



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004164

First-tier Tribunal No: HU/53283/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 14th of January 2025

Before

UPPER TRIBUNAL JUDGE KHAN
DEPUTY UPPER TRIBUNAL JUDGE BARTLETT

Between

DALJINDER SINGH
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Moriarty, Counsel instructed by Aliza Elaahi & Co Solicitors
For the Respondent: Ms S Lecoite, Senior Home Office Presenting Officer

Heard at Field House on 20 December 2024

DECISION AND REASONS

Introduction

1. This oral decision was delivered following submissions heard in the appeal. The hearing was held remotely on the video cloud platform. We are satisfied that the parties were able to see and hear each other and to fully participate in the proceedings.
2. The appellant, who is an Indian citizen, appeals with permission against the decision of First-tier Tribunal Judge Richardson ('the judge') dated 4 July 2024, dismissing his appeal against the respondent's refusal to grant leave to remain on human rights grounds.

3. The appellant arrived in the UK on 1 January 2007 on a visit visa and subsequently overstayed. He was found working illegally and declared an illegal entrant. On 8 July 2010, he was granted immigration bail from which he absconded in March 2011. On 1 March 2022, the appellant made an application for leave to remain which was refused by the respondent on 21 February 2023.
4. The appellant appealed the respondent's refusal to the First-tier Tribunal on the basis of his genuine and subsisting relationship with his wife, Gaganpreet Kaur ('GK') (also an Indian national with leave to remain until 15/09/2026) and their two children born in October 2019 and June 2022, with whom he claimed to share a private life and family life under Article 8 European Convention on Human Rights ('ECHR').
5. The appellant's case is that his wife and children cannot be expected to relocate to India with him, in circumstances where she is suffering from significant physical and mental health issues following the death of her father in India in November 2021, and is currently struggling to cope with the care of their two young children.
6. Before the First-tier Tribunal, the primary issue under the Immigration Rules was whether there would be 'insurmountable obstacles' or 'very significant difficulties' for the appellant and GK in continuing their private and family life with their children in India under paragraph 276ADE and EX.1. & EX.2 of Appendix FM. It was submitted that if this was made out, then the appeal should be allowed.
7. In the alternative, it was submitted, if the appellant had shown that his case meets the requirements of paragraph 276ADE(1)(vi), on the basis that there would be very significant obstacles to his integration on return to India alone, then his appeal should also be allowed. Further, and in the alternative, it was argued the question for the Tribunal under Article 8 ECHR was whether the evidence demonstrates that it would not be proportionate to expect the appellant and his wife and children to relocate or to force them to separate.
8. The First-tier Tribunal dismissed the appeal on 4 July 2024 even though it was accepted by the respondent that the appellant and GK are in a genuine and subsisting relationship. It is this decision that is the subject of the appeal hearing today.

Decision of the First-tier Tribunal

9. Before the First-tier Tribunal, there was no representation from the respondent. The appellant was represented by Mr Moriarty who also appears today. The key findings of the First-tier Tribunal leading to the dismissal of the appeal are to be found at paragraphs [8] to [34] of the decision.
10. In brief, the judge raised several issues in respect of the expert medical report of Dr Rachel Thomas, a consultant clinical psychologist, whose expert report was submitted on behalf of GK. Dr Thomas stated in her professional opinion, that GK was suffering from psychiatric symptoms of adjustment disorder with mixed anxiety and depressed mood caused by the refusal of her husband's immigration case which she learned of in April 2023. It was her professional opinion that GK was psychiatrically unfit to fly to India.

11. At [21] the judge stated his concerns with regard to Dr Thomas' report. He observed that:
 - (a) it did not test the point that when the appellant met GK she must have known from the outset, or very soon after, that the appellant was an overstayer in the UK and therefore had very little prospect of meeting the Immigration Rules;
 - (b) it did not consider the impact of the death of GK's father on her mental condition;
 - (c) GK herself had limited leave to remain and as such there was no guarantee that when her limited leave expires, that she would be able to extend that leave;
 - (d) GK could not travel due to the risk of suicide which was an incredibly strong assertion by Dr Thomas given that GK worked full-time and there was little consideration of how she dealt with everyday life; and
 - (e) Dr Thomas was dismissive of the GP's diagnosis in circumstances where she had only spoken to GK for about two hours of the consultation in contrast to the longstanding contact between GK and her GP.
12. In light of his concerns, the judge concluded at [22] that given the failure of Dr Thomas to consider the other factors, he could only give limited weight to the report. Further, he did not accept that GK was at real risk of suicide if required to travel to India.
13. On balance the judge found at [24] that there were no insurmountable obstacles or difficulties that would prevent the appellant and his family continuing their private and family life in India. In relation to paragraph 276ADE(1)(iv) of the Immigration Rules, the judge found at [30] that the appellant had failed to show there were insurmountable grounds to his integration in India. In relation to Article 8 ECHR, the judge accepted it was engaged but concluded at [34] there was no disproportionate interference with family life.
14. At [34] the judge commented that the appellant was free to return to India alone and apply for entry clearance. He observed that his wife and children were free to travel with him or remain in the UK and seek to sponsor an entry clearance application.

Grounds of Appeal.

