



**Upper Tribunal  
(Immigration and Asylum Chamber)**

**Appeal Number: UI-2023-003234  
First-Tier Tribunal No: HU/52068/2021  
IA/06143/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 26<sup>th</sup> April 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BAGRAL**

**Between**

**VALSAMMA VARGHESE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No representative

For the Respondent: Ms J Isherwood, Senior Presenting Officer

**Heard at Field House on 29 February 2024**

**DECISION AND REASONS**

**Anonymity**

1. The First-tier Tribunal did not issue an anonymity order. I am satisfied that the private life rights of the appellant, and members of her family, do not outweigh the public interest in open justice and so there is no requirement that she enjoy anonymity.

## **Background**

2. In a decision issued on 14 December 2023 I set aside the decision of the First-tier Tribunal following a concession made by Ms Lecointe on behalf of the respondent that the judge materially erred in law by her failure to adequately consider material evidence, namely the report of Dr Abraham, that informed the question of proportionality. I preserved many of the factual findings made by the First-tier Tribunal that were not subject of challenge and, in view of the nature of the error, the appeal was retained in this Tribunal. The appellant did not attend the error of law hearing, and as Ms Lecointe was not in a position to proceed, the hearing was adjourned with directions.
3. This is the resumed hearing of the appeal, and I am required to remake the decision.
4. The appellant is an Indian national born on 19 July 1963. She is a widow and lived alone in India. The appellant entered the United Kingdom on 12 March 2020 with entry clearance conferring leave to enter as a visitor until 11 September 2020. The appellant's only daughter, Ms Jincy Varghese ("the sponsor"), is a British citizen and resides in the United Kingdom with her husband and son.
5. On 7 September 2020 the appellant made an application outside of the Immigration Rules on compassionate grounds. Essentially it was stated the appellant was dependent on the sponsor for care, and that, the appellant could not return to India due to a high rate of Covid, but nonetheless indicated her intention to do so once the situation improved. The appellant's personal circumstances evolved, and by the time her appeal came before the First-tier Tribunal in May 2023, she had been assessed privately by two Consultant Psychiatrists, Dr Abraham and Dr Attalla on 5 July 2021 and 26 February 2023 respectively. Dr Abraham formed the "impression" that the appellant was experiencing an "Adjustment Disorder with mixed anxiety and depressive reaction". Dr Atalla's diagnosis was that the appellant had a "Major Depressive Disorder & Anxiety Disorder" and assessed her as unfit to give evidence. In consequence, the appellant did not appear before the First-tier Tribunal, but she was legally represented, and the sponsor gave oral evidence.
6. It was common ground before the First-tier Tribunal that the appellant could not satisfy the requirements of the Immigration Rules as an Adult Dependent Relative as she made her application in-country. The issue in the appeal was thus confined to whether the appellant's removal would be contrary to Article 8 ECHR (both within and outside the Immigration Rules). It is useful at this juncture to set out the findings that I preserved from the decision of the First-tier Tribunal. They are as follows:

"28. It is of note that the appellant has only been in the United Kingdom since 2020 and has spent by far the majority of her life in India where, I am satisfied, she has family to whom she can return. It is not suggested that the appellant has lost any

connection to her country of origin that would suggest significant obstacles to integration there. There is no evidence that the appellant is estranged from family there.

29. In relation to any physical health problems, I find that the appellant has not been in receipt of any specialist input in the United Kingdom. It is not suggested that the appellant was unable to access, or receive, medical attention for her physical health problems in India. It is also said that the appellant is suffering from mental health problems. The appellant has not, however, received any treatment for mental health problems in the United Kingdom, or in India. This is despite the sponsor's submission that the appellant was depressed when she last visited the appellant in India. Furthermore, I find that the claimed destruction to the family home in India does not sit well with the claim that all that was intended for the appellant was a temporary visit to the United Kingdom.

30. The appellant has provided a Psychiatric Report prepared by Dr Attalla, Consultant Psychiatrist. I am satisfied that Dr Attalla is giving his opinion on matters within his expertise. I am further satisfied that Dr Attalla has acknowledged his duty to the court. I find, however, that I cannot place reliance on Dr Attalla's report as providing an accurate description of the appellant's circumstances.

31. Dr Attalla assessed the appellant following a video interview on 26 February 2023. The sponsor acted as the interpreter during that interview. Dr Attalla conducted a mental state examination by video. He concluded that the appellant is suffering from major depressive disorder, which was not fabricated. In relation to the prognosis and consequences of return, Dr Attalla states that the appellant's depression and anxiety would increase and that this would worsen her mental ill-health, resulting in a psychiatric crisis. Unfortunately, Dr Attalla heads his conclusions on the appellant's mental state as:

"5. PSYCHOLOGICAL CREDIBILITY OF ACCOUNT: *[sic]*

32. It is trite law that it is not the function of an expert to reach conclusions on the credibility of an account provided by an individual. Credibility findings are for the tribunal to reach.

