



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-003918

First-tier Tribunal No: HU/57832/2021  
IA/17144/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

5 September 2024

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**BALJIT KAUR**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Din, instructed through Direct Access.

For the Respondent: Mr Lawson, a Senior Home Office Presenting Officer.

**Heard at Birmingham Civil Justice Centre on 13 August 2024**

**DECISION AND REASONS**

1. The appellant, a citizen of India born on the 24 December 1974, was granted entry clearance for a multi-entrance visit visa, valid from 26 June 2003 until 26 December 2003. She entered the UK on 8 July 2003 and claims to have remained since.
2. A point that arose the outset of the appeal is that, as the Appellant's period of residence is on the face of it now for a continuous period in excess of 20 years, whether she could succeed on this basis pursuant to Appendix PL. Mr Lawson was not willing to concede that point or consent for the matter to be considered as a "new matter", indicating that the relevant date under the Rules was a period of continuous residence as at the date of application, 2 June 2021. At that time the appellant had not achieved the necessary 20 years continuous residence. Mr Lawson's view is that if appellant wishes to proceed on that basis, if she does not succeed with this appeal, then she will have to make a fresh application that could be considered on its merits.

3. The appellant's immigration history is very poor as recorded in the refusal of her human rights claim dated 24 November 2021, the immigration decision the subject of this appeal, as follows:

- on 26 June 2003 the appellant was granted entry clearance valid from 26 June 2003 until 26 December 2003.
- On 8 July 2003 the appellant entered the United Kingdom.
- 6 September 2010 appellant applied for leave to remain outside the Immigration Rules.
- On 17 October 2010 that application was refused without a Right of Appeal.
- On 5 November 2010 the appellant submitted a reconsideration request of the decision dated 17 October 2010.
- On 29 November 2010 the decision was maintained.
- On 6 December 2011 the appellant again submitted a reconsideration request for the decision dated 17 October 2010.
- On 16 June 2015 the appellant was served, via her legal representative, with form RED.001 (Enforcement Notice), RED.002 (One Stop Notice), form RED.003 (Statement of Additional Grounds) and form IS96 (Request to Report).
- On 24 June 2015 appellant was served, to her home address, with form IS96 (Requirement to Report), Form RED.001 (Enforcement Notice) and form RED.002 (One Stop Notice).
- On 24 August 2015 the decision of 17 October 2010 was refused and the appellant's Human Rights claim certified as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002 with an out of country Right of Appeal.
- On 13 October 2015 as you had failed to report as required, you are registered as an Absconder on the PNC.
- On 4 March 2019 you were removed from the PNC as an absconder. The Home Office wrote to you to advise you how the decision dated 24 August 2015 was served. You also served with a notice reminding you of your liability for removal (RED.001 Enforcement Notice) and BAIL201 (Notification of Grant/Variation of Immigration Bail to a Person Detained or Liable to Be Detained).
- On 20 March 2019 Home Office received a Pre-Action Protocol letter dated 20 March 2019, challenging the decision dated 24 August 2015. This was responded to on 3 April 2019 offering a further reconsideration of the decision dated 24 August 2015.
- On 18 April 2019 the Home Office wrote to you requesting further information/evidence of your current circumstances to reconsider the decision dated 24 August 2015.
- On 29 May 2019 the Home Office wrote to you again requesting further information/evidence of your current circumstances to reconsider the decision dated 24 August 2015.
- On 20 June 2019 the Home Office 's reconsider the decision dated 24 August 2015 as certified your Human Rights claim as 'clearly unfounded' under section 94 of the Nationality, Immigration Asylum Act 2002 with an out of country Right of Appeal.
- On 9 June 2019 you lodged a Judicial Review (JR) against the Home Office is decision dated 16 June 2019.
- On 13 August 2019 JR (Papers) Permission to proceed was refused.
- 7 October 2019 JR (Oral) Permission to proceed was refused with a finding of no Merit.

- 2 June 2021 further submissions were received dated 27 May 2021.

4. There have therefore been a number of applications and refusals and it is clear the appellant has engaged with the Home Office on a number of occasions and that, despite enforcement notices having been served upon her, it does not appear any action was taken to remove her from the UK.
5. In her witness statement dated 8 February 2022 the appellant confirms her immigration history and that she does not have any health issues.
6. The appellant confirmed the contents of this statement are true at the start of her oral evidence. She acknowledged that she has been in the UK at the date of the statement without legal status for more than 18 years and of the step she claims she took to try to regularise her status, which are set out in the chronology above. It is noted that despite knowing at each point of refusal she had no right to remain the appellant took no steps to leave the UK voluntarily, as the Secretary of State was entitled to expect a law-abiding citizen to do.
7. The appellant confirms she has family in India, her parents and her brother and his wife who have two daughters. She also claims to have a child but states she does not know his whereabouts and sets out at [6(a) - (j)] the issues she claims amount to significant obstacles preventing her returning to India.
8. In relation to her circumstances in the UK, the appellant claims she has a brother in the UK, Jatinder Jit Singh who is married and lives approximately 10 minutes away from where she lives (at that time) and that he had three young daughters (at that time) aged five, three years and six months old, and four months old.
9. Manpreet Kaur Singh, the appellant's sister-in-law, lives with her brother and has indefinite leave to remain in the United Kingdom. The appellant claims they have a very strong relationship and that she is a second mother for her children. The appellant claims *"her existence makes her satisfied and gives her mental strength which is crucial for her as being a mother of the three children that I look after them during the day, therefore she easily aids her husband with the company commitments, or over she contributes to the financial affairs of the family and she is a taxpayer, as she knows due to blood relationship with the children, I take care of children properly sincerely."*
10. The appellant also refers to Harveen Kaur Shergill her brother's eldest daughter, born 29 September 2016, who has a diagnosis of autism, Gurleen Kaur Shergill, born on 20 May 2018, the second daughter of her brother, and Savreen Kaur Shergill, born 29 July 2021, her brother's youngest daughter.
11. The appellant claims have a strong relationship with all three children but particularly Harveen. The appellant claims the child spends full days and nights with her and the others who call her grandmother. The appellant states she looks after her brother's children in the UK every day, as their mother works as the Director of her company and attends college for three days. After coming back from college she does office work at home in addition to her college work, and therefore cannot make time to look after the children. The appellant claims in her statement she does physical activities by picking the children up and dropping them off at school and claims to be the person who is available most of the time for the children, claims the children's teachers know her, she takes them to the GP if they do not feel well, and claims to play a double role as the mother and father for the children.
12. The appellant claims Harveen as a number of disabilities as she is not able to talk and unable to behave like a normal child. The appellant claim she communicates with her using sign language and that she is the only person who knows her communication aim as she has grown up with her. The appellant also claims to take care of all her nieces.

