



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

Appeal Number: HU/01357/2018

THE IMMIGRATION ACTS

Heard at Field House

On 12th September 2018

Determination

Promulgated

On 9th October 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

RK

(Anonymity has been directed)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Claire, Counsel on behalf of A2 Solicitors, London

For the Respondent: Mr Withwell, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India born on 17 December 1993. She appealed the Secretary of State for the Home Department's decision dated 18 December 2017 refusing her application for leave to remain on the basis of her private life in the United Kingdom, as it was found that the application did not meet the terms of the Immigration Rules and did not fall for a grant of leave outside the Immigration Rules, as there were no exceptional circumstances in her case and the removal of the appellant to

India would not breach the United Kingdom's obligations under Article 8 of the Convention. The appeal was heard by Judge of the First-Tier Tribunal Richards-Clarke on 1 June 2018 and dismissed on human rights grounds in a decision promulgated on 20 June 2018.

2. An application for permission to appeal was lodged and permission was granted by Judge of the First-Tier Tribunal EM Simpson on 25 July 2018. The permission states that it has been granted purely on the Judge's treatment of the appellant's Article 8 private life claim and as the appellant's immigration history is that she came to the United Kingdom at the age of 13 years with family members and overstayed her visit visa with them, her unlawful and precarious status was outside her control from the outset. Her family also made an application to regularise their status, on which the appellant was a dependent, in August 2011. The decision on this was not made until 21 August 2015 and this was a refusal. The permission states that there is arguable scope, with reference to the statutory considerations under Section 117B (4) and (5), to accord greater regard to her combined minority and lack of capacity when assessing the weight to be given to her private life claim and the overall Article 8 balancing exercise, when assessing proportionality. The permission goes on to state that the weight given in the decision, to the appellant's marriage to an Indian national in February 2017, detracted from the arguably necessary independent assessment of the constituents of private life that the appellant had established in the United Kingdom during the 11 years from the time she was 13, particularly when, on reaching 18 she found herself unable to pursue higher education because of her status and then facing medical problems which included anxiety and depression because of the possible separation from her close family members with whom she has always lived. The appellant has married a man from India without any status in the United Kingdom. In 2015 the appellant's brother was granted 30 months discretionary leave but by that time the appellant was 22 years old.

The Hearing

3. Counsel for the appellant referred me to paragraphs 30 and 31 of the First-Tier Tribunal Judge's decision, submitting that at the end of paragraph 30 the Judge concludes that the appellant's immigration status was precarious and so in accordance with Section 117B (4) and (5) little weight should be given to her private life formed at this time. He submitted that when the appellant arrived in the United Kingdom with her family she was 13 years old and had no control over her situation or her status and the Judge's findings about her private life in the UK are unfair. He submitted that the fact that her brother was under 18 years old and was granted discretionary leave put her at an unfair disadvantage as she had been a minor when she arrived in the United Kingdom.
4. He then submitted that the Judge finds that public interest outweighs this appellant's private life but she was a minor for five years in the United

Kingdom until she was 18 years old, and there must be compassionate factors in this case.

5. I was referred to the appellant's bundle in which there is medical evidence being a GP report and evidence from Anchor Counselling to which she has been referred because of her depression and anxiety. She also had to have an abdomen and pelvis ultrasound and urinary tract ultrasound. She has been to Hounslow IAPT Service, which is a talking therapy service for people experiencing depression and/or anxiety. In 2018 she was referred to Primary Care Plus for further support with emotional regulation/reducing self-harm. Counsel submitted that this appellant was abused at the age of 13 when she arrived in the United Kingdom and submitted that the Judge has not adequately considered the compassionate aspects of this claim.
6. Counsel then submitted that the Judge has misdirected herself by placing too much weight on the fact that the appellant has married an Indian national who has no status in the United Kingdom and has given insufficient weight to the appellant's private life in the UK, which was established well before she got married.
7. He referred me to the case of ***Kumara [2016]*** EWCA Civ 813 and submitted that this appellant would have considerable problems integrating in India now. Although she is Indian she might well not be enough of an insider to participate in life in India and might well not be accepted there. Since she was 13 she has never been back to India. He submitted that she has done well in her studies in the United Kingdom, is in contact with the Sikh community in the United Kingdom and speaks Punjabi. He submitted however, that this does not mean that she will be able to integrate and be able to enjoy her private life in her country of origin.
8. He submitted that these are all errors of law and the permission in this case was properly granted.
9. The Presenting Officer submitted that this appeal is based only on the appellant's private life.
10. He referred me to paragraph 18 of the decision in which the Judge is considering the appellant's private life under the Immigration Rules. She deals with this in the next few paragraphs and then at paragraph 24 refers to the various medical problems the appellant is suffering from. In this paragraph she refers to the case of ***N [2005]*** UKHL 31 and he submitted that the case of ***N*** is not appropriate in this case as this is not an asylum case. The Judge finds that the facts about the appellant's medical condition have not been challenged and he referred me to paragraph 28 of the decision in which the Judge states that the requirements of Immigration Rules set out in paragraph 276ADE cannot be satisfied. He submitted that this finding has not been challenged and the Presenting Officer submitted that at paragraph 27 the Judge gives reasons for her finding that there would not be very significant obstacles to the appellant's