33. Dr Attalla further concludes that the appellant is at low to moderate risk of suicide. He then states that:

*"There is a risk of deterioration in Mrs. Varghese's mental health if she fails to comply with the medical treatment as recommended."*

[Emphasis added both above and below]

34. This conclusion, I find, fails to have regard to the fact that the appellant is currently not in receipt of any medication, at all. Dr Attalla goes on to say:

*"However, should she comply fully with the recommended treatment and her fears for her safety in India are eliminated, her prognosis is likely to be satisfactory."*

35. It is not clear what Dr Attalla means by "satisfactory" as no further explanation is provided by him. Furthermore, Dr Attalla has referred to the appellant's fears in India when the appellant has not claimed any fear on return. It may be that Dr Attalla is

merely referring to the circumstances that the appellant would be returning to in India.

36. Dr Attalla also says this:

*“Conversely, if she able [sic] to remain in the UK, Mrs. Varghese will gradually begin to feel safe. Once Mrs. Varghese is granted immigration status in the UK, she will then need specialist mental health input....”*

*“In the longer term, once Mrs. Varghese has been granted leave and only then, it will be helpful and imperative to be offered long-term and specialist psychotherapy by an adult psychotherapist.”*

37. I find that the conclusion that the appellant will need specialist mental health input once she is granted immigration status does not sit well with the conclusion that she would face a serious and irreversible decline in her mental health if she does not comply with treatment. It is also not clear what Dr Attalla is suggesting should happen between the appellant’s immigration issues being resolved and the appellant commencing treatment, if her mental ill-health is of such severity that she would face a psychiatric crisis. I have found that the appellant is currently not in receipt of medical attention in relation to mental health problems. This is despite having a daughter who is a nurse and who is paying privately for any medical attention. It is not clear why the appellant would, therefore, need to wait until her immigration issues are resolved to commence treatment.

38. Quite unhelpfully, Dr Attalla says this in relation to the risk of suicide:

*“...This would increase if her immigration application rejected [sic] and her mental health will deteriorate further...”*

39. Dr Attalla bases his findings on the account that was self-reported by the appellant and he states that:

*“There is likely to be a rapid and irreversible decline in her state of health resulting from intense suffering and lead [sic] to a significant reduction in life expectancy.”*

40. I find that Dr Attalla has failed to give an explanation of how he has reached such conclusions solely based on the account that was relayed to him. I find that there has been significant emphasis on the appellant being granted immigration status as the basis for starting any treatment and for the appellant’s mental health improving. I do not accept that if the appellant were experiencing a significant mental health crisis, she would not have immediately commenced mental health treatment, or that she would not currently be receiving treatment for mental health problems. I find that I cannot place any reliance on Dr Attalla’s report as providing a reliable and accurate account of the issues in this appeal, in relation to the appellant’s mental health.

41. In relation to the expert evidence submitted, I have considered the case of AAW (expert evidence – weight) Somalia [2015] UKUT 00673 (IAC). There, the Upper Tribunal held that any opinion offered by an expert that is unsupported by a demonstration of the objectivity and comprehensive review of material facts required of an expert witness is likely to be afforded little weight by the Tribunal. In particular, a witness who does not engage with material facts or issues that might detract from the view being expressed risks being regarded as an informed advocate for the case of one of the parties to the proceedings; rather than an independent expert witness. I

have also considered the case of MOJ & Ors (Returns to Mogadishu) Somalia CG [2014] UKUT 00442, at [23] - [27], in relation to the duty and responsibility of an expert.

...

48. It is not accurate to describe the appellant as facing potential destitution if she were to return to India. The appellant has lived there for the majority of her life. She has a family home there and no evidence has been provided to show that it is no longer available to her. Whilst she may have established a private life in the United Kingdom in the time she has been here, she has always known that her leave was temporary.

49. The appellant has linguistic, cultural, family and social attachments to India. I find that any loss of connection to India in the time that she has been in the United Kingdom would be quickly recovered. Having regard to the period during which she has resided in the United Kingdom and the very different culture, language, traditions and social setting to which she may have become accustomed, the exercise of integrating into society in India is something that can be achieved in the same manner that she was able to settle in the United Kingdom. It will not, in the language of the rule, give rise to "very significant obstacles".

...