13. The appellant claims that if she is removed from the UK she will not be able to survive without her nieces, especially Harveen, as she has brought her up as her own daughter for five years at the date of the statement. The appellant claims Harveen will be exposed to a massive negative effect if she is removed. The appellant states, "she is my sole and I am her soul" and that she has been registered with the school in GP as a carer. The appellant claims it will be unduly harsh for them both if they are separated.
14. At [12] of the original statement the appellant refers to a trip undertaken by Harveen to India on 24<sup>th</sup> December with her family. The appellant states she herself was okay for two to three days, although thinking about Harveen, and became very stressed, wanting to cry and was crying every day. She claims she completely lost interest in everything, did not want to eat, and ate once a day, but was not feeling hungry. She claims a neighbour supported her during this time telling her Harveen will come home. The appellant made an appointment with a GP and was told not to stress, prescribed medication, and told her it was her attachment to Harveen which was the reason for this reaction. The appellant claims that when Harveen returned to the UK she felt much better and now does not need any medication.
15. In that paragraph the appellant refers to her brother telling her that whilst in India Harveen was also feeling unwell. The appellant states that she was able to talk via video calls with her brother in India during which Harveen wanted to talk to her, but was unable to do so, which stressed her more. The appellant claims that when Harveen returned they are both happy now.
16. In relation to her private life in the UK, the appellant states she goes to the Sikh Temple every weekend to help older adults and has built friendly relationships with women of different cultures and learned basic English. The appellant states she wants to learn the English language and be active if she gets legal status. Though the appellant cannot speak English she claims she integrates with her friends to learn and has not claimed any public funds, and would not be claiming any, and is not a burden on the state as her brother helps financially.
17. In her oral evidence the appellant confirmed the presence of family members in India, that she has contact with them on occasions, and speaks to her mother and father once a month or sometimes longer when she has time. She confirmed she had spoken to them the week before the hearing. She referred to an issue with a brother in India regarding such communication.
18. The appellant stated in her oral evidence she has now been in the UK for 21 years.
19. The appellant confirmed her brother who she lives with is in contact with the family in India. When the appellant was asked why she could not go and live with family in India, with her mother and father, she referred to the composition of their family and that she would need to be kept. The appellant stated her brother lived in the household and was not able to afford to keep her.
20. The appellant stated she came to the UK on a Visa and when asked whether she had any intention to leave, to return to India, she stated she did. When asked why she did not leave she claimed she had nowhere to go and referred to family. When asked what family, she referred to a brother and any in-laws. When you appellant was asked how she has managed financially in the UK, she stated her brother provides for her. When asked whether her brother could afford to support her if she returned to India, the appellant claimed he had his own family.
21. Mr Lawson asked the appellant about details of the school Harveen attendance which is a mainstream school. When asked how Harveen travelled to school the appellant stated that she drove her there with her mother.
22. Mr Lawson referred the appellant to a letter from the primary school attended by Harveen dated December 2021 and addressed 'to whom it may concern' in

which it is written “she is occasionally collected and dropped off at the school by her aunt, Mrs Baljit Kaur” which contradicted what the appellant was claiming. The appellant stated that was not right as she drops Harveen off.

23. The appellant confirmed Harveen’s mother worked and was studying and confirmed the frequency of both events.
24. The appellant was asked why, if she was return to India, her parents could not look after the children including Harveen, to which she claimed the child always comes to her and she has an emotional attachment to her.
25. When Mr Lawson put it to the appellant that children, including Harveen would also have their mother and father, the appellant claimed they will, but she will be able to look after Harveen.
26. Mr Lawson asked the appellant who would look after Harveen she was not there, i.e. if she died or was unable to provide care, to which the appellant claimed her mother would do that.
27. Mr Lawson asked the appellant if she accepted that autistic children need continuity, which appellant confirmed she did agree with.
28. Mr Lawson put it to the appellant that as Harveen has lived with her and her mother and father since she was born, why would they not be able to provide care for her as she will be used to her mother and father, the appellant confirmed they could.
29. The appellant was asked by Mr Lawson if she was returned to India, why it would be hard for Harveen to stay with somebody she has lived with all her life, to which appellant claimed she helps with things, they have their own children, and that Harveen had missed her in the past.
30. When asked whether this was when Harveen went to India, the appellant confirmed it was.
31. Mr Lawson put it to the appellant that there was a difference between Harveen going to India and being away from the appellant rather than the appellant going to India and Harveen remaining in a familiar environment, to which appellant claimed that it was not a reaction just based upon the fact Harveen was in India, as it was with regard to her.
32. The second witness was the appellant’s brother Jatinder Jit Singh whose original witness statement is dated 8 February 2022. In that he confirms he is a British national born in India who came to the UK illegally and stayed until 2008, married, and returned lawfully in 2009. He obtained British citizenship in 2016.
33. Mr Singh describes himself as a construction manager working for MJ Beton Ltd, a company owned by his wife Manpreet Kaur. Mr Singh claims to be the manager of the company although I understand he has recently been appointed as the co-director. He states the company takes on work nationwide, and that at the date of his statement they had sites in Burton on Trent, Cambridge, Bedford, Hull, and Tewkesbury, generating an income of approximately £50,000-£60,000 per annum.
34. Mr Singh confirms his marriage to Manpreet Kaur, who is his second wife, with whom he has three daughters. He has another daughter aged 13 at the date of the statement to lives with his former wife in Scunthorpe, who comes to stay with him and the family every other weekend.
35. In relation to Harveen, Mr Singh’s state she suffers from autism although claims not to know what type of autism it is. He states it manifests itself in that she does not speak, has a “very high temper”, and cannot be left alone. Mr Singh states the appellant plays a huge role in looking after Harveen as she spends times with her, feeds her, takes her to school, brings her back, sleeps with Harveen, and does everything. Mr Singh states his wife struggles with Harveen as she has to look after the other children as well as work. Mr Singh states if the children go out the appellant has to go or remain at home with Harveen.

