



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: HU/08251/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 11 April 2019**

**Determination Promulgated
On 1 May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

**FATEMA [L]
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Miah (for Crystal Law Solicitors)

For the Respondent: Mr I Jarvis (Senior Presenting Officer)

DECISION AND REASONS

1. The Appellant is Fatema [L], a citizen of India born 29 August 1996, who appeals against the decision of the First-tier Tribunal of 5 September 2018 to dismiss her appeal on human rights grounds, itself brought against the refusal of her application on 19 March 2018.
2. Her immigration history is that she entered the UK on 14 September 2015 with leave as a visitor until 25 February 2016, on

which day she applied for leave outside the Rules, an application that was refused on 15 September 2016; a similar application was then made in November 2016 and refused on 13 October 2017. Following judicial review proceedings the decision was reconsidered and maintained, leading to this appeal.

3. The Appellant's claim arises from the care needs of her younger brother [B] who suffers from quadriplegic cerebral palsy and requires full time care. She has lived with him and the rest of the UK-based family, her parents, paternal grandmother, and her brothers. Her help was vital given that her father has been too unwell to work regularly; her grandmother, [JL], also had mobility problems, asthma and depression. Other family members had been granted leave: her parents and her brothers [B] and [A], though the application of her other brother [M] remained outstanding, and by the time of the appeal before the First-tier Tribunal, had been refused but was subject to ongoing judicial review proceedings.
4. The Appellant's mother [Z] has visited the UK on four occasions from 2008, and was granted leave until 8 August 2016 and then until March 2019, on the basis that [B] needed her care. The Appellant's father had lived in the UK with [B] since 2003, [B] having been granted leave as a medical visitor which was then extended via discretionary grants of leave, their father presently holding leave until 18 February 2019. The Appellant had previously lived with her maternal grandmother but she had died; she could not be expected to return to India to live alone given the social pressures on lone women.
5. A letter from Sayeed Medical Centre in Leicester stated that [B]'s condition required a multidisciplinary team to look after him, assisted by his carers at home. The Appellant's mother witness statement set out that Fatema is fit and healthy which is why we need her ... [she] provides us with the emotional support that we need."
6. The country evidence included a report from Open Democracy of 12 January 2017 *Seeking justice for rape by the state in Bastar, India* which set out that for tribal women living in the Bastar region of central India, sexual abuse at the hands of security forces had become routine, a problem for which the state government had now been challenged to take responsibility. Paramilitary forces had sexually mistreated women in one village in South Bastar in 2015, an incident that was said to be "common". In one month that year 13 rapes had been reported in one village. A report by Women Against Sexual Violence and State Repression (WSS), which conducted an independent fact finding mission in the region, said:

"Sexual Violence in Chhattisgarh is reaching alarming levels. The combing operations of the security forces inevitably involve large scale sexual violence against adivasi (tribal) women. The

police on the other hand refuse to file even an FIR, thus all the energy of women is directed into getting their complaints heard. The purpose of sexual violence then is not just to humiliate, but also display physical control over the body of the subjugated by male security forces.”

7. The Secretary of State's Country Policy and Information Note *India: Women fearing gender-based violence* (July 2018) states:

“4.8 Single women

4.8.2 Relocation within India of single women, women with children or victims of familial crime was reported to be difficult because of the need to provide details of their husband's or father's name to access government services and accommodation [42]. Single women faced difficulties in accessing housing [43].”
8. The First-tier Tribunal heard the appeal (without a representative from the Respondent being present). Addressing her case under the Rules, the Judge concluded that the Appellant faced no very significant obstacles to integration in India, given she was in good health, was single, could return to live with her maternal grandmother and younger brother in India with whom she had previously lived, could read and write and had skills readily transferable to life in India, and could indeed be accompanied back by her brother [M] if that was thought desirable, given he had no leave in the UK.
9. As to the claim outside the Rules, family life was established here between the Appellant and the rest of her family. It was clear that the Appellant helped to look after [B]. However, it was difficult to see that the Appellant could be essential to [B]’s care given that her mother’s application had already proceeded on the basis that she herself was the only appropriate carer. There was extended family living in Leicester and Bolton to call upon.
10. Her father had given inconsistent evidence as to his ability to work (saying he was presently working in his witness statement but in oral evidence that he was not working), notwithstanding having been treated for some health conditions. A GP’s letter stated he suffered from cardiac pain and was under cardiology review. The Appellant's grandmother Mrs [L] did not appear to need a great deal of care; the medical evidence did not confirm the conditions from which she was claimed to suffer.
11. The Appellant's mother had lived mostly in India until 2015. Since 2003 the family had kept in touch via visits; they had had at least one family holiday in Dubai.

