



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002288
HU/01459/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 08 October 2024

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

and

Gayatri Ghosh
(no anonymity order made)

Respondent

Representation:

For the Appellant: Mr. A Tan, Senior Home Office Presenting Officer
For the Respondent: Ms. U. Sood, Counsel instructed by Direct Access

Heard in Manchester Civil Justice Centre on the 10th September 2024

DECISION AND REASONS

1. The Respondent is a national of India born on the 10th July 1953. On the 28th March 2023 the First-tier Tribunal (Judge Mather) allowed her appeal on human rights grounds. The Secretary of State now has permission to appeal against that decision, granted by Upper Tribunal Judge Lane on the 2nd November 2023.
2. The case before the First-tier Tribunal was that Mrs Ghosh had established a family and private life in the United Kingdom such that it would be disproportionate to refuse her leave and expect her to return to India. At the date of the First-tier Tribunal hearing Mrs Ghosh was approaching her 70th birthday. She averred that she has lived with her daughter and her family since she arrived in the UK in February 2017. The unchallenged evidence of the family included the fact that she has a strong emotional bond with her disabled grandson with whom she spends a considerable amount of her day. Mrs Ghosh further relied on medical evidence which stated that since arriving in the UK she has been paying privately for treatment for diabetes, cataracts, generalised anxiety disorder,

chronic kidney disease, depression, arthritis and hypertension. She continues to suffer the consequences of a left-sided stroke she had in 2016. Psychiatrist Dr Ola Junaid assessed Mrs Ghosh has having impaired short term recall, which he classed as a moderate cognitive impairment falling short, at this stage, of a formal diagnosis of dementia.

3. Having set out the evidence, the First-tier Tribunal found the Respondent to be a vulnerable individual with significant mental and physical needs. It directs itself to the guidance in Kamara [2016] EWCA Civ 813, in particular the passage at paragraph 14:

“The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day to day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individuals private or family life”.

4. The First-tier Tribunal decision then states [at 22]: “Given the Appellant's physical and mental difficulties, I accept Mrs Sood's submission that in this case, I accept there would be very significant obstacles to the Appellant's integration into India. As such, I allow the appeal under the Immigration Rules”. It is common ground that ‘very significant obstacles’ was reference to the ‘private life’ test then set down in paragraph 276ADE of the Immigration Rules.

5. The Tribunal concludes its decision by saying this:

“For the sake of completeness, I have gone on to consider whether there are exceptional circumstances in this case which would render removal a breach of Article 8 because it would result in unjustifiably harsh consequences for the Appellant or another family member. I have reminded myself of the 5 stage test set out in the case of Razgar. Given the special, unique and compelling features of the Appellant's circumstances, including her special relationship with her grandson, who is severely impaired, I find the refusal to grant this application does interfere disproportionately with the right to respect to private life under Article 8 ECHR. Accordingly, the appeal is allowed under Article 8 ECHR”.

Error of Law: Decision and Findings

6. The Secretary of State now appeals on four grounds¹:
 - (i) That the Tribunal had no jurisdiction to ‘allow’ the appeal ‘under the Immigration Rules’;
 - (ii) The Article 8 assessment is flawed for a failure to have regard to the public interest considerations set out in s117B Nationality Immigration and Asylum Act 2002;

¹ The numbering of these grounds shifted between the initial and renewed applications. This is the order which appeared in the former, and the order in which I shall address them.

- (iii) The finding that there are very significant obstacles to Mrs Ghosh's integration in India is not supported by reasoning;
- (iv) The Tribunal has failed to have regard to relevant caselaw concerning the Adult Dependent Relatives rules.

7. Before me Mr Tan concentrated his oral submissions on ground (iii). He submitted that the Decision does not engage with points made on the Secretary of State's behalf, such as the fact that Mrs Ghosh has lived in India all her life, and that she could pay for help if she returned there. He invited me to disregard ground (iv) since he accepts that this was an application made on Article 8 grounds 'outside of the rules' and it was accepted by all parties that the Adult Dependent Relative rules did not apply.
8. Ms Sood pointed out that none of the evidence given in the appeal was challenged. In particular the Secretary of State had had an opportunity to assess and dispute the medical evidence, all of which had been provided in advance of the hearing, but she did not do so. Having heard from Mrs Ghosh and her daughter the Tribunal was satisfied that she was as frail as they claimed she is. This was not just about her physical problems, but about her mental health. It was reasonable for the Tribunal to accept that this elderly woman, who was widowed suddenly, is psychologically reliant on her daughter: Ms Sood submits that this is not a relationship that can be substituted with paid for care without unjustifiable hardship for the parties.