36. Mr Singh states his wife works from home although his sister is there to look after the children. He claims his wife would not be able to work and look after the children as it will be impossible if she is talking to employees, companies, organising wages and everything else. He states his wife is fluent in English.
37. Mr Singh states that Harveen's relationship is very good with his sister and that they have an understanding of meaning. When Harveen needs something she turns to the appellant and gives her a sign. Mr Singh claims Harveen does not understand what they say which makes things difficult, she is happy watching puppets or Peppa Pig and is obsessed, she takes the phone to the appellant to get her to put Peppa Pig on YouTube. Mr Singh claims that she knows that as a daily routine and if they put anything else on, she starts to scream.
38. Mr Singh states that if the appellant had to leave it would break Harveen's heart as they have a good understanding and although she is comfortable with her mother she has a deeper relationship with the appellant than her own mother. Mr Singh states Harveen would always go to the appellant even if the room is full of other people, and she sleeps with the appellant each night.
39. Mr Singh confirmed that he had taken Harveen to India when she was 2 ½ and again on 24 December 2021. He states the first week of the visit in India was fine which he puts down to there being a bit of excitement as there were loads of cousins, although after that week she did not want to play and was quiet, which made Mr Singh believe she wanted to go home. He states it seemed that Harveen was missing home. He stated the appellant called every day on video call but Harveen did not respond to her as she cannot speak, so there was no physical contact. He states Harveen missed her home and wanted to go back.
40. They remained in India for a total of four weeks and Mr Singh claims Harveen cried and was upset for three weeks. Attempts to take her around were not successful. As soon as they returned home Harveen became very excited and after 10/15 minutes of running around took the appellant's hands and took her to the bedroom and went to sleep.
41. Mr Singh stated that he supports the appellant and has done so for about 13 to 14 years. She separated from her husband, is older than he, so is like a mother to him, and he has to look after her. He claims the appellant looked after him when he was young in India and they became close. He states he is her favourite brother and he is the youngest in the family. He states that if the appellant has to return to India he cannot explain how big a loss it would be for him.
42. Mr Singh states as his sister is separated from her husband their parents would not accept her if she went back to India. His brother also lives in India with his family and they could not undertake the burden, and that although the appellant will not be rejected it will be hard on them as she will be a financial burden. Mr Singh confirmed he could support his sister in India but the main issue relates to Harveen and her relationship with the appellant, and who is going to support him in the UK, as he sees his sister as his mother and that he would be lost without her.
43. In reply to questions put in cross examination Mr Singh confirmed he has family in India who he is in contact with. He also confirmed he supports the appellant in the UK and that he would continue to support her if she was returned to India.
44. Mr Singh was asked about who takes Harveen to school, which he claimed was the appellant after which Mr Lawson referred him to the school letter I have referred to above claiming that she only did so occasionally. Mr Singh confirmed that he drops Harveen off as does his wife and the appellant. He confirmed that occasionally he and his wife dropped Harveen off at school.
45. Mr Singh accepted Harveen needed continuity in her life and that when he picked Harveen up from school there were no problems.
46. Mr Singh confirmed Harveen receives carers allowance.

47. When asked by Mr Lawson if the appellant was returned to India why he and his wife would not be able to look after Harveen, Mr Singh stated that he would have to give up his job and that it will be difficult for Harveen.
48. Mr Lawson then referred Mr Singh to the fact Harveen is a child in his household, used to living with him and his wife, and that although it could impact upon him financially he could apply for benefits if they could not work, and asked him bar that what the impact would be, to which Mr Singh stated the appellant does everything for her and spends time with Harveen.
49. When Mr Lawson asked Mr Singh if the appellant was lost what they would do, he stated they would care for her but the relationship would not be the same.
50. When asked how long the appellant had lived with him in the UK Mr Singh stated since 2013 having lived with another brother previously. He confirmed it was for a period of about 15 years.
51. Mr Singh was asked by Mr Lawson why, when her Visa came to an end, he did not encourage his sister to return to India, to which he claimed his sister's life is with him and that he will look after her.
52. The third witness was Mrs Manpreet Kaur who has also filed witness statement dated 8 February 2022, in which she confirms the family composition, her own immigration history, and grant of British citizenship approximately six months before the date of the statement.
53. Reference is made to her status as the director of the company and income received at [4].
54. Mrs Kaur confirms Harveen has been diagnosed with autism which was only noticed when a midwife came to the house to look after her second daughter and advised that they should have Harveen examined. That was in 2018. They therefore took Harveen to the GP and about 2 ½ years later she was diagnosed as being on the spectrum. Mrs Kaur states Harveen is not on medication, is seeing a speech and language therapist, a physiotherapist who sees her at school, and inclusion support and early years groups who are also involved with her. She stated these groups come to the school.
55. Mrs Kaur states Harveen has a very close bond with the appellant. She states Harveen slept with the appellant from eight months old every night and that Harveen will not eat as much from her but will from the appellant who feeds her every day, and that they spend time together.
56. Mrs Kaur states that in school Harveen attached herself to a teacher when she was in Reception class and that when she moved from reception to nursery she was not herself. She stated the school eventually moved the teacher to the class for Harveen after which she settled down. Mrs Kaur states Harveen gets attached emotionally and that if they walk past the private nursery she attended she wants to go to the nursery and cannot understand why she cannot go to that school now. It is said Harveen does not like change and has attached herself to the appellant.
57. Mrs Kaur states the appellant takes care of the children and if she did not she would not be able to take care of the business. She states her own parents live in India and that the appellant is like a mother to her. She claims that she cannot live without her as well. Mrs Kaur states that if the appellant had to go to India, she would not manage life with her as she gets up whenever Harveen wakes in the night if there is an issue and is very caring of them all.
58. In relation to the trip to India, Mrs Kaur states on 24 December 2021 they flew to India for a month. Harveen was okay for the first week but from the second week she started to cry and that during the last week she cried for three days. They tried to go to 2-3 weddings but could not stay as Harveen would start to cry. When the appellant made video calls Harveen would not always speak to her and would run as she wanted to meet her and the calls did not make sense. She

states sometimes the calls would upset her more as she could not understand why the appellant was not there and could not understand they were in a different country.

59. Mrs Kaur stated on the day they returned Harveen only properly settled when they were in the taxi heading for home and that she completely settled as soon as they arrived. She took the appellant's hand, took her up the bedroom, and went to sleep.
60. Mr Lawson asked Mrs Kaur in cross examination about the school and who drops Harveen off, which she claimed was the appellant. When asked who picks Harveen up she claimed that she did. When asked whether it was with anybody else, she claimed it was not. When asked whether her husband did, she stated he did not as he was working. When it was put to her that when her husband was asked this question he said he did, she replied "sometimes".

#### The expert evidence

61. There is within the bundle a document described as an independent psychiatric report regarding the appellant following an assessment on 28 January 2022. The report is dated 14 February 2022 and refers to the proceedings before the First-tier Tribunal. The report's author is Dr Oladimeji Karim who describes himself as a Consultant Psychiatrist and sets out his qualifications and experience at [1] of the report; although makes no claim to be an expert in the field of child and adolescent psychiatry.
62. Information relating to Harveen's diagnosis and psychiatric history are set out at [9] of the report, which includes the following:

9.1.3 The Multi-agency Assessment (MAA) document summarises that Harveen had attended 'Twinkly group' for further assessment of communication and interaction difficulties, which prompted Dr Chole Aston, Lead Professional with Child & Adolescent Mental Health Services (CAMHS)/Inclusion Support Early Years, to initiate the MAA process.

9.1.4 The MAA document records the decisions of a MAA Panel Meeting held in January 2020 to consider whether Harveen's "learning and social profile" was characteristic of ASD. The panel comprised of Speech & Language Therapy (SaLT), Inclusion Support, Child Health (Dr Gandhi) and CAMHS/Inclusion Support Early Years (Dr Aston). Discussions at the MAA Panel Meeting included Harveen's assessed and observed skills in "social interaction, social communication and flexibility of thinking and behaviour" (referred to as the Autistic 'triad of impairments' and detailed in the ICD-10 diagnostic criteria for Autism) in addition to sensory processing differences.

