal care to perform everyday tasks. The medical evidence does not deal with the long-term care needs of the Appellant and does not "allude to which everyday tasks the Appellant can and cannot carry out in the day and which she can and cannot carry out at night". The medical evidence did not:

"confirm what tests, if any, were performed to come to the conclusion that the appellant cannot perform everyday tasks. The report does not state how long was spent with the appellant assessing her ability to perform everyday tasks. The reports state that the appellant's physical and mental conditions have been deteriorating but there is no indication as to what they were like before they deteriorated, what tasks could be done before deterioration and what tasks can be done now." (see paragraph 44).
 - (iii) There is a high probability that the Appellant has extended family members in India who can be trusted and employed to provide the Appellant with care. The Appellant's sister and her son with his family "will be able to provide the Appellant with love, and emotional support". This would give

the Appellant “the added benefit of being in close proximity to close family members from whom she can receive emotional support”. With such care arrangements in place, “the Appellant’s anxiety and depression would be abated as she will not feel isolated and alone and her care will be “managed appropriately” as recommended by Dr Balu” At [55] the judge stated that:

“These care arrangements would also deal with the Social Worker’s recommendations found at paragraph 5.2 that the presence of close family members in the appellant’s life meets the appellant’s need for social interaction and emotional support which is beneficial for her mental health.”

(iv) The Appellant’s children were all financially able to meet the costs of renting accommodation for her and for paying for care support in India. They would have the “option of selling or renting the Appellant’s property to offset the costs of paying for the rented accommodation near the Appellant’s sister”. India has a functioning healthcare system and that there were no reasons why she would not be able to access the treatment in India.

(v) Once the Appellant begins to access cognitive behaviour therapy (CBT) as recommended by Dr Balu:

“58. There will a (sic) turning point in the appellant’s mental health which I have no doubt will be for the better, reducing her anxiety and depression, her fear of being on her own and overall her quality of life. I also find any likelihood of the appellant wanting to harm herself will be dramatically reduced once she starts therapy.”

(vi) The Appellant’s United Kingdom family “...can all take turns to visit her in the first 6 months of her return to India in order to assist in her re-settlement.”

(vii) The Appellant does not meet the Immigration Rules and she would have access to an appropriate level of care in India. She would be able to “receive appropriate home care to assist with her daily needs including the administration of her medication, which I accept is important to keep her well”. The Appellant would not suffer unjustifiably harsh consequences on return to India. One or other of her children “will be with her during her settling period and during that time she will rekindle her close relationship with her sister and her nephew who will be there to supervise her care arrangements and provide emotional support”.

(viii) The care arrangements along with the mental health treatment will assist her mental health and stop it from deteriorating. She concluded that the Appellant was not able to show that the Article 3 threshold “as viewed through the lens of *AM (Zimbabwe) [2020] UKSC* is met.” The Appellant could not show “that she faces a serious, rapid and irreversible decline in her state of health resulting in intense suffering or to a significant reduction in life expectancy, on her return”.

4. The judge quoted at length from the case of *Ribeli v Entry Clearance Officer, Pretoria* [2018] EWCA Civ 611 and concluded that “the public interest carries the most weight and therefore I find the decision of the Respondent is proportionate”.

The Grounds of Appeal

5. There are six grounds of appeal. In essence the main complaints can be summarised as follows:
 - (i) The judge failed to consider material evidence including the applicant's suicide attempts and the evidence of the ISW in particular that she suffers from very high levels of anxiety and if there was no-one around her she would have no motivation to do anything.
 - (ii) The judge did not properly consider the evidence of Dr Balu relating to the need for a routine and the significance of the relationship with the Appellant's family in the United Kingdom.
 - (iii) The judge failed to consider the evidence relating to family members in India in particular the judge overlooked the evidence about how it would be possible for her sister to take care of her and to provide "an overarching eye" in light of her own serious health problems which were disclosed in the evidence.
 - (iv) The judge failed to properly fully consider the extent of the Applicant's care needs.
 - (v) The judge failed to consider the evidence relating to the impact of the decision on the Appellant's family in the UK.
 - (vi) The judge did not take into account the issue of suicide risk and that Dr Balu's evidence was based on there being adequate treatment and medication available to the Appellant in India.

