



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/14908/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 9<sup>th</sup> May 2019

Decision & Reasons Promulgated  
On 28<sup>th</sup> May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

D V P  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms R Chapman, Counsel

For the Respondent: Mr Bramble, a Home Office Presenting Officer

**DECISION AND REASONS**

**Background**

1. The Appellant was born on 25<sup>th</sup> November 1984. He is a male citizen of India.
2. He applied for leave to remain on 12<sup>th</sup> January 2018. The heart of his case is that he suffered an accident at work in 2012. His right (dominant) hand was crushed by a fork lift truck. This caused significant damage. Following surgery and numerous interventions he has been diagnosed with a complex regional pain syndrome. He is

unable to use his right hand. He has been admitted to a mental health unit for inpatient treatment. In December 2016 he received a dorsal root ganglion stimulation implant for pain relief which requires ongoing checks and maintenance not available in India.

3. The Respondent refused the application on 3<sup>rd</sup> July 2018. The matter came before Judge Graves on 12<sup>th</sup> December 2018. The appeal was dismissed. Judge Kebede granted permission to appeal on 2<sup>nd</sup> April 2019. She stated:

“There is arguable merit in the assertion of the grounds that the judge failed to consider various matters relied upon by the appellant including the question of stigma and discrimination in relation to his mental health illness and his parents’ lack of knowledge of his condition which, when taken cumulatively, were arguably material. Whilst the other grounds perhaps have less arguable merit, I am satisfied that all grounds may be argued.”

4. Without seeking to do Miss Chapman’s additional grounds any disservice, I summarise them in this way. The medical evidence is that the technology to support the implanted pulse generator is not available currently in India, he would have difficulties in pursuing his personal injury claim from India, and the Judge erred in relation to the country and expert evidence, and the Appellant’s ability to work, be supported, and regarding his integration here.

### Submissions

5. There was no Rule 24 notice. Mr Bramble essentially submitted that the high threshold to establish an Article 3 claim was not reached even if the matters of concern had been included in the assessment. The nerve implants were not a particularly relevant factor because the injury was not life threatening and treatment is available in India. There are no very significant obstacles to the Appellant returning to live in India. The Judge does not have to set out everything and did refer to the mental health issues. The litigation can be concluded with him being abroad because liability has been established and it is simply a matter of quantum being determined. The grounds amount to no more than a disagreement with the decision which is thorough.
6. Ms Chapman relied on her original Grounds of Appeal. This was primarily a case being brought under [276ADE] of the Statement of Changes in Immigration Rules HC 395 (“the Rules”). One must look at human rights through the prism of the Rules. The findings were not adequate. The issue of stigma should have been considered as it feeds into the findings. His disability means it will be difficult for him to work. He will be confined to his local village which has not been taken into account. The Judge has not taken into account the evidence from the Appellant’s personal injury solicitor as to the difficulties in taking instructions from him were he not in the United Kingdom. There was no consideration regarding the impact on the Appellant’s physical and moral integrity. She accepted that it was a careful decision, but, when the factors she had identified were looked at cumulatively, they could have made a difference.

Judge Grave's consideration of the evidence

7. The Judge Stated at [14] of the judgment:

"I asked what evidence there was of the impact of removal on the appellant. Ms Chapman directed me to the psychiatric report, but said because it was commissioned for the personal injury claim, the main thrust of that report related to that claim, and of course the issues were not necessarily the same as those in this appeal. I asked if it was correct that the report appeared to find that the appellant could work, albeit with some support. Ms Chapman said that was a correct reading of the report, and the appellant lived above a shop, with his friend. I asked if it was an accurate reading of the report (p.94) that the appellant had denied any suicidal ideation, and Ms Chapman said that was correct. She said the report showed that the appellant's mental health continued to improve, but there was continued psychological disturbance (p98-99), but this was based on his living in this country. He was on a high dose of Quetiapine (p.92)."