9.1.5 In respect of 'Social Interaction and shared play', the MAA Assessment document records that Harveen had been observed as inconsistent in taking notice of her peers and to be "very self-directed" in her play and interests. She "does not tend to show interest in activities initiated by others but is not upset when adults attempt to interact with her" however she is not generally motivated to maintain such interactions. Harveen was observed to approach adults "if they have a phone she wants to play with or if she wants them to put something on the television". She would not approach an activity to play but would engage for short periods when prompted by adult direction. Harveen had not been observed to demonstrate any awareness of her peers but it was recorded that her mother had reported Harveen "getting better with her little sister". Harveen had not been observed to use any gestures and was not pointing at the point of the MAA assessment.

9.1.6 Under the subheading 'Social Communication', the MAA assessment document informs that SaLT had reported a loss of language skills at approximately 12-months-old. She was reported to currently have no singular words but would make some sounds ("e.g. makes an "eee" sound to protest") and had been observed to often make a repetitive



'tongue click' sound that increased when adults were attempting to engage with her. "Very brief" observation of Harveen looking at adults have been observed but she does not use eye contact to regulate communication. Although generally self-directed and not using communication for social purposes, Harveen "does find a way to communicate with adults for her highly motivating needs e.g. passing them the TV remote".

9.1.7 Regarding 'Behaviour and Responses - being flexible', the MAA document reports "Harveen was not always motivated by toys in Twinkl's however more recently appears to be self-selecting toys of her choice. Harveen has not yet been observed to play functionally or imaginatively with toys and instead will often move them around. Harveen mostly puts things in her mouth or throws items on the floor instead of looking at them." It was reported that Harveen was "interested in posting activities repetitively. Harveen likes posting and blocks but will generally only play when it is brought to her" although it was acknowledged that she had more recently been selecting toys to play with.

9.1.8 Under the subheading 'Sensory Responses', the MAA document advises that Harveen has not been observed to demonstrate flapping of her hands or tip-toe walking. She had however been observed to often put things into her mouth and to chew on "unpleasant textures" such as chalk. Harveen was further noted to spend "a lot of time climbing and wandering around" and to tend not to "settle" on activities "unless it is on her terms".

9.1.9 The MAA Panel concluded that "Harveen's learning and social profile is characteristic of an Autism Spectrum Disorder and therefore a diagnosis of Autism Spectrum Disorder is appropriate for her". A plan was formulated for Harveen to be reviewed in the Paediatric clinic to inform future involvement, for SaLT to continue to provide advice for supporting language and communications skills and for Inclusion Support Early Years to continue to provide advice to support development of learning, communication and interaction skills.

9.1.10 Under the subheading 'Recommendations', signposting to the Sandwell Autism Group, Local Authority services, Autism West Midlands and Sandwell Parents for Disabled Children were provided to afford, information, advice and additional support for the child, parents and family. It was noted that Sandwell Parents for Disabled Children offered play and leisure opportunities for the child and families which include weekly Adaptive Sports sessions during term time and other activities/trips during school holidays. Additionally, sensory processing advice was noted to be available from Children's Therapies - Occupational Therapies and a contact number for the FASTA Parent Sensory Advice Group was provided.

9.1.11 Within a letter dated December 2021, Mrs L Paino, Headteacher, confirms that Harveen has been a student at Crocketts Community Primary School since September 2020. It is noted therein that "She is occasionally collected and dropped off at school by her Aunt, Mrs Baljit Kaur". A separate letter addressed 'To Whom It May Concern' from the Norvic Family Practice (General Practitioners), dated 16 December 2021, documents receipt of the request from Harveen's mother (Manpreet) that Mrs Kaur be "appointed as Harveen's carer, to enable Harveen to attend appointments, take to and from school etc. as she works full time and at times, she is unable to do this herself".

9.1.12 Within his Witness Statement, Harveen's father (Jatinder) informs of her diagnosis of Autism, advising "I do not know what type of Autism it is, but she does not speak, and she has a very high temper, and she cannot be left alone."

9.1.13 Within her Witness Statement, Harveen's mother (Manpreet) reports that Harveen is not currently prescribed any medications but has ongoing involvement with SaLT and Physiotherapy during school visits as well as via Inclusion Support and Early Years Groups.

63. Dr Karim was asked in the report to address a number of specific issues set out at [2.2.1] and refers to the sources of information he had for the purposes of report at [3.1].
64. Dr Karim's opinion and recommendations are set out at [15] of the report followed by a paragraph entitled "Summary of Conclusions" [16] in the following terms:

16.0 Summary of Conclusions

- 16.1 I confirm that I undertook an independent psychiatric assessment of Mrs Kaur, including observations of her interaction with her niece, Harveen Kaur Shergill, as instructed.
- 16.2 It is my professional opinion that Harveen is appropriately diagnosed with Autism in accordance with the ICD-10 and ICD-11 diagnostic criteria as set out within section 17.1 of this report which would be most appropriately categorised as F84.0 Childhood Autism (ICD-10) and 6A02.2 Autism Spectrum Disorder without disorder of intellectual development and with impaired functional language (ICD-11).
- 16.3 In respect of whether "the Autism will increase with time", it is my professional opinion that Autism is a lifelong condition for which there is no permanent 'cure' and that it is too early in Harveen's young life to predict how she may develop and progress in the long-term. However, the inherent features such as impairment of communication and social interactions are likely to remain (she is currently non-verbal/unable to speak). In the short-term, it is likely that her presentation will remain largely consistent if social and environmental factors, routines etc. remain unchanged and predictable. It is nevertheless reasonable to surmise that as change is generally very disruptive for Autistic individuals (routine and structure are very important for maintaining stability and Harveen is known to present with rigidity and inflexibility), variations to the aforementioned social/environmental factors would be likely to result in an increase in challenging behaviours and deterioration in presentation.
- 16.4 It is my professional opinion that Harveen is very physically and emotionally dependent upon Mrs Kaur.
- 16.5 It is my professional opinion that the role played by Mrs Kaur in Harveen's life "from the perspective of a child with Autism" would be succinctly described as that of a parent/maternal role, with Harveen looking to Mrs Kaur to provide her emotional and physical needs/wants. They have a close and trusting relationship, providing Harveen with consistency and predictability.
- 16.6 It is my professional opinion that the long-term effect of any permanent separation on Harveen if Mrs Kaur has to leave the UK would be detrimental.
- 16.7 It is my professional opinion that the physical and emotional dependency of Harveen upon Mrs Kaur cannot be replicated via modern means of communications (such as via video, telephone or internet connection).
- 16.8 It is my professional opinion that the prescription of Risperidone to Harveen is inappropriate and possibly counterproductive.
- 16.9 It is my professional opinion that Mrs Kaur has appropriately stopped taking her prescribed medication of Promethazine Hydrochloride, however I respectfully recommend that she return to her GP for support/treatment should she experience a return/escalation of depressive/anxiety symptoms.
- 16.10 I respectfully highlight to the Tribunal that, in the event of Mrs Kaur being required to leave the UK, it is my professional opinion that Mrs Kaur could again experience the symptoms presented during her recent separation from Harveen and the family. I therefore respectfully recommend that the Tribunal should be aware of this potential deterioration in her mental wellbeing in that circumstance.
65. Dr Karim undertook a first reassessment and produced an addendum report dated 20 April 2023 and a further reassessment on 10 December 2023 and 27 January 2024, leading to his recent report dated 18 March 2024.