integration into India and that the appellant's primary concern seems to be the pursuit of her education at university. The Judge is satisfied that she could pursue her higher education goals in India. The Judge points out that she lived in India until she was 13 and is now married to an Indian national. She therefore could return to India as a married woman with a husband who has family with property in India. He only came to the United Kingdom in 2012 as an adult. The Presenting Officer submitted that none of this has been challenged and the Judge then goes on to look at the appellant's situation outside the Rules and the principles of ***Razgar [2004]*** UKHL 27.

11. The Judge finds that there is private life and at paragraphs 30 and 31 deals with the core of the account. The Judge accepts that the appellant's private life rights are sufficient to engage Article 8 and deals with proportionality. She notes that the appellant is not financially independent and therefore Section 117B(3) cannot be satisfied and she relies on a private life established when she was in the United Kingdom unlawfully. The judge therefore finds that in accordance with Section 117B (4) and (5) she can give little weight to this private life. The Presenting Officer submitted that the Judge's findings about this are not unlawful and he submitted that the remaining grounds are merely a disagreement with the Judge's findings. The Judge has properly considered the appellant's medical condition and although she finds that the appellant has a significant private life, she finds that public interest outweighs this and in carrying out the proportionality exercise she notes in particular that the terms of the Immigration Rules cannot be satisfied so the claim can only be considered outside the Rules. She finds that there is nothing significant which would stop the appellant and her husband returning to India. The Presenting Officer submitted that although the appellant was a minor when she came to the United Kingdom she is now 24 years old and is married. She is part of the Sikh community in the United Kingdom and her husband only left India in 2012. He submitted that the Judge has given proper reasons for her conclusion and finds in favour of the respondent. He submitted that as this is purely a disagreement there is no error.
12. Counsel for the appellant referred to paragraph 24, stating that the case of ***N*** is not relevant when Article 8 is being considered. He submitted that it is correct that this claim cannot meet the terms of the Immigration Rules but although this is a strong point he submitted that it is not determinative. He submitted that if all claims were to fail because the terms of the Immigration Rules cannot be satisfied then Article 8 outside the Rules would never require to be considered and Article 8 outside the Rules is important in this claim when this appellant's history is considered and when her health issues are taken into account.
13. I asked the Presenting Officer if he finds that the Judge has given too much weight to the fact that the appellant has married an Indian who has no status in the United Kingdom. He stated that that is not his finding but this had to be taken into account when the Judge made her decision. He

submitted that this appellant can relocate to India and this would not be a breach of Article 8.

Decision and Reasons

14. I have carefully considered the appellant's immigration history and the fact that she had no control over her situation when she came to the United Kingdom with her family. By the time a decision was made in her family's application to regularise their status in 2011 there was no decision until 2015 and by that time the appellant was 22 years old, so although her brother was granted discretionary leave she was not.
15. The Judge took this into account when carrying out her proportionality assessment.
16. This appellant is not financially independent and is now 24 years old. The Judge has carefully considered her medical situation and has also taken into account her history before reaching her decision. The appellant is now married to an Indian national with no status in the United Kingdom and this had to be considered by the Judge when reaching her decision. If the appellant returns to India she will be with her husband who has family there and his family has property there and the appellant lived in India until she was 13 years old so she must have memories of India and she plays an active part in the Sikh community in the United Kingdom and also has an A Level in Punjabi.
17. The Judge has carried out a perfectly adequate proportionality assessment and has given proper reasons for finding that when public interest is weighed against the appellant's and her family's human rights, public interest must succeed. Sections 117B(4) and (5) cannot be satisfied. The fact that the application fails to meet the terms of the Immigration Rules has to be given considerable weight in the proportionality assessment. There is no reason why the appellant cannot continue her studies at university in India and when the Judge finds that any interference with the appellant's rights under Article 8 is justified necessary and proportionate, she was entitled to reach this conclusion and make this finding.

Notice of Decision

There are no material errors of law in the Judge's decision promulgated on 20 June 2018 and I find that her decision must stand. The appellant's claim is dismissed on human rights grounds.

Anonymity has been directed.

Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify

him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 2 October 2018

Deputy Upper Tribunal Judge IAM Murray

A handwritten signature in cursive script, appearing to read 'Iain Murray', written in black ink.