IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003057

First-tier Tribunal Nos: HU/54385/2022
LH/00974/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 31 July 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

Kuldeep Kaur Rayaat
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr. A. Maqsood, S Z Solicitors Limited
For the Respondent: Ms. S. Cunha, Home Office Presenting Officer

Heard at Field House on 11 July 2024

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of First-tier Tribunal Judge M Davies (the "Judge"), dated 26 June 2023, in which she dismissed the appellant's appeal against the respondent's decision to refuse leave to remain in the United Kingdom on human rights grounds. The appellant is a national of India who applied to remain on the basis of her family and private life.

2. Permission to appeal was granted by Deputy Upper Tribunal Judge Wilding in a decision dated 28 March 2024 as follows:

> "4. Ground 1 is unarguable. The Judge plainly has applied the correct standard of proof.
>
> 5. Equally ground 4 is unarguable. The Judge did not unlawfully apply the "effective immigration control test". Firstly, it is not a0 test, secondly it is rooted in s117B(1) of the 2002 Act as amended. That the appellant was not unlawfully in the

UK may be a factor going in her favour, however her status is precarious, and there is a public interest in effective immigration control to those people who are not settled here.

6. I consider the rest of the grounds are however arguable. The Judge in particular in relation to the assessment of very significant obstacles has failed to consider whether the appellant would be able to integrate applying the test in Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813;

> *14. In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. 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 individual's private or family life.*

7. Given the medical evidence, it is arguable that there is no assessment, or no adequate assessment, as to why it is found that the appellant would have the capacity to participate in society in India in 2023.

8. The above also has knock on consequences to the Judge's holistic assessment when undertaking the Article 8 balancing exercise. In particular it is arguable that the Judge does not appear to factor into his assessment the impact on the family unit were the appellant to be removed."

3. The respondent provided a Rule 24 response dated 17 April 2024.

The Hearing

4. The appellant, her son and daughter-in-law attended the hearing.

5. I heard oral submissions from both representatives following which I reserved my decision.

Error of Law Decision and Reasons

6. As stated in the grant of permission, and as accepted by Mr. Maqsood, the grounds are rather rambling. Mr. Maqsood focused on the two grounds referred to by the judge granting permission which relate to the Judge's consideration of whether there would be very significant obstacles to the appellant's re-integration into India, and her assessment of the proportionality of the decision in relation to the appellant's family life.

7. It is clear that there has been some confusion from the start. The appellant was present in the United Kingdom when she made her application. She came to the United Kingdom as a visitor. Shortly after arriving she had a heart attack. She then applied for further leave to remain given her change in circumstances. The application was considered as if the appellant had made an application as an Adult Dependent Relative, but such applications can only be made from outside

the United Kingdom. Although the respondent considered that the eligibility criteria were not met due to the appellant's care needs, in any event she could have not met those criteria because she was in the United Kingdom.

8. The appellant's skeleton argument addressed the reasons for refusal and therefore focused on the status of Adult Dependent Relative. However, in the witness statements, it was clear that the appellant was submitting that there would be very significant obstacles to her reintegration in India. In the review, from [12] to [14], the respondent considered whether there were very significant obstacles to the appellant's reintegration into India. The Judge focused on whether the appellant met the requirements of the immigration rules as an Adult Dependent Relative, not whether there would be very significant obstacles to her reintegration. She has stated that the respondent is the Entry Clearance Officer, although the appellant was present before her at the hearing. While there is some overlap between these two rules, I find that the Judge has not given full consideration to the appellant's private life, and whether she would be able to reintegrate into life in India.

9. The Judge found the witnesses to be credible. At [25] she states:

> "I found all the witnesses to be credible. They gave their evidence in a straightforward manner and they answered the questions asked. There were no inconsistencies. I find that the contents of their witness statements are true and accurate."