15. The appellant appealed the decision of the First-tier Tribunal. Permission to appeal was granted by First-tier Tribunal Judge Scott on 5 September 2024 in respect of three grounds:

Ground One: relates to alleged procedural unfairness arising from adverse findings made in respect of Dr Thomas' report in circumstances where the judge did not raise the issues with the appellant at the substantive hearing to give him an opportunity to address them;

16. Grounds Two and Three: relate to a failure of the judge to make any or any adequate findings in relation to the assessment of facts and evidence concerning documentary evidence that was before him. In particular, the determination makes no mention of the letter of Ms Dutt dated 6 March 2024 which was relied on by the appellant confirming that GK had started a course of therapy and providing corroboration of Dr Thomas' expert findings. Likewise, there was no reference to the ISW (Independent Social Worker) Report which considered the appellant's relationship with his children. There is also no reference to what weight the judge gave to the witness statements of the appellant and GK.
17. No Rule 24 response was filed by the respondent.
18. It is against this background that the appeal comes before us.

Discussion and Analysis

19. We have not set out the submissions of either party. However, our analysis of the case reflects the submissions they made. We wish to express our gratitude for the high quality of the submissions.
20. In respect of ground one, the appellant relies on the decision of Abdi & Ors v Entry Clearance Officer [2023] EWCA Civ 1455. In that case, the Court of Appeal at [29] cited with approval the decision of HA v Secretary of State for the Home Department (No.2) [2010] SC 457 which addressed the issue of procedural unfairness where an issue arises which has not been raised by the parties. The Court observed that 'Whether there is procedural unfairness is fact-sensitive. The Tribunal may identify an issue which has not been raised by the parties to the proceedings, but it will be unfair, ordinarily at least, for it to base its decision upon its view of the issue without giving the parties an opportunity to address it upon the matter.'
21. The Court of Appeal at [37] also cited Moses LJ in the decision of SH (Afghanistan) v Secretary of State for the Home Department [2011] ECWA Civ 1284 where he stated at [15] 'Tribunals like courts, must set aside a determination reached by the adoption of an unfair procedure unless they are satisfied that it would be pointless to do so because the result would inevitably be the same.'
22. We remind ourselves that although the respondent was not represented at the appeal hearing the appellant was represented by Mr Moriarty of counsel. We also note that Dr Thomas' report was submitted by the appellant on behalf of GK, and the judge's adverse findings were material to the decision.
23. We note the respondent's review dated 29 February 2024 did make a brief reference at [37] to the expert report and identified that no evidence of a recorded formal diagnosis that GK was not fit to fly had been provided by way of her GP or consultant medical records. However, we also observe that the judge's adverse findings go much wider than the review's references. This point was

highlighted by Mr Moriarty. He accepted that the respondent's review did touch on Dr Thomas' report, but that the judge's findings went much further, and therefore the point with regard to fairness and the need to speak to the appellant's counsel, who was present, was all the more important to resolve the concerns and act fairly in the circumstances.

24. We have carefully considered the circumstances facing the judge and the decision of Abdi which is binding on this chamber. We find that it was procedurally unfair for the judge to make adverse findings about Dr Thomas' report and to then rely on the same to support his decision making without first affording an opportunity to the appellant to address/resolve his concerns. It was open to the judge to raise these with counsel, but he failed to do so for whatever reason. In the circumstances, the judge's decision-making involved procedural unfairness which amounts to a material error of law.
25. Turning to grounds two and three, these touch upon the judge's failure in a number of respects already mentioned to make any or any adequate findings in relation to the range of documentary evidence that was relied upon on by the appellant. We note there is no reference to Ms Dutt's evidence in the judge's decision even though it is supportive of Dr Thomas' report. Given the adverse findings made in respect of the expert report we would have expected to see something in the judge's reasonings about how he viewed Ms Dutt's evidence.
26. On matters relating to what weight if any was given to GK's and the appellant's witness evidence, or indeed the ISW report, the judge's decision is again silent.
27. In considering this matter, we remind ourselves of the decision in Volpi v Volpi [2022] EWCA Civ 464 which states that it is not necessary for a judge to set out expressly every point of the evidence and that the Upper Tribunal should be reluctant to interfere with the fact-finding of a First-tier Judge. That must be right in principle. However, whilst matters of weight are for the First-tier Judge, in this case there is no indication what weight, if any, has been given. There is no reference whatsoever to the evidence of Ms Dutt even though her evidence supported Dr Thomas' report.
28. It was incumbent, for the judge to have set out why he departed from the views of Ms Dutt concerning Dr Thomas' report. There is nothing on the face of the decision with regard to what the judge was thinking. This is not simply a question of weight but constitutes a failure to give reasons or any adequate reasons on material matters which constitutes a quintessential error of law: see R (Iran) v Secretary of State for the Home Department [2005] ECWA Civ 982. The same applies to the failure of the judge to indicate what weight if any has been given to other key documentary evidence.
29. For the reasons we have stated, there are several material errors of law present in the judge's decision. We allow the appeal on all the permitted grounds and set aside the decision of First-tier Tribunal Judge Richardson. Having heard submissions from the respective parties, we are satisfied that this case should be remitted to the First-tier Tribunal to be heard afresh. There are no preserved findings.

Notice of Decision

30. The decision of the First-tier Tribunal involved the making of several material errors of law and is set aside. The case is remitted to the First-tier Tribunal to be reheard afresh by a different judge with no preserved findings.

K.A.Khan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

31 December 2024