Submissions

6. There was a Rule 24 response relied on by the SSHD. Both parties made extensive oral submissions. Ms Isherwood's overriding submission was that the judge looked at all of the evidence. The judge referred to the medical evidence and looked at the Immigration Rules (IR). Although she did concede that parts of the decision were badly worded with reference to the everyday care needs of the Appellant. We asked Ms Isherwood what she understood the judge to have meant when using the term "overarching eye". She said that her interpretation was that the sister would care for the Appellant needs.

Error of Law

7. Dr Balu's report was written on the basis that he accepted that there would be professional medical care/support in India. The absence of treatment was not relied on by the Appellant. It was accepted that medical treatment is available in India. The Appellant's case was that it was not accessible to her without the care and support of her United Kingdom family. The Appellant's case was presented on the basis that the care and support from her United Kingdom family was a protective factor in this case preventing the deterioration in her mental health. There was evidence from these family members in the United Kingdom in support of the Appellant's case. We find that the judge did not properly engage with how the Appellant's case was put. She focussed on the availability of care in India and the possibility of other family members assisting the Appellant.

8. While the availability of care and the help of family members are relevant considerations, when assessing the wider Article 8 proportionality assessment and Article 3, it was incumbent on the judge to make clear findings of the Appellant's care requirements and the impact of that care being provided by a person/s other than the United Kingdom based family in the United Kingdom with whom she currently resides. The thrust of Dr Balu's evidence was that the level of dependency on the United Kingdom family was high and that without their day to day care/support the Appellant's health would deteriorate. While the judge concluded that the Appellant could not meet the requirements of the IR for adult dependant relatives, which is a very high hurdle, what she did not do is to consider the extent of the Appellant's dependency on her United Kingdom family and how the lack of support from them would impact on her overall health in the light of the evidence of the experts which included evidence of suicide attempts in order to assess the wider Article 8 assessment and Article 3. Moreover, the judge made findings that questioned the veracity of the expert evidence in relation to the tests carried out to assess the everyday needs of the Appellant. It is not an issue specifically raised by the Appellant, but from what we can see the evidence was not challenged by the SSHD.
9. The judge found that the Appellant's elderly sister in India could keep "an overarching eye on the Appellant's care arrangements". It is not entirely clear to us what was meant by this. If we accept Ms Isherwood's understanding of this finding, further reasons were required engaging with the expert evidence and the evidence of the family members. The judge expected the Appellant to relocate within India to live closer to her sister. However, the judge did not make clear findings about the level of dependency and the care needs of the Appellant in order to explain how the elderly sister and her son would be able to reasonably manage them. The judge concluded that the decision of the SSHD was lawful because the family in India would be able to provide the appropriate level of care or supervision, but it is not clear what level of care was found by the judge to be appropriate in the light of the expert evidence. The finding of the judge that family in India would be able to provide the Appellant "with love, and emotional support" does not properly engage with the evidence of Dr Balu and the ISW relating to the significance of the relationship between the Appellant and her United Kingdom family.
10. We note from the Respondent's review that the SSHD relied on the Reasons for Refusal Letter (RFRL) of 7 February 2020. There is no engagement with the medical evidence or the evidence of the ISW. We note that the review dealt primarily with the disparity in care between the United Kingdom and India, which was not an issue relied on by the Appellant. The Appellant relied on extensive expert evidence setting out the difficulties that she would face as a result of not being cared for and supported by her family in the United Kingdom. It was the separation from the United Kingdom family which the Appellant said would cause her condition to deteriorate. It appears to us that the SSHD did not grasp the issues in this appeal which did not assist the First-tier Tribunal.
11. The judge did not make clear reasoned findings about the level of care/support required by the Appellant, the impact of removal to India on her physical and mental health resulting from the loss of care and separation from her family in the United Kingdom in the context of Articles 8 and 3. We appreciate that the IR relating to adult independent relatives are very stringent. However, we are not in a position to say with any certainty the errors would have made no difference to the outcome under Articles 3 and the wider Article 8 assessment.

12. For all of the above reasons we find that the judge materially erred. We have not dealt with each and every point raised by the Appellant. We set aside the decision of the First-tier Tribunal to dismiss the Appellant's appeal. There will need to be a fresh hearing.

Joanna McWilliam

Judge of the Upper Tribunal
Immigration and Asylum Chamber

31 July 2023