



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003254

First-tier Tribunal No: HU/55400/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

3rd October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE COTTON

Between

**SECRETARY OF STATE
FOR THE HOME DEPARTMENT**

Appellant

and

**REKHABEN HARSHADBHAI SHARMA
(NO ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer.

For the Respondent: Mr M Brookes, Counsel instructed by Batley Law.

Heard at Field House on 21 September 2023

DECISION AND REASONS

1. This appeal is against a decision of the First-tier Tribunal (FtT) promulgated 31 March 2023, which allowed the appeal of Ms Sharma. For ease I refer to the parties as they were in the FtT.

Background

2. The respondent is a national of India who was born on 6 February 1960. She entered the UK on 25 September 2020 as a visitor and made a family and private life application to the respondent on 15 October 2020, which was refused on 20 August 2021. Following two periods of CV Assurance she made a further private and family life-based application which was refused by the respondent, leading to the appeal to the FtT.
3. The respondent had refused the application on the basis that the appellant did not qualify under the long-residence provisions in paragraph 276ADE(1)(vi) of the

Immigration Rules, that she would not face very significant obstacles on return to India, and that there were no exceptional circumstances which would render the refusal of leave to remain a breach of art 8 of the European Convention on Human Rights.

4. The appeal to the FtT was heard by Judge Iqbal (the Judge) who identified the issues in [5] of the determination which can be paraphrased as whether the appellant would face very significant obstacles if removed to India, whether the appellant had a private and family life in the UK or India, and whether her removal would be proportionate.
5. The Judge concluded that the appellant would not face very significant obstacles on return, but that removal would engage art 8 outside the Rules and that the totality of the appellant's circumstances were sufficient to demonstrate that her removal would be disproportionate. The appeal was therefore allowed on Human Rights grounds.
6. The respondent appealed, and was granted permission, on the grounds that:
 - a. The Judge failed to provide adequate reasons why family support for the appellant could not continue in India; and
 - b. The Judge did not consider whether there was suitable residential care available in India.
7. At the beginning of the hearing I confirmed these grounds of appeal with the advocates.
8. Mr Walker noted that the Judge highlighted at [43] that this was a finely balanced case, and submitted that the grounds of appeal perhaps are more indicative of the respondent complaining about a decision that they are not happy with. Mr Walker conceded that there was not an error of law in the Judge's decision. In light of this, the appellant made no submissions.
9. Having considered the FtT determination, I note that the Judge addresses at [41] why the appellant would be unlikely to be able to access assistance or care from someone outside her family. The analysis is succinct but is, in my judgment, sufficiently clear and is grounded in the evidence. It is not clear that the second ground of appeal reflects something that the Judge was asked to consider, or was so plainly an issue that the Judge should have considered it. Mr Walker's sensible concession reflects all of this.
10. I am satisfied that the concession as to there being no error of law in the Judge's determination is correct.

Notice of Decision

11. The decision of the First-tier Tribunal did not contain a material error of law. Accordingly, the decision stands and this appeal is dismissed.

D Cotton
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 September 2023