10. However, while she has found the contents of their statements to be "true and accurate", she has not adopted their evidence into her findings. She appears to state that she accepts their evidence but, given her findings, she has not accepted it in its entirety, and the weight she has attached to it is not clear

11. The Judge's consideration of paragraph 276ADE(1)(vi) is at [49]. She states:

> "The Respondent also considered the Appellant's application under Paragraph 276ADE(1)(vi) because she has established a private life in the UK to a degree based on her relationship with family members and her medical needs. However, she does not meet the requirements of the Immigration Rules for the grant of Leave to Remain on the basis of her private life because she has not resided in the UK for over 20 years and there are no very significant obstacles to her integration in India. She has lived there her whole life save for the past two year, she speaks the language, and knows the culture. Her physical and mental health needs will not prevent her from integrating in India and she will have the presence of her daughter and neighbour there."

12. I find that this is an inadequate consideration of the appellant's circumstances for the purposes of paragraph 276ADE(1)(vi). There is scant consideration of the appellant's mental and physical health needs and their impact on her ability to reintegrate. The appellant's son said in his witness statement that his mother had both hearing and sight problems. These have not been taken into account. These are both factors which are relevant to the appellant's ability to reintegrate. Neither has the evidence from the psychiatrist been taken into account. Her evidence was that detachment from her family would bring along a significant deterioration in the appellant's mental health. She referred to the importance of continuity of family support in order for the appellant to improve her mental health. In relation to her mental and cognitive health, the Judge found that the appellant appeared confused before her ([27] and [37]). This is a relevant factor to which there is no reference at [42].

13. The Judge finds that the appellant will have the "presence of her daughter and neighbour", but there are no findings as to the support that she will receive from either of them and how their presence alone will enable the appellant to reintegrate. The finding that they are present does not equate to a finding that they will assist her. The Judge made no finding that she could not rely on the evidence of the appellant's daughter who stated that she would not be able to look after the appellant. However, there is no reference to the evidence from the appellant's daughter in India.

14. The Judge considered the psychiatric evidence at [38] to [40] and finds that the appellant has been diagnosed with mixed anxiety and depressive disorder [39]. In her report Dr. Hussain states that failing to treat the appellant's current symptoms of mixed anxiety and depression with antidepressants, and withdrawal of family support, is likely to cause a further deterioration in her mental health. The report states that the appellant's detachment from her family, to whom she is emotionally attached, may lead to her deteriorating significantly, both mentally and physically. Dr. Hussain writes that continuous support from her family is important to improve and maintain her mental and physical health. She further considers that the appellant is not fit to travel due to her physical health problems and her current state of mind.

15. At [40], the Judge states that she gives "some" weight to the report on the basis that Dr. Hussain had only one consultation with the appellant and wrote the report as an expert witness rather than as a medical practitioner who was treating her on a day-to-day basis. However, I find that it is not clear what weight she has given. The findings at [39] are clearly relevant to the assessment under paragraph 276ADE(1)(vi) but there is no reference to them when the Judge assesses whether there would be very significant obstacles to the appellant's integration. If some weight had been given to the psychiatric evidence, there should be some reference to those findings at [42]. Weight is a matter for the Judge, but it needs to be clear on the face of the decision what weight has been given and, with respect to the psychiatric evidence, it is not clear.

16. The Judge had accepted that the appellant needed long-term personal care due to her age and illness. She had found that this was available in India. However, the fact that she needs long-term personal care due to her age and illness is a relevant factor when considering whether there would be very significant obstacles to her integration on return to India. The Judge found at [37] that the appellant was totally dependent on her son and his wife for support with everyday tasks. She found that she had a close and supportive relationship with her son and daughter-in-law and was provided with good quality, physical and emotional support [52]. She had a close relationship with her granddaughter [52]. These are all relevant factors to be taken into account, against a background of the psychiatric evidence that detachment from the family would lead to a deterioration in the appellant's mental health.

17. Although the respondent had refused the application on the basis that the appellant did not meet the immigration rules as an Adult Dependent Relative, the Judge should have been aware, as was considered in the review, and given that the appellant was before her, that a full assessment of paragraph 276ADE(1)(vi) was necessary in order to make a decision in relation to the appellant's private life. I find that this has not been done.

18. I accept, as set out in the grant of permission, that this had a knock-on effect to the Judge's consideration of the appellant's family life. I find that the Judge has

given inadequate consideration to the impact of the appellant's removal on family life. In relation to her immigration status, it was precarious and this was a relevant factor which needed to be taken into account. However, it was submitted that there was no consideration of the appellant's circumstances insofar as she had not, for example, come to the United Kingdom with a visit visa with the intention of frustrating the requirements of the immigration rules by applying for further leave once she was here. The heart attack which she suffered in the United Kingdom in March 2021 was a dramatic change in her circumstances and resulted in her dependence on her son and daughter-in-law. This is why the application was made. I find that this is a relevant consideration which has not been taken into account.