68. The appellant and sponsor's relationship has not been called into question by the respondent. I find that the appellant is the sponsor's biological mother. The concept of family life is not confined to the nuclear family but incorporates other forms of relationships. Whether or not family life exists outside the nuclear family depends on the nature of the relationship and not the status. Each case is fact-specific and must be assessed individually. The ECtHR has, in practice, taken a different approach to a) the nuclear family of legally and legitimately married spouses and minor children, and b) other family relationships.

...

74. I find that whilst the appellant is the sponsor's mother, the appellant has always lived in India and she has been able to access any medical attention for physical health problems there. The appellant has family remaining in India (siblings) and no evidence has been provided to show that their circumstances are such that they cannot provide any support to the appellant, should she require support.

...

78. Whilst I accept that there would be distress caused to the appellant and the sponsor by virtue of being separated, the appellant has always lived in India and the purposes of her trip to the United Kingdom were for a visit. I find that whilst she has been living with the sponsor in the United Kingdom in the time that she has been here, there are no more than normal emotional ties on the facts of this appeal."

### **The Resumed Hearing**

7. The appellant is a litigant in person. A notice of hearing was sent to the appellant by email at the address she provided to the tribunal for service of correspondence. The appellant nor anyone on her behalf attended the

hearing. There was no explanation for the absence of the appellant and/or the sponsor. In the circumstances, and in view of the overriding objective, I considered that it was in the interests of justice to proceed with the appeal.

8. I had before me a core bundle produced for the hearing which included the evidence made available by the parties to the First-tier Tribunal. The appellant did not file any further evidence in compliance with the Tribunal's directions.
9. In her submissions on behalf of the respondent Ms Isherwood referred to the reports of Dr Abraham and Dr Attalla, and to a medical letter of Dr Sreekumar dated 17 June 2020, a Consultant Neurosurgeon in India. Ms Isherwood submitted that the appeal under Article 8 ECHR ought to be dismissed. She referred to factors such as the appellant's inability to meet the Immigration Rules, the appellant had spent most of her life in India, where she has family - she will not face destitution.
10. Dr Atalla's report was based on the appellant's self-reporting, and he had not adequately explained how the appellant's removal would result in a psychiatric crisis. Dr Abraham's report was outdated and did not comply with the Tribunal's Practice Direction for such reports. It was not clear what other information was before Dr Abraham. In so far as the appellant's concerns regarding the risk of Covid - this was no longer relevant. It is clear from Dr Sreekumar's letter that the appellant received medical treatment in India. There was no evidence of a significant private life in the UK. The appellant's leave in the UK is precarious. There are no very significant obstacles to integration. There was no evidence the appellant was financially independent. The appellant could return to India where she would have family support.

### **Burden and Standard of proof**

11. The burden of proof lies on the appellant to show that the respondent's decision is a breach of her human rights, and/or those of the sponsor, to a family and/or private life under Article 8 ECHR. The standard of proof is a balance of probabilities.

### **Discussion**

12. The issue in this appeal is very narrow. It is limited to an assessment of whether the appellant's removal would cause unjustifiably harsh consequences either for her and/or any other family member such that there would be a breach of Article 8 ECHR. The assessment is to be conducted within the parameters of the First-tier Tribunal's preserved findings of which there are many in consequence of the error of law being limited to its inadequate treatment of the evidence of Dr Abraham.
13. It was accepted before the First-tier Tribunal that the appellant could not meet the requirements of the Immigration Rules as an adult dependent relative, and, on its preserved findings, the appellant will not face very

significant obstacles to integration on return to India. The appellant does not therefore meet the requirements of the Immigration Rules.

14. Further preserved is the First-tier Tribunal's finding that the appellant does not enjoy a family life with the sponsor (or indeed any other family member in the UK), however, I accept the appellant's relationship with the sponsor and her family is likely to be an important aspect of their respective private lives. There is little evidence of the appellant's private life beyond the relationships she enjoys with her family, however, I am prepared to accept that over the passage of time, the appellant will have established a private life and Article 8 is engaged.
15. I accept that the interference is in accordance with the law, and that the interference is necessary to protect the legitimate aim of immigration control and the economic well-being of the country. The central issue in this appeal is whether the decision to refuse leave to remain is proportionate to the legitimate aim *viz.* whether a fair balance has been struck between the individual and public interest; GM (Sri Lanka) v Secretary of State for the Home Department [2019] EWCA Civ 1630.
16. The evidence is confined to that which was before the First-tier Tribunal who heard the appeal in May 2023. I am hearing this appeal in 2024 and the evidence appertaining to the appellant's personal circumstances and health condition(s) has not been updated, and nor have I had the benefit of hearing oral evidence.
17. The appellant's claim in summary is that she has physical and mental health problems and is entirely dependent on the sponsor. In her written testimony the appellant asserts, amongst other things, that she relies on the sponsor to meet her daily care needs. She refers to a previous stroke, her condition of diabetes, fibromyalgia, anxiety, and to her fear of living alone.
18. In her evidence before the First-tier Tribunal the sponsor stated, amongst other things, that she is an only child and that no other person in India could provide the appellant with care. She referred to the appellant's depression, her loss of interest in life, and to two emergency visits to hospital for shortness of breath and coughing. She referred to the appellant's consultation with a psychiatrist who recommended therapy. It was the sponsor's evidence that she worked three days a week which prevented her from going to India with the appellant. The sponsor referred to the appellant's surviving sister in Kerala, the partial destruction of the appellant's family home, to her previous travel to India to visit the appellant and to the provision of financial support.
19. In its preserved findings the First-tier Tribunal did not accept the evidence the appellant would face destitution on return and found that she could return to her home and family in India. It took account of the appellant's physical health problems and noted that she had not been in receipt of any specialist input in the UK, and nor had it been suggested the appellant was unable to access, or receive, medical treatment in India. It is plain from the