66. In Dr Karim's professional opinion Harveen is appropriately diagnosed with autism, the applicable classification as set out in ICD-10 being out of Childhood Autism (F84.0) and within the ICD-11 is Autism Spectrum Disorder (6A02).
67. In relation to the impact of autism upon Harveen, Dr Karim writes:
- 14.5.1 The impact of Harveen's Autism is that she continues to require high levels of attention and support through 24-hour care and full-time one-to-one attention and supervision.
  - 14.5.2 Due to her need for structure and stability, which is compounded by her rigidity and attachment, Harveen is dependent upon Mrs Kaur for her physical and emotional care. This includes needing Mrs Kaur to feed her and sleep in the same bed with her to ensure she achieves appropriate sleep and receives adequate nutritional intake, as well as attending to her personal hygiene needs when she wets or soils herself. Harveen has experienced significant distress in response to separation from Mrs Kaur (as evidenced during the 2021/2022 trip to India with her parents).
  - 14.5.3 Harveen's difficulty in coping with change is inherent to her Autism diagnosis. I note that her difficulty in this regard is described by Bobby Rainford, Assistant Head Teacher & Special Educational Needs Coordinator (SENCo) at Crocketts Community Primary School, who reports that Harveen finds change "extremely difficult to cope with".
  - 14.5.4 Although children can develop at different rates, it would generally be anticipated that during the past two years, a child of Harveen's chronological age (seven-years-old) would achieve certain developmental milestones. A child without Autism will generally be demonstrating development of a strong sense of independence and even sometimes being inclined to complain. Harveen however continues to both rely upon and want to be supported, demonstrating no interest in independence or resistance to the constant level of 24-hour care/support she receives.
  - 14.5.5 It would be typically anticipated that a child would be able to control both bladder and bowels throughout the day, without the need for nappies/diapers, at between approximately three- to four-years-old. By five-years-old children are usually self-sufficient in this area (being able to undress, use the toilet, wipe themselves, re-dress, flush the toilet and wash their hands). Harveen has only been 'toilet trained' in the past 12 months and continues to have incidents of wetting and soiling herself as she is unable to verbally indicate that she needs to use the toilet.
  - 14.5.6 Children of Harveen's chronological age are generally starting to build friendships with peers and start to feel a need for acceptance by peers. They demonstrate signs of being self-aware and compare their own skills to those of their peers, begin to see things from their peers' perspective and begin to understand how their behaviour affects others. It is also common for seven-year-olds to become inclined toward other adults such as a teacher in preference to their parent/primary caregiver at home. Harveen however remains rigidly attached to Mrs Kaur and demonstrates no interests in her peers.
  - 14.5.7 Between six- and seven-years-old a child would be expected to have an average vocabulary of approximately 5000 words, to be speaking in full, complex sentences and to be able to articulate their ideas clearly and thoughtfully, mastering most grammar skills and being able to engage in a more 'mature' conversation which can be understood by those outside their immediate family. The impairment in Harveen's social communication is severe, with Harveen continuing to be non-verbal.
  - 14.5.8 Bobby Rainford has documented that in addition to being unable to communicate her needs, Harveen cannot "keep herself safe". Bobby Rainford advises that Mrs Kaur attends school trips and visits to support Harveen, suggesting Harveen would be unable to access/participate in these activities without Mrs Kaur affording this support.
68. In relation to the impact upon Harveen should she be separated from the appellant, Dr Karim writes:

14.9.1 It is my professional opinion that if Harveen were separated from Mrs Kaur would include social withdrawal, functional deterioration and increased anxiety. As noted at in response to the question at paragraph 13.8 of this report, Harveen demonstrated significant distress that could not be consoled when she was separated from Mrs Kaur for a few weeks in December 2021/January 2022. It is reasonable to conclude that if the separation were to occur for a greater length of time, Harveen's distress would further escalate and, given her inability to express herself verbally, there is a high probability that Harveen would escalate to express her distress physically (potentially through harm to herself or others) and that poor dietary intake and sleep would result in deterioration in her physical health.

69. In his updated Summary of Conclusions at [15] Dr Karim writes:

- 15.1 Having previously assessed Mrs Kaur and observed her interactions with Harveen (please see reports dated 14 February 2022 and 20 April 2023), I confirm that I undertook further independent psychiatric assessment of Mrs Kaur and observed her interactions with Harveen during a video appointment via Zoom on 10 December 2023 and a further face-to-face appointment at the home address on 27 January 2024 for the purpose of authoring this report.
- 15.2 It is my professional opinion that Harveen is appropriately diagnosed with Autism which would be most appropriately classified in accordance with the ICD-11 criteria as Autism Spectrum Disorder without disorder of intellectual development and with impaired functional language (6A02.2). Autism is a neurodevelopmental disorder which is present from birth, is lifelong and will remain Harveen's diagnosis for her entire lifetime.
- 15.3 It is my professional opinion that Harveen would be appropriately described as 'Low functioning' and that the level of difficulty experienced with speech/communication, interactive impairment and imaginative impairment would be appropriately described as 'Severe'. The 'level' of impact upon Harveen due to her Autism has remained broadly unchanged since my first assessment in January 2022 and she remains reliant upon others for high levels of support and attention to meet her basic needs via 24-hour care and full-time one-to-one attention and supervision.
- 15.4 Harveen is delayed in achieving 'normal' developmental milestones (in accordance with her chronological age) including in respect of independence, levels of support, continence/toileting, peer relationships, self-awareness, social communication and verbal communication. Harveen's difficulties are inherent to her Autism diagnosis, particularly coping with change, restricted/repetitive interests, communication difficulties and sensory needs. Due to her need for structure and routine, compounded by rigidity, lack of flexibility and attachment, Harveen is dependent upon Mrs Kaur for her physical and emotional care. Her dependence upon Mrs Kaur has become more evident, she demonstrates no interest in interaction with other family members or her peers.
- 15.5 It is my professional opinion that there is little prospect of any lessening of the impact upon Harveen of her Autism in the foreseeable future. It appears likely that Harveen will experience significant difficulties for at least the next several years. In the longer-term, inherent features are likely to remain. If social and environmental factors remain consistent and stable, it is my professional opinion that Harveen's presentation will likewise remain largely consistent. However, variations to social/environmental factors would be likely to result in an increase in challenging behaviours and a deterioration in presentation.
- 15.6 It is my professional opinion that Harveen has a significant physical and emotional dependency upon Mrs Kaur and respectfully refer the reader to my responses as paragraphs 13.7.1 to 13.7.5 for examples of how this is evident.
- 15.7 It is my professional opinion that Harveen views Mrs Kaur in what we would generally describe as a parental/mother role and as her primary care provider.
- 15.8 It is my professional opinion that there would be a deleterious impact upon Harveen if she were separated from Mrs Kaur.