12. Applying the statutory criteria, whilst the Appellant spoke English she was not financially independent, and had established her family life in the UK during a time when her immigration status was precarious.
13. Grounds of appeal contended that the First-tier Tribunal had materially erred in law by
 - (a) Failing to make a finding on the Appellant's status as a lone woman in India given the country evidence showing the problems she might face;
 - (b) Failing to take account of the fact that some family members had been granted leave based on [B]'s care needs, and that [M] was pursuing judicial review proceedings;
 - (c) Failing to take account of the fact that it was now necessary for the Appellant's mother to work full time to support the family, who had never had recourse to public funds;
 - (d) Failing to take account of the evidence that external agencies could not meet [B]'s round-the-clock care needs and that there was no evidence that extended family members were able to meaningfully assist.
14. The Upper Tribunal granted permission to appeal on 19 December 2018 on the basis that all issues raised in the grounds were sufficiently arguable to have an impact on the appeal's outcome.
15. Mr Miah submitted that there was no evidence to show that other family members would step in: indeed the grants of leave since 2003. [B] had been granted leave as a medical visitor in 2003 and had subsequently been granted Discretionary Leave to Remain. The maternal grandmother had passed away after the Appellant's arrival in the UK. Applying the *Kamara* test the dangers she faced was highly relevant to this.
16. Mr Jarvis submitted that
 - (a) It was not established that the Appellant's own home area was as dangerous as she claimed and in any event Article 3 ECHR or asylum had not been raised on the appeal;
 - (b) The Appellant entered as a visitor and ECHR Art 8 should not be interpreted to allow a family to migrate in stages simply because of the grant of leave to some members; there was a lack of evidence to show that the Appellant's presence was in itself vital to [B]'s care regime.

Findings and reasons

17. I accept that there were indeed material errors of law in the decision of the First-tier Tribunal.

18. Firstly, the Appellant has not previously lived in India alone, and it is clear that in the part of the country from which she is from she might face real dangers. The Home Office's own evidence indicates problems for lone women lacking male relatives living in the country. One can readily imagine that a mature woman with experience of independent living in an urban centre would be able to navigate life well enough, but the Appellant is a young woman who does not have experience of living alone without family support. The Judge below believed she could resume life with her grandmother, but this finding overlooked the evidence that that lady had passed away.
19. Mr Jarvis's submission was that these considerations were effectively ruled out of consideration because the Appellant had not pursued an asylum claim. One can readily envisage cases where an asylum claim, whether by reference to the Refugee Convention or Article 3 of the Human Rights Convention, would not succeed, for example because the problems in question would not reach the persecution threshold, or might be defeated by the relatively high threshold represented by the test for unduly harsh internal relocation. However those same issues might nevertheless be arguable as matters representing "*very significant obstacles to integration*" or circumstances amounting to a disproportionate interference with private and family life. To shut those matters out of consideration would deprive the ground of appeal raising incompatibility with the Human Rights Act 1998 of effect.
20. Secondly, some family members have been granted leave on the basis of [B]'s care needs. As Mr Jarvis submitted, this does not necessarily entitle the entire family unit to migrate to the UK. However, this is a case where the Secretary of State has granted leave to remain to parents and siblings in recognition of the care needs and family life of a vulnerable young person. Adequate support arrangements were in place for the Appellant herself in India so long as her grandmother was alive. However, her death clearly potentially leaves the Appellant in the situation of a "stranded sibling" abroad without the close family support that she would otherwise receive. I do not consider that the First-tier Tribunal can simply make a decision on the basis that [M]'s application has been refused, given that there is a pending legal challenge to that decision. Besides, Tribunal appeals must be determined on their merits, not simply on the basis of the legality of Home Office decisions, and so all relevant considerations fall for assessment within their compass.
21. For these reasons I consider that the appeal needs to be re-heard afresh.

Decision

The appeal is allowed to the extent it is remitted to the First-tier Tribunal for re-hearing.

Signed

Date 24 April 2019

A handwritten signature in black ink, appearing to read 'M.A. Symes', with a long, sweeping underline that extends to the left and then curves back under the signature.

Deputy Upper Tribunal Judge Symes