19. I find, taking into account the decision as a whole, that the Judge has not given proper consideration to the evidence. Her consideration of whether there would be very significant obstacles to the appellant's integration into India is inadequate. I find that this is a material error of law.

20. There was no further evidence provided for the appeal in the Upper Tribunal. I therefore find, as discussed at the hearing, that it is appropriate for me to remake the decision on the basis of the evidence before me.

Remaking

21. I have taken into account the evidence and the findings of the Judge in the First-tier Tribunal. There was no challenge by the respondent to the Judge's finding that the evidence of the appellant, her son and daughter-in-law could be relied on, and I adopt that finding here.

22. The Judge found that "some weight" could be attached to the evidence of Dr. Hussain. I have carefully considered that evidence (pages 435 to 445 of the Upper Tribunal bundle). Dr. Hussain is a practising adult psychiatrist. She is aware of her duty to the courts. She has set out her qualifications and experience and I find that she is qualified to write such a report. She conducted a psychiatric assessment and mental state examination of the appellant. She was provided with instructions and a list of the appellant's medication. She has considered the appellant's personal circumstances as reported by the appellant's son. I find that there is nothing untoward in this. This is the way that information would be obtained, especially given the appellant's medical problems, particularly her memory. Her cognitive difficulties were recognised by the Judge.

23. At [3.2] Dr. Hussain sets out the appellant's history of coming to the United Kingdom and the heart attack. At [3.3] she considers her cognitive decline and at [3.4] her mobility issues. At [4] she considers her psychiatric symptoms. The mental state examination is set out at [6] and her opinion at [7]. I find that I can attach weight to this report. It is consistent with the evidence of the appellant's son and daughter-in-law, which was accepted by the Judge. I place weight on the evidence of Dr. Hussain.

24. I find, based on the evidence of Dr. Hussain, that the appellant's mental health is likely to deteriorate if the family support she receives now is withdrawn. I find that it may also lead to a deterioration in her physical health. Dr. Hussain states "Her detachment from her family, who she is emotionally attached to, may lead her to deteriorate significantly, mentally and physically." She states that, if her physical health deteriorates, the prognosis for her depression is likely to be poor. If find, based on Dr. Hussain's evidence, that "continuous support from [the

appellant's] family is important to improve and maintain [her] mental and physical health".

25. The Judge found that the appellant did not meet the requirements for entry clearance as an adult dependent relative. However, this includes the unchallenged finding that she required long-term personal care in order to perform everyday tasks, a finding which I adopt.

26. I find the appellant is 68 years old. She has significant physical and mental health conditions as a result of which she is entirely dependent on her son and her daughter-in-law. Following her heart attack she had a pacemaker implanted. I find that she has problems mobilising and uses a wheelchair. I find that she has poor hearing and uses a hearing aid. She has poor eyesight. I find that she has problems with her memory and becomes confused as was apparent before the Judge. She suffers from anxiety and depression. I find, based on the psychiatric evidence that this would worsen on her return to India due to detachment from her son and daughter-in-law.

27. I find that the appellant has a home in India. She would be living alone. I find that her daughter lives in India. However, I find that her daughter would not be able to provide the same care as her son provides in the United Kingdom.

28. I have considered whether the appellant's circumstances mean that she would face very significant obstacles to her reintegration into India. I have taken into account the case of Kamara which states:

> "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 individual's private or family life".

29. I find that the appellant would not be able to integrate without significant support. She requires not only help for her personal care, but also supervision. I find that she struggles to mobilise and to see. While she speaks the language, she has poor hearing. I find that her memory problems mean that she cannot be left without supervision. I find that her mental health would deteriorate on return to India without the support of her family. I find that she is reliant on them physically and emotionally. She has lived in India for the majority of her life but, when she last lived there, she did not have the significant medical problems which she has now. Her husband had recently died, but she was living alone and able to care for herself. The situation has changed completely. She has never lived in India with the physical and mental health difficulties which she has now, which would cause her very significant difficulties in integrating. I find that she will not have the capacity to participate in life in India. I find that the appellant has shown that she meets the requirements of paragraph 276ADE(1)(vi).