- 15.9 It is my professional opinion that the intensity of Harveen's bond with Mrs Kaur is intrinsically linked to her Autism diagnosis (being "not neurotypical"). It is my professional opinion that it is unlikely that Harveen would establish a comparable attachment to any other individual.
- 15.10 It is my professional opinion that the long-term effects of any permanent separation from Mrs Kaur would cause Harveen extreme distress and would be very emotionally and psychologically deleterious to Harveen.
- 15.11 It is my professional opinion that the practical responsibilities of Mrs Kaur's role could be replicated/provided by another individual, however it is extremely unlikely that Harveen will accept delivery of care or support from another individual and it would not be possible to transfer/replicate their emotional bond.
- 15.12 It is my professional opinion that replication of physical/emotional dependency through "modern means" of communication is not possible in Harveen's case.
- 15.13 It is my professional opinion that neither Harveen or Mrs Kaur have attempted to exaggerate either the symptoms displayed by Harveen or the role which Mrs Kaur plays in Harveen's life.

#### The submissions

70. On behalf of the Secretary of State Mr Lawson relied on the reasons for refusal letter but accepted that the issue in the appeal is the impact upon the appellant of being returned to India and impact upon Harveen.
71. Mr Lawson submitted that the appellant's original claim was that she would suffer risk on return from her family but she now speaks to her family regularly and has contact with family in India according to her own evidence, suggesting this basis of claim is now without merit.
72. It was submitted there is no credible evidence of any difficulties the appellant would experience in relation to being returned to India sufficient to warrant a finding that she could not go.
73. In relation to Harveen, Mr Lawson submitted that her mother, father, and siblings are in the UK and will remain. Harveen is part of that family and has been so for all her life.
74. In connection with the relationships the appellant has developed with Harveen, Mr Lawson submits that this has been during the time the appellant has been in the UK illegally. Throughout Harveen has had her own family here too.
75. Mr Lawson accepted that for a person such as Harveen continuity was important in relationships but submitted that she has had this throughout her whole life with her family, and that it was not made out her parents could not provide the required degree of care she needs.
76. Mr Lawson submitted there are no insurmountable obstacles to the appellant returning to India.
77. On behalf of the appellant Mr Din submitted the appeal should be allowed.
78. He submitted there was evidence of obstacles in relation to the family in India.
79. Mr Din accepted the substantive issue related to the relationship between the appellant and Harveen. He referred to the report of Dr Karim who has made a number of visits to the family and comments upon the impact upon Harveen of separation and disruption, which he submits will be disproportionate.
80. Mr Din referred to incidents when Harveen was crying in India and the fact that when she returned to the UK any medication was stopped.
81. When Mr Din was asked why the family took an autistic child to India if they knew it would be problematic, based on a change of environment and need for certainty, he stated that autistic children could be taken out and the family decided to take her on holiday.
82. When asked if it was a case of Harveen's mother and father thinking she would be okay if she went on holiday, Mr Singh nodded "yes" from the back of the court.

83. In relation to the school, Mr Din submitted that the appellant assists with the school run and that the school are saying the parents have input as does the appellant. He submitted the appellant is the main person as she always drops Harveen off at school, but that she is not the only one, and that she does what she does for Harveen for the child and referred to the extent of any impact if there is to be a change in those arrangements.
84. Mr Din submitted the appellant undertook a parental role which was not a one-off issue but an ongoing arrangement with clear evidence of interaction between the appellant and Harveen. Mr Din submitted such interaction between Harveen and the appellant was more than between the child and other family members. It was submitted the appellant has in fact stepped into the role of the parent.
85. When I indicated to Mr Din my finding will be the parents had not abandoned Harveen, he submitted that appellant had stepped into the role of the parent, shared a parental role with the biological parents, and that the appellant viewed her role as a mother/carer role which she would lose if she had to go to India.
86. Mr Din submitted that section 55 best interests of the child is relevant and that the appellant should remain in the UK.
87. Mr Din was asked by me at the commencement of the appeal whether there had been any enquiry or discussion with the Autistic Society or other such organisations who produce guidance to assist parents of autistic children in various circumstances, including loss of a parent. I advised him that I had dealt with cases involving autistic children where similar issues and information from this source had arisen, and I therefore had judicial knowledge of the content of the guidance. He stated no such enquiry had been made.

### Discussion and analysis

88. It is clear from seeing and hearing the evidence being given, together with the content of the witness statements and oral evidence, that no member of this family unit wants to appellant to be returned to India. I find their evidence has been tailored to try and prevent that occurring. I note the appellant's claims regarding the reasons why she wishes to remain in the UK and the role she has undertaken, and her brother's reasons why he wants her to remain, but they are personal choices and do not, per se, impose any obligation on the Secretary of State to allow her to remain.
89. I accept, however, that the family has adopted a routine in which the appellant plays a specific role in which she assists with her brother's three children, which enables their natural parents to undertake greater economic activity and, in relation to Mrs Kaur, to also be able to study in addition. That is not an unusual arrangement in many families, including those of Asian origin, in which extended family members may live in the same household. The appellant is a blood relative her brother and a member of the family of her brother and sister-in-law who is trusted to undertake the role she has, according to Mrs Kaur, mainly as a result of the blood connection.
90. It is clear that this family were well aware that the appellant had overstayed her visa and remained in the UK illegally and so are all complicit. There is no evidence that any attempt was made by any family member to encourage the appellant to return to India, the evidence in fact suggesting the opposite.
91. I do not find the alleged exceptional circumstances if the appellant was to return to India would amount to insurmountable obstacles, for although she has lived in the UK for a number of years it was not made out she has no knowledge of the reality of life in India, even though she has few such prospects and the thought of going back is not attractive to her.