Discussion and Findings

9. Paragraph 22 of the First-tier Tribunal decision reads as follows:
- "22. Given the Appellant's physical and mental difficulties, I accept Mrs Sood's submission that in this case, I accept there would be very significant obstacles to the Appellant's integration into India. **As such, I allow the appeal under the Immigration Rules**".
10. The Secretary of State is quite right to say that there is no power for the First-tier Tribunal to 'allow' an appeal under the Immigration Rules. To that extent ground (i) is made out and the words I have highlighted in bold above are struck out and substituted with "the Appellant has demonstrated that she meets the requirements of paragraph 276ADE(1)(vi)".
11. Ground (ii) is also made out. As Ms Sood fairly accepted, the First-tier Tribunal decision makes no reference to the public interest factors set out in s117B Nationality Immigration and Asylum Act 2002. I am unable to read into the decision any consideration of those factors. The Tribunal's brief analysis of Article 8 'outside the rules', set out at its paragraph 23, therefore falls to be set aside.
12. Before me Mr Tan accepted that the error identified in ground (ii) is not necessarily fatal to the remainder of the Tribunal's decision. If the Tribunal was entitled, on the evidence, to find that Mrs Ghosh could meet the requirements of the Rules, the public interest in refusing her leave would, absent any additional countervailing factors, fall away: TZ (Pakistan) and PG (India) v SSHD [2018] EWCA Civ 1109. It is no doubt for that reason that it was ground (iii), which critiques the Tribunal's approach to the rule, that Mr Tan made the focus of his submissions.

13. Mr Tan's first complaint is that matters specifically raised by the Secretary of State are not addressed in the Tribunal's reasoning.
14. The first example given is of the fact that Mrs Ghosh spent almost her entire life in India. I do not accept that the Tribunal failed to weigh this matter in the balance. In setting out the facts it records, at its paragraph 3: "She arrived in the UK at the age of 63 years and 6 months old. Prior to that, she had resided in India which included her formative years and all her adult life". The grounds go on to suggest that in these circumstances no question of 're-integration' arises, since Mrs Ghosh can simply resume her existing private life where she left off. Nor do I accept that submission. Mrs Ghosh has been in the UK since February 2017. In that time, three intervening life events have significantly changed things for her: the first is that her husband of some 50 years died; the second is that the house that they lived in has been ceded back to the owner, the Indian government; the third is that Mrs Ghosh's health has considerably worsened. These matters were all plainly relevant to whether or not she would be able to integrate in India. It would in my view have been quite irrational for the First-tier Tribunal to have assumed that she was already integrated.
15. The second example given by the Secretary of State of a matter omitted from the Tribunal's reasoning is her submission that Mrs Ghosh could pay for appropriate care in India. I accept that this is not specifically mentioned in the decision. I have carefully assessed whether or not that lack of reference is material to the outcome of the appeal. I have concluded that it is not.
16. The essence of a reasons challenge is that the losing party does not understand why she has lost. The Secretary of State can here be under no illusions about why she has lost: she is plainly aware of the evidence given in the appeal, and the fact that this evidence was accepted in its entirety by the Tribunal. On this particular point, the family never tried to conceal the fact that Mrs Ghosh was assisted, whilst living in India, by paid servants: both she and her daughter make reference to domestic servants in their witness statements, as does Dr Junaid in his report. Their evidence, however, is that following the sudden death of her husband Mrs Ghosh became extremely mistrustful of anyone other than her daughter and son-in-law, and this included the servants. Her refusal to have them care for her was one of the motivating factors in this application being made. The family attribute this lack of trust to a decline in Mrs Ghosh's mental state. As her son-in-law Mr Partha Roy puts it, she had a "complete mental breakdown" following the death of her husband. In these circumstances the fact that she could pay for domestic help was of little, if any, relevance.
17. More widely there is the question of whether the Tribunal has done enough to explain why it found the 'very significant obstacles' test to be met. I accept Mr Tan's submission that the reasoning is brief. That said, this was, as I say above, a case in which the evidence was unchallenged, and accepted by the Tribunal. It was a case in which the evidence strongly supported the conclusion reached by the Tribunal. The evidence of the family and medical professionals included the following matters:
 - i) Mrs Ghosh does not have family to whom she can turn in India;
 - ii) She was "highly dependent" on her husband during his lifetime, and after his death this dependence transferred to her daughter and son-in-law;

- iii) She is now integrated into her son-in-law's family in the UK, and has a particular bond of affection with her grandson;
 - iv) Since her arrival in the UK she has seen a Counsellor to help her cope with bereavement and depression;
 - v) Mrs Ghosh's own assessment that if returned to India she would be "frightened and lonely";
 - vi) Dr Junaid considered that there was an increased risk in India of social isolation, "more likely than not to have a significantly detrimental effect on her health and well-being";
 - vii) This was also the view of social worker Vicky Davidson, who conducted a review of the plans for Mrs Ghosh's social care;
 - viii) Her stroke has left Mrs Ghosh unsteady on her feet and she is not left alone by family members as she is at increased risk of a fall.
18. This evidence, referred to in the round at the Tribunal's paragraph 22, was in my view a sufficient basis for it to conclude that the test was met. I bear in mind that the Tribunal had properly directed itself to the guidance in Kamara [2016] EWCA Civ 813 in the preceding paragraph, and in the absence of any indication to the contrary I can be satisfied that this specialist Tribunal understood and followed its own self direction.

Decisions

- 19. The decision of the First-tier Tribunal is set aside to the limited extent identified above.
- 20. The decision in the appeal is remade as follows: the appeal is allowed on human rights grounds because Mrs Ghosh meets the requirements of the rules.
- 21. There is no order for anonymity.

Upper Tribunal Judge Bruce
Immigration and Asylum Chamber
4th October 2024