letter from Dr Sreekumar that the appellant received medical treatment in India for her physical health conditions.

20. As to the appellant's mental health, similarly, the First-tier Tribunal observed the appellant had not received any treatment for her mental health problems either in the UK or in India, and it gave sustainable reasons as to why the diagnosis of Dr Atalla could not be given any probative weight. These findings are preserved for the reasons I gave in my error of law decision and, whilst, as the First-tier Tribunal noted, the appellant may be experiencing low mood following the loss of her husband, there remains no reliable evidence before this Tribunal that the appellant has a severe mental health condition.
21. The psychiatric report prepared by Dr Abraham, dated 6 July 2021, pre-dates the report of Dr Atalla dated 23 February 2023 by some margin. Dr Abraham's report is very short, it comprises of three pages and is now considerably outdated, and, as Ms Isherwood observed, is not compliant with the Tribunal's Practice Direction in respect of expert reports. Dr Abraham's report is based on a single face-to-face consultation based on the appellant's self-reporting of her symptoms. The appellant referred to the death of her husband, the destruction of her home, to her fears of catching Covid and to her anxiety about living alone in India. Dr Abraham did not actually give a diagnosis but his "impression" was that the appellant had an adjustment disorder with mixed anxiety and depression, and his initial recommendation was that she engage in talking therapies as a first line of treatment. There is no evidence the appellant acted on that recommendation. Overall, whilst I have given due consideration to the report of Dr Abraham, it is not satisfactory evidence that at the date of this hearing, the appellant is suffering from a severe mental health condition, and this evidence takes the appellant's case no further.
22. Overall, there is an absence of any satisfactory evidence regarding the private life that has been established by the appellant in the UK and of her current medical circumstances. For the reasons I have already set out, there are no very significant obstacles to the appellant's integration on return to India where she will have the continued support of her family, and access to medical care and treatment. I have had due regard to factors that weigh in favour of the appellant including her age, and her mental health (in so far as it is known in respect of her low mood and anxiety) and physical health. I have had regard to the length of her presence in the UK and the relationships that she is likely to have established with others especially the sponsor, and the sponsor's family.
23. On the other side of the scales, I have had regard to the preserved findings made by the First-tier Tribunal and the appellant's familial connections to India. The appellant has not established that she is at risk of catching Covid, or that if she did, that there would be a serious impact on her health in consequence of a lack of treatment or inability to access treatment. Such claims in my view are without merit. There is scant evidence that the appellant's family in the UK would not be in a position to visit her in India,



and/or that her removal would cause unjustifiably harsh consequences for them.

24. Section 117A(2)(a) of the 2002 Act requires me to have regard to the considerations listed in section 117B in considering the public interest question. The public interest question is, in turn, defined in section 117A(3) as being the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2). There is, however, an element of flexibility within this provision. In Rhuppiah v Secretary of State for the Home Department [2018] UKSC 58, at [49], Lord Wilson observed that the provisions of section 117B cannot put decision-makers in a strait-jacket which constrains them to determine claims under Article 8 inconsistently with the article itself. I acknowledge the appellant arrived in the UK lawfully and made an in-time application for further leave to remain. Nevertheless, S117B(5) of the 2002 Act requires that little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
25. In the end, standing back, although I accept the removal of the appellant to India will interfere with her private life, even giving due weight to the factors that weigh in favour of the appellant, in my judgement, the interference for the purposes of the maintenance of effective immigration control is proportionate and, it follows, lawful.
26. Accordingly, I dismiss the appellant's appeal on human rights grounds.

### **Notice of Decision**

The appellant's appeal is dismissed.

R.Bagral

Deputy Upper Tribunal Judge  
Immigration and Asylum Chamber  
15 April 2024