92. The appellant has family in India, it was not made out she will be rejected or homeless, and her loyal brother in the UK has confirmed he will provide financial support for her, as he currently does, if she is returned.
93. Mr Singh's evidence was that the appellant would not be abandoned which is in accordance with the traditional values of a Sikh family, who will look after their own.
94. I find it not made out the appellant is able to succeed under the Immigration Rules in her own right in relation to this application.
95. In relation to Article 8 ECHR, the starting point is to consider the nature of the protected right being relied upon, which is either family or private life.
96. I find the appellant clearly has a private life in the UK based upon her interaction with the family unit over a considerable period of time. That private life was however, as submitted by Mr Lawson, formed during the time the appellant's status in the United Kingdom has been precarious. It has in fact, since she overstayed, been illegal.
97. In relation to whether family life recognised by Article 8 exists it is necessary to consider in detail the nature of the interaction which exists between the appellant and other family members and in her role within the family structure. I find in light of the extent of the financial, practical, and emotional dependency the appellant has upon her brother's family unit in the UK, including the role she plays in relation to Harveen, that the nature of the relationship is more than that one ordinarily would expect with an aunt staying with other relatives, such that family life recognised by Article 8 ECHR is engaged.
98. The issue is the proportionality of interference, as noted above, which requires consideration, as the starting point, of the best interests of all the children.
99. Section 55 Borders, Citizenship and Immigration Act 2009 came into force on 2 November 2009. That introduced into UK law Article 3 (1) of the United Nations Convention on the Rights of the Child 1989 which states: "*in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration*".
100. It is accepted that the best interests of the child are a primary but not paramount consideration is confirmed by Lady Hale in *TZ (Tanzania)* [2011] UKSC 4 "*This does not mean (as it would do in other contexts) that identifying their best interests would lead inexorably to a decision in conformity with those interests. Provided the Tribunal did not treat any other consideration as inherently more significant than the best interests of the children, it could conclude that the strength of the other considerations outweigh them. The important thing, therefore, is to consider those best interests first.*"
101. A further relevant guidance from *ZH (Tanzania)* [2011] UKSC 4, is that the child is the innocent victim of his/her parents' choices.
102. The best interests of all the children under discussion, but particularly Harveen, is to be able to live with and be brought up by both parents and to have the stability and continuity of social and educational provision and the benefit of growing up in the cultural norms of the society in which they belong.
103. There is no suggestion on the facts of this appeal that any of the children will be expected to leave the UK to go to India. There are British citizens, the homes are in the UK, they are educated in the UK, and various support services to meet their specific needs are all based in their home area.
104. In relation to Harveen, it is clear that major decisions with regard to the child's life, on the evidence, are made by her parents. It appears, however, that a situation has developed in which Harveen has, in accordance with her personality and as she has done elsewhere, attached herself to the appellant, her auntie, with whom she would not want to be separated.

105. I accept Harveen does not like change but I do not accept on the evidence that the description of her reaction when her mother and father took her to India was solely as a result of the appellant not being able to travel with them. That may have been one factor in Harveen's mind especially if she associated the appellant with home. It was clear when one considers the evidence as a whole that Harveen's initial reaction was favourable when she was able to play with cousins for the first week of their visit and it was only later when she probably started to miss home, and her familiar environment and routine, that she became upset.
106. Harveen cannot be blamed for the situation that has developed in which it appears the appellant has been allowed to develop a relationship with her that would now need to be broken.
107. It is also interesting to note in the witness statement of the appellant that it appears one element behind the intensity of her interaction with Harveen is more to do with her own needs rather than solely for Harveen's.
108. I have not been provided with sufficient evidence to warrant it being found that if the appellant is removed to India, her parents would not be able to care for the needs of all their children. Whilst the current arrangement has been very convenient for them in that it has allowed them to develop their business and work, although the children's mother does work from home and leaves day-to-day tasks to the appellant, it was not made out that they could not themselves adapt to meet the needs of the children on a day-to-day basis as many working parents do, even with children who have been diagnosed with autism.
109. I repeat my comment made in the course of Mr Din's submissions that I do not accept that the mother and father of these children have abandoned their parental responsibilities or duties in respect of any of the children. The role played by the appellant is to provide support to the parent's by caring for children when they are otherwise engaged, with more intense support for Harveen in light of her specific needs. In respect of that role, it is clearly shared with the parents.
110. Harveen has lived in the same household with her parents and the appellant since birth. It is clear from the evidence that she has formed secure attachments with all the adult members of that household.
111. It is accepted that autistic people are likely to experience a wide range of mental and physical conditions than non-autistic people, that autism is a lifelong trait, and that autistic person with a learning disability will form a small but vulnerable minority with much worse life outcomes.
112. The evidence suggests that Harveen experiences rigidity/focal repetitive interests, and how she processes and experience sensory information differently. The evidence does not suggest Harveen does not have the range of feelings a neurotypical person does, but she clearly finds it challenging when she tries to express those feelings. There is reference, for example, from Mr Singh to her loss of temper/rage which could be as a result of pure frustration. Work is clearly being undertaken with Harveen, particularly in the school environment, to help cope with such difficulties, including her current lack of verbal communication.
113. The comparator in Dr Karim's report to the milestones one would expect of a child who has not been diagnosed with autism is somewhat unhelpful. The spectrum of autism varies very widely although modern practice does not refer to where an individual specifically appears on the spectrum. There are children who have very little impact which does not stop them having a good and full life. Some autistic people have average or above average intelligence, some have a learning disability, they may have other conditions, but it is clear from the extent of the enquiries and reports that Harveen's parents actively engaged with establishing what her needs are and how these may be best addressed to ensure that she has the best opportunities available to her.



114. Harveen attends a mainstream school albeit with support being provided where required.
115. It is not made out in the evidence that other family members, i.e. Harveen's parents, will be unable to communicate with her particularly if they are trying to find out what is wrong. I accept any adjustment will take time, because it is clear that when Harveen wishes to communicate but does not appear to be getting the response that she requires, she seeks out the appellant with whom she has developed non-verbal communication methods. It is not made out that Harveen's parents cannot communicate with their daughter to some extent, or that they would not be able to learn how to communicate effectively and adapt to communicate with Harveen if the appellant is not present.
116. It is not made out that Harveen suffers physical or mental health issues to the extent that her parents could not take over day-to-day care for her if required. When Mr Lawson asked the witnesses in cross-examination what would happen if the appellant was no longer present their replies did not indicate that the child will be abandoned or that adequate care would not be available. The appellant's main argument was that she would not be present, but the parents are clearly of the view that they would take over and provide the care, albeit that it would, in their view, interfere with other current arrangements.
117. It is not made out that if the appellant is returned to India the physical and sensory environment in the home could not be adapted to meet Harveen's needs or to minimise any distress to her.
118. It is accepted that an autistic person needs certainty and does not adapt well to change. In terms of Harveen this was demonstrated when the family took a holiday to India. It is important note in this respect that there was nothing in Harveen's presentation or behaviour that led the family to believe that taking her to India was not a good idea.
119. Although the family have tried to paint Harveen's distress during the visit to India as being mainly/solely as a result of the appellant not being with them, for if she had travelled she would not have been permitted to re-enter the UK, that fails to give due regard to the fact that Harveen was taken, by plane, to a completely different country, with different climate, different food, outside her comfort zone, which represented a material change in her life and routine. Although attempts were made to manage that by taking her to see a doctor in India, who prescribed medication, the event that resolved the problem was Harveen returning to her home environment. That is clearly demonstrated by the fact that when the family entered the home Harveen became excited, running around for 10 to 15 minutes, before taking the appellant's hand and taking her upstairs to the bedroom where she went to sleep.
120. In some respects that reaction represents a problem the family have created for themselves in that normality for Harveen is to sleep with the appellant. How long that could go on for, particularly as Harveen will grow up, is questionable.
121. This is a family in which they know what is normal for Harveen. Although the appellant's removal means a major aspect of normality will no longer be present, it is not made out on the evidence that the family will be unable to create a new norm. I accept Harveen may find it difficult to cope with such change initially but there was no evidence that she would not be able to manage long-term. Harveen is not on any medication and is able to exist within the environment that currently exists as best she can.
122. Guidance provided by the National Autistic Society is available dealing with change, which sets out strategies to deal with change including finding out about the change, such as what is involved and when it is going to take place. The guidance provides coping strategies to reduce the impact upon an individual of

removal of someone who will no longer form part of the autistic person's life over a period of time and getting the autistic child familiar with the revised process.

