



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

Appeal Number: IA/44780/2013  
IA/44781/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 9 April 2014**

**Determination  
Promulgated**

**On 24<sup>th</sup> April 2014**

**Before**

**DESIGNATED JUDGE MURRAY**

**Between**

**MR DARSHAN SINGH (FIRST APPELLANT)  
LABH KAUR (SECOND APPELLANT)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Chapman, Counsel for Bindmans LLP London  
For the Respondent: Ms Johnston, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellants are citizens of India and are husband and wife. They were born on 18 February 1946 and 10 March 1954 respectively. They appealed against the decision of the respondent dated 16 October 2013 refusing them leave to remain in the United Kingdom as the dependant relatives of their son, Harpreet Singh, who is present and settled here. The appeals were heard by Judge of the First-tier Tribunal Devittie on 27 January 2014, who dismissed the appeals under the Immigration Rules and

allowed them on human rights grounds, in a determination promulgated on 14 February 2014.

2. An application for permission to appeal was lodged by the respondent and permission was granted by Judge of the First-tier Tribunal Sommerville on 12 March 2014. The grounds of application state that the judge failed to give adequate reasons as to why family life could not be maintained by regular visits from India. The grounds go on to state that the judge failed to follow the guidance in cases such as Gulshan [2013] UKUT640 (IAC) and Nagre [2013] EWHC 720 (Admin) in assessing the Article 8 case.
3. The background to this case is that the appellant's oldest son committed suicide in India in 2009. The appellants came to the United Kingdom on 7 March 2012, with entry clearance as visitors, valid until 17 August 2012. They made their applications for leave to remain as dependant relatives on 13 June 2012 and on 31 July 2012 that application was returned for want of compliance with formalities to do with the completion of the application form. On 13 August the appellants made a further application outside the Immigration Rules for leave to remain. They also requested that their application be considered under paragraph 317 of the Immigration Rules.

## THE HEARING

4. The Presenting Officer submitted that the judge failed to consider the medical care of the appellant in India. She submitted that the appellants had both sought treatment there for depression and this treatment is ongoing. She submitted that the support of the appellants' family members in the United Kingdom can continue as it is at present and that the Immigration Judge at the first-tier hearing had been told that the appellants had been caring for their granddaughter on their own, in India, for some time and this makes it clear that they do not need continuing support from their son in the United Kingdom. She submitted that their son in the United Kingdom must have considered their health good enough for them to look after their young daughter in India and the judge did not deal with this issue.
5. The Presenting Officer directed me to paragraphs 23(iii) and 26 of the determination where the judge deals with proportionality and refers to the effect of their eldest son committing suicide on the appellants. She submitted that the judge has not properly considered the appellants and their family members in the United Kingdom living apart. She submitted that the appellants' grandchildren's parents can care for them. The appellants are not their primary carers.
6. She submitted that if the appellants go back to India this will not be a permanent separation as they can visit at any time. I was referred to the case of *Zoumbas v SSHD* (2013) UKSC 74. She submitted that there is

nothing in the evidence to indicate that the grandchildren's parents are unable to care for their children. The appellants' son in the United Kingdom would like the appellants to live with his family but this is not an absolute requirement. The appellants state that they require emotional support but this contradicts the statement that they are primary carers of their grandchildren.

7. I was referred to the said case of Gulshan and the Presenting Officer submitted that the appellants' applications cannot meet the terms of the Immigration Rules and there are no compelling circumstances which would enable them to remain in the United Kingdom outside the Rules. I was asked to overturn the decision.
8. I put to the Presenting Officer that the judge has given a detailed explanation of why he found there were compelling circumstances. She submitted that the judge put too much weight on the suicide of the appellants' eldest son and the appellants and their grandchildren can still have a close relationship through visits.
9. The appellant's representative submitted that she is relying on her Rule 24 response. She submitted that the determination is well reasoned and there is no error of law therein. She submitted that the main ground of application is that the judge failed to give adequate reasons as to why family life could not be maintained by regular visits and this is not accepted.
10. I was referred to Mr Horrocks' Social Work Report. It deals with the family life ties between the appellants as grandparents and their grandchildren and the history of this family since the death of the appellants' eldest son, Major Singh. The report refers to the appellants being primary carers for the grandchildren. They have been primary carers since the grandchildren were born. They came to the United Kingdom for the birth of their oldest grandchild, Jasleen, and have always been a focus in her life. She stayed on her own with her grandparents in India for 9 months but their daughter-in-law wanted her daughter with her, so they returned with her to the United Kingdom. She submitted that their daughter-in-law is British born and all her family members are in the United Kingdom. The appellants' original applications were made under the previous Immigration Rules but the payment box was not ticked on the form and by the time this was rectified the Immigration Rules of 9 July 2012 applied. She submitted that if the appellants' original applications had gone ahead under Rule 317, they would have been successful and as a result of this, this is an Article 8 case and is well founded. She submitted that the judge dealt properly with the appeal and gave proper reasons for all his findings finding that family life can no longer be maintained by visits. Each time the appellants return to India their mental health is affected badly. The social work report states that separation would constitute significant harm not only to the appellants but to the grandchildren and that this reaches the "family threshold" of significant harm. The report states that the birth of the appellants' granddaughter gave them hope in their lives and based on her