Article 8

30. I have considered the appellant's appeal under Article 8 in accordance with the case of Razgar [2004] UKHL 27. The Judge found that the appellant had a family life with her son. I find that she has a family life with her son's whole family, her son, daughter-in-law and grandchildren, sufficient to engage the operation of Article 8. I have found that the appellant is completely reliant on her family. I find that the emotional ties between the appellant and her family in the United Kingdom go above and beyond the ties normally to be found between a parent and adult children. I find that the decision would interfere with this family life. The appellant has been here since 1 March 2021, and I find that she has built up a private life here. I find that the decision would interfere with this private life.

31. Continuing the steps set out in Razgar, I find that the proposed interference would be in accordance with the law, as being a regular immigration decision taken by UKBA in accordance with the immigration rules. In terms of proportionality, the Tribunal has to strike a fair balance between the rights of the individual and the interests of the community. The public interest in this case is the preservation of orderly and fair immigration control in the interests of all citizens. Maintaining the integrity of the immigration rules is self-evidently a very important public interest . In practice, this will usually trump the qualified rights of the individual, unless the level of interference is very significant. I find that in this case, the level of interference would be significant and that it would not be proportionate.

32. I have taken into account all of my findings above when considering proportionality. In assessing the public interest I have taken into account section 19 of the Nationality, Immigration and Asylum Act 2002. Section 117B(1) provides that the maintenance of effective immigration controls is in the public interest. I have found above that the appellant meets the requirements of paragraph 276ADE(1)(vi) of the immigration rules, so there will be no compromise to effective immigration control by allowing her appeal.

33. Following TZ (Pakistan) [2018] EWCA Civ 1109, I find that her appeal falls to be allowed. This case states at [34]:-

> "That has the benefit that where a person satisfies the Rules, whether or not by reference to an article 8 informed requirement, then this will be positively determinative of that person's article 8 appeal, provided their case engages article 8(1), for the very reason that it would then be disproportionate for that person to be removed."

34. In line with this, the headnote to OA and Others (human rights; 'new matter'; s.120) Nigeria [2019] UKUT 00065 (IAC) states:

> "(1) In a human rights appeal under section 82(1)(b) of the Nationality, Immigration and Asylum Act 2002, a finding that a person (P) satisfies the requirements of a particular immigration rule, so as to be entitled to leave to remain, means that (provided Article 8 of the ECHR is engaged), the Secretary of State will not be able to point to the importance of maintaining immigration controls as a factor weighing in favour of the Secretary of State in the proportionality balance, so far as that factor relates to the particular immigration rule that the judge has found to be satisfied."

35. The appellant does not speak English (117B)(2)). She is financially dependent on her family. I find that they able to financially support and accommodate her, and have been doing so since she came to the United Kingdom (section 117B(3)).

36. In relation to sections 117B(4) and (5), while little weight is to be given to a private life established when a person has precarious leave, the appellant's circumstances are relevant. She came to the United Kingdom with a visit visa intending to return to India. However, she had a heart attack shortly after coming here which resulted in her being dependent on others. Owing to the change, she applied in time for leave to remain. She has not been here illegally. Further this section applies only to private life, not to family life. Section 117B(6) is not relevant.

37. I find that the only way that family life could be maintained between the appellant and her family is by the family returning to India with her. It has not been suggested by the respondent that they should do this. I find that, owing to the appellant's physical and mental health needs, family life could not be maintained by modern means of communication and visits. It could only be maintained by the physical presence of her family. I find that it would not be proportionate to expect them to return to India in order to maintain family life with the appellant.

38. Taking all of the above into account, and placing weight on the fact that the appellant meets the requirements of the immigration rules under paragraph 276ADE(1)(vi), I find that the appellant has shown that the decision is a breach of her rights, and those of her family, to a family and private life under Article 8.

Notice of Decision

39. The appeal is allowed on human rights grounds, Article 8 family and private life. The appellant meets the requirements of paragraph 276ADE(1)(vi) in relation to her private life.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
23 July 2024