123. The Autistic Society guidance refers the issue of official support and involving the right people. It was not made out before me that Harveen's family would not be able to reduce/adapt their working hours, replacing the role undertaken by appellant, or that to do so would result in unduly harsh consequences for the child if properly managed.
124. It may be if the appellant is removed Harveen may be faced with a situation akin to bereavement which may include expressions of anger, restlessness, changes in sleeping and eating patterns, increased dependence upon her parent's, the loss of previously displayed skills and confidence, and that she may find it difficult to further express her own feelings about the appellant not being there. The National Autistic Society again provides guidance to help a child through such a situation.
125. The evidence is that the family have accepted the current arrangement rather than proactively undertaken work to change the process slowly by reintroducing greater input by the parents or less of the appellant in preparation for her removal. The reason for this, as stated above, is that they do not want her to leave. There is no evidence therefore that coping strategies that could assist Harveen have been tried and tested. There is also no evidence that the appellant or the family have sought professional help in managing any change if the appellant is returned to India, for example from Harveen's teachers, GP or a psychologist specialising in assisting autistic children, who might be able to provide guidance on managing a successful transition.
126. There is no evidence in the expert report to show that such arrangements could not be successful. The tenure of the report of Dr Karim appears to be that if the appellant suddenly disappears that will have devastating effect upon Harveen. That is understandable if the child is not made aware of it, prepared for it, and cannot understand what has happened.
127. Turning back to the other issue relevant to the proportionality, namely the issue of the appellant being able to succeed on the basis of long residence, that is a relevant consideration as Appendix PL and the rule relating to 20 years continuous residence reflects the Secretary of State's view that if a person has established such a long period of having lived continuously in the UK it would not be proportionate to remove them provided they do not fall for refusal under suitability or eligibility grounds.
128. In relation to suitability, they are:

PL 2.1. The application must not fall for refusal under the suitability grounds for refusal for leave to remain as set out in S-LTR.1.2. to S-LTR.2.2. and S-LTR.3.1. to S-LTR.4.5. of Appendix FM of these rules.

PL 2.2. The application must not fall for refusal under paragraph 9.6.1. (sham marriage or civil partnership) of Part 9: grounds for refusal.

129. S-LTR.1.2 relates to a person who is currently the subject of the deportation order which does not apply to the appellant.
130. S-LTR.1.3 relates to a person's presence not being conducive to the public good because they have been convicted of an offence for which they have been sentenced to imprisonment for at least 4 years, which does not apply to the appellant.
131. S-LTR.1.4 relates to a person's presence in the UK not being conducive to the public good because they have been convicted of an offence for which they have been sentenced to imprisonment of less than 4 years but at least 12 months, unless a period of 10 years has passed since the end of the sentence, which does not apply to the appellant.

132. S-LTR.1.5. applies when the presence of a person in the UK is not conducive to the public good because, in view of the Secretary of State, that offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law, which does not apply to the appellant.
133. S-LTR.1.6 applies if the presence of person in the UK is not conducive to the public good because their conduct (including convictions which do not forwarding the preceding paragraphs), character, associations, or other reasons, make it undesirable to allow them to remain in the UK. That does not apply to the appellant.
134. S-LTR.1.7 relates to failure without reasonable excuse to comply with requirements, which do not apply to the appellant.
135. S-LTR.1.8 relates to a person's presence in the UK not being conducive to the public good for the reasons set out in that section, which are not applicable to the appellant.
136. S-LTR.2.1 states and applicant will normally be refused on grounds of suitability if paragraph 2.2 applies which has not been shown to apply on the facts to the appellant.
137. S-LTR.3.1 is not applicable as it is not made out the appellant's presence in the UK is not conducive to the public good on the facts.
138. It is not made out that any of the criteria set out in S-LTR.4.1 – 4.5 apply to the appellant on the facts.
139. It is not made out on the facts the application will fall for refusal under paragraph 9.6.1. (sham marriage or civil partnership) of Part 9: grounds for refusal.
140. In relation to eligibility:
- PL 5.1. Where the applicant is aged 18 or over on the date of application:
- (a) the applicant must have been continuously resident in the UK for more than 20 years; or
- (b) where the applicant has not been continuously resident in the UK for more than 20 years, the decision maker must be satisfied there would be very significant obstacles to the applicant's integration into the country where they would have to live if required to leave the UK.
141. There is an exclusion for a person who has made a protection or asylum claim which had been declared inadmissible under part 11 of the Immigration Rules before 28 June 2022, or section 80B and 80C of the Nationality, Immigration Asylum Act 2002 and which continues to be treated as inadmissible, meaning they cannot meet the requirement of PL5.1(b), which it is not suggested is applicable to the appellant in this appeal.
142. It is accepted that PL7.1 the continuous period of residence referred to in PL 5.1 may include time spent in the UK with or without permission. It is not made out the appellant has served any period of imprisonment or been detained at an institution nor that the continuous period of residence has been broken.
143. The appellant has, establish that if she applied for permission to remain on the basis of long residence she would succeed. There is nothing I have seem to suggest that the appellant's application on this basis would be refused.
144. Joining together the threads of the proportionality assessment, the Secretary of State's view is that the appellant has remained the United Kingdom without leave for a considerable period of time. She has developed a private life during the time her stay has been precarious/unlawful. The Secretary of State's view is that the public interest, based primarily on the maintenance of immigration control, requires the removal or a further application to be made on the basis of long residence.
145. In support of the appellant is the fact she has been in the UK in excess of 20 years. The Secretary of State has had numerous opportunities to remove her but

does not appear to have taken advantage of the same. The appellant has a strong established private life in the UK based primarily upon her life with her brother's family, friendship groups and involvement with the local Sikh Temple. The appellant also has developed family life with the family as set out above. That includes her very strong relationship with Harveen. In addition to her in excess of 20 years continuous residence in the UK, it has not been shown that an application would stand to be refused on the basis of any concerns in relation to the appellant's eligibility or suitability. The public interest in removal for a person who satisfies the 20 years continuous residence requirement is reduced on the basis of the Secretary of State's own policy to be found in Appendix PL. On this basis the appellant must succeed.

146. I therefore find, on the balance of probabilities, that the Secretary of State has not established that any interference in the private and family life developed by the appellant in the UK is proportionate.

147. On that basis I allow the appeal pursuant to Article 8 ECHR.

### **Notice of Decision**

148. Appeal allowed.

**C J Hanson**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**28 August 2024**