religion, the second appellant believes that Dalsheen, the youngest grandchild, is a reincarnation of Major, the boy who committed suicide.

11. I was then referred to the medical report of Dr Sinha. He has been treating the appellants privately since December 2009 in the United Kingdom. At paragraph 3 he refers to the appellants' mental illnesses and their suicidal ideations. They tried to self harm by taking an overdose and the doctor states that if they were to return to India their mental health would deteriorate and their health appears to improve with family support. He states that if they are able to settle in the United Kingdom he believes there would be a substantial improvement in their health. He refers to the 2 grandchildren having a special bond with the appellants and refers to them as their "saving grace". He also refers to the situation if they return to India almost definitely causing the appellants' mental health to deteriorate.
12. The representative submitted that the judge was correct to find that it would not be proportionate for the appellants to have to return to India and visit. The evidential background has been properly considered by the judge and his findings are based on this. Ground 1 of the application fails to realise the strong family life of the extended family in this case. The judge anchored his findings on the relevant case law referring to *Best v United Kingdom* [1984] 40DR196 and *Kugathas* [2003] EWCA Civ 31. She submitted that the individual circumstances of each case have to be considered. She submitted that the judge deals with the best interests of the grandchildren based on the social work report, the other evidence and the background circumstances that underlie the social work report, including the suicide of the appellants' eldest son. Its effect on their mental health is not contested. The judge finds that separation is not in anyone's best interests and that is enough to make the decision sustainable.
13. The judge at paragraph 23 deals with public interest, referring to the economic well-being of the United Kingdom and the necessity of immigration control. When dealing with proportionality he did not consider the original application which was rejected because of the lack of a tick in the form. The representative submitted that when this is taken into account the appellants' claim is even stronger. The judge recognises the social need of the appellants to be with their grandchildren and finds that living in India and visiting is not an option.
14. She submitted that the determination deals with all the points raised in the grounds of application. The appellants are vulnerable adults who need support in a family unit and the most satisfactory way for this to happen is for their applications to be allowed.
15. I was referred to the Rule 24 response and the representative submitted that the judge has not failed to consider unjustifiably harsh consequences. That phrase is rolled up with the phrase exceptional circumstances. At paragraph 9(b) the judge refers to the said case of *Nagre*. At paragraph

10 he refers to exceptional features and the fact that suicide has not been ruled out. She submitted that the respondent has not properly considered the consequences if the appellants are removed. At paragraph 11 the judge refers to compelling circumstances and Article 8 and the test in Nagre and Gulshan. At paragraph 26 he refers to compelling reasons and exceptional features. The representative submitted that public interest fails when weighed against the circumstances of this case. I was asked to uphold the determination.

16. The Presenting Officer submitted that the terms of paragraph 317 of the previous Rules would not necessarily have been met as the appellants have not shown that they are mainly dependant on their son in the United Kingdom. They have a daughter, sister-in-law and grandchildren in India and there is nothing to say that they will not help them if they return.
17. The Presenting Officer submitted that there is no evidence that medical treatment for the appellants in India cannot be supplied. On return to India there is no evidence to indicate that their life expectancy would be shortened. She submitted that the judge has not properly assessed this part of the evidence.
18. With regard to the appellants being primary carers, the Presenting Officer submitted that no significant harm would be caused to the children if the appellants are returned to India. The children will still be with their parents. I was asked to consider the said case of Zoumbas. She submitted that the evidence makes it clear that the oldest child has been left with a childminder and has been in nursery and there is nothing to stop her parents from continuing with this. She asked me to find that there is a material error of law in the judge's determination.
19. I reserved my decision.

## DETERMINATION

20. The determination in this case is detailed and thorough. The grounds of application state that Article 8 is not a means through which the appellants can choose where to conduct their family life and that the appellants have been and can continue to be regular visitors to the United Kingdom. They state that there is ongoing medical assistance in India for the appellants and that the judge has given too much weight to the suicide of Major Singh in India. They state that the judge was wrong to find that this amounts to exceptional circumstances, as this phrase applies only when removal would result in unjustifiably harsh consequences notwithstanding the public interest in removal and so his determination is flawed. The grounds point out that the applications do not meet the terms of the new Immigration Rules, might well not have met the terms of the previous Rules and the result of removal would not result in unjustifiably harsh consequences.

21. The determination makes it clear that the judge is aware of all the issues in this case and has considered all of the evidence before him, including Dr Sinha's medical report and Peter Horrocks' independent social work report. He has referred to the said cases of Gulshan and Nagre relating to Article 8. He finds that these claims cannot meet the terms of the Rules and finds there is good arguable case for consideration of the claims under Article 8 of ECHR. He finds that there is family life among the appellants and their son, daughter-in-law and grandchildren and states that the particular circumstances of each case must be taken into account. The social work report states that the relationships between the appellants and their grandchildren are much more than normal emotional ties. The judge states that the approach to Article 8 in the case of an entry decision is different from the approach in removal cases.
22. At paragraph 20 the judge notes that the appellants have been living in the same household as their son and his family for 2 years. During that period their bonds have been strengthened and he goes through the 5 step process in Razgar (2004) UKHL27. At paragraph 21 he deals with proportionality and the best interests of the grandchildren referring to the social work report and stating that there is little difference between the roles played by the grandparents in the lives of Jasleen and Deshan and the roles of their parents. He finds that a permanent or semi permanent separation would cause the children significant trauma and distress. The social work report refers to significant harm, reaching the threshold required for the Family Court to make an order in respect of a child. At paragraph 22, based on the social work report and the factual evidence, he concludes that the separation of the grandchildren from their grandparents would not be in the best interests of the appellants or their grandchildren.
23. At paragraph 23 the judge deals with public interest and adequate means to provide for the maintenance and accommodation of the appellants. He gives considerable weight to the appellants' mental health as the result of the suicide of their eldest son. The judge states that he cannot ignore the evidence on the subjective states of mind of both the appellants which points to potentially grave consequences if they are separated from their family in the United Kingdom.
24. The judge goes on to state that the scales are finely balanced and the appellants must demonstrate compelling reasons why they should be granted leave to remain. He has clearly considered the possibility of the appellants' son and his family going to live in India and when proportionality is assessed he finds that the appellants might well contemplate suicide if forced to live apart from their son and his family and finds that visiting would not be sufficient. He finds there are exceptional features which tilt the balance in the appellants' favour and that the public interest considerations are not sufficiently compelling to outweigh the gravity of the consequences of removal. The appellant's eldest son's suicide took place in India. This must have played a part in

the judge's decision. He has not taken into account, when assessing proportionality that had the appellants' original applications not been rejected they might well have succeeded under the previous Rules but had he considered this he might have attached more weight to their claims.

25. All aspects of these claims have been considered by the judge and he has given adequate reasons for all of his findings. He has considered the totality of the evidence and finds that because of exceptionality the appeals should be allowed under Article 8 of ECHR. He has taken into account the relevant case law, the Immigration Rules and ECHR.
26. He finds that removal would result in unjustifiably harsh consequences, notwithstanding the public interest. He states that the new Rules will not achieve an Article 8 compliant result and he has identified compelling circumstances. He finds the risk of suicide by the appellants, due to their mental condition, an exceptional feature. He has identified a compelling reason for allowing this appeal under Article 8 of ECHR. His decision is sustainable.

### **DECISION**

27. There is no error of law in the judge's determination.
28. The judge's decision must stand. The appeals are allowed on human rights grounds.
29. No anonymity order is made.

Signed

Date

Designated Judge Murray  
Judge of the Upper Tribunal