8. The Judge continued at [15]:

"I asked about the evidence of availability of treatment for the appellant's condition, mindful that the respondent says treatment was available for the appellant's mental health problem in India, and for the type of pain relief treatment as well. She said (p.1) that the specific type of implant the appellant had was not available in India, although other types were. I asked about affordability of care and treatment, and Ms Chapman directed me to the US Department of State report and expert report. I asked if the experts could indeed be said to be suitably qualified in the field of access to medical services, suitability, affordability and so on in India, when the report said they were lawyers and did not address qualifications in that field. Ms Chapman went through the report with me, and said that at least one member of the team who had written the report worked at grass roots level in India, albeit as a lawyer, and the lawyers had contacted hospitals and spoken with doctors about what treatment was available. I asked to be addressed again in submissions, on whether only contracting agencies, without direct experience of issues surrounding accessing treatment in India was sufficient. When asked about the personal injury claim, Ms Chapman explained that the appellant was seeking a settlement in the region of over £50,000. I asked why the appellant was saying such a claim could not be pursued while he was in India, and was directed to an email from the lawyer with responsibility for that claim, which said it would be difficult to take instructions remotely. The trial was set for September 2019, if it went ahead."

9. Within [18] it states:

"His specialist treatment from Dr Brener at St Thomas's Hospital was privately paid through interim payments from the personal injury claim, (I noted that was around £3,200 according to the medical documents), but the rest of his treatment was on NHS and he only paid for his prescriptions, and did not pay for other medical treatment from his GP or the psychiatrist."

10. The Appellant's family circumstances were noted in [19]:

“...his mother had rheumatoid arthritis and has difficulty walking, and his father was very old and had been bitten by a snake, and due to the lack of specialist medical facilities in the area, he had problems with the poison... his friend Jignesh supported them by sending money home. His dad would cook for his mother and his aunts from the village came to the family home and did domestic chores for them as well. They lived in a village in a rural area.”

11. His work ability was noted in [20/21]:

“he would only be able to work with one hand. Most days were bad although some were good and there was also his mental condition.” “...the family home ... was owned by one of his aunts, only his parents lived there, he had no siblings. He only had his cousin and aunts, who lived a ten to fifteen minute walk from his parents’ home.” “... they were helping his parents because Jignesh was sending them money and they would not help him.”

Jignesh “...did ask the appellant to served people at the till, but he found it difficult. He could fill things, or move things, put things away, but had to be shown what to do. He did not always remember what a customer had asked for.”

12. His care needs were noted in [22/23]. He could not:

“manage in his home village...His dad was seventy four and his mother was on bed rest with arthritis. They could not look after the appellant. The family did take the father to hospital for appointments but that was the only help they provided.”

Jignesh “...did the washing up and washed the appellant’s clothes. He did up the appellant’s shoe laces...he gave him a bath two or three times a week.” He could not continue to support him in India “...because his wife was coming to live in the United Kingdom to live with him and there would be lots of expenses. Healthcare was very expensive in India, and if the appellant was sent back, he would have a break down.”

Judge Grave’s judgement

13. In relation to health conditions and treatment, the Judge in particular noted the report from Dr Brener (15<sup>th</sup> October 2018) at [27] that the Appellant was:

“ ‘clearly better than when I last examined him’, still having some auditory hallucinations, he was having flashbacks of the accident, but was able to have more eye to eye contact and his speech was more fluent. He was still suffering with present and constant pain in his hand, although less than previously and had back pain, but was trying to get out of the house as much as possible. He was going to temple each week and getting out to see a few friends. He was going out alone to temples sometimes, and seeing his counsellor and GP alone, could deal with money and change, do light shopping and meet friends in town alone. He had been helping in the shop downstairs for two or three hours on a weekly basis, putting things on shelves, and had served a few customers from the till, with support and encouragement. He reported that: “when he feels better he can do more...if there are auditory hallucinations or his mood is particularly low, he cannot leave the house.’ ”

And at [28] that;

“The appellant had been diagnosed with Post Traumatic Stress Disorder with depression..., was ‘feeling better’ after a change in medication, he was still hearing some voices, but ‘his mood had lifted a little’, he was still experiencing hypervigilance, but his sleep had improved, he denied ‘suicidal thoughts’, and was seeing a counsellor, but had been referred back to his GP by secondary mental health services, and was getting ‘minimal input’ from them. He still had symptoms of his illness but ‘these are less significant’ and was ‘certain’ that he was ‘much better as far as it goes’. In terms of work, he could deal with money and follow instructions to work in a shop, such as stacking shelves. In terms of future mental health treatment, he would still need input ‘for at least a year or so’, such as therapy and medication...factors could ‘lead to a worsening of his mental state’ such as immigration matters.”

And at [29] that;

“In terms of medication, the appellant is taking Quetiapine, for mood stabilisation, Pregabalin for nerve pain, Paroxetine and Mirtazapine, and has a spinal cord stimulator (p.195). He remains under the care of his GP, and has talking therapy. He was previously hospitalised for a lengthy period in 2014 and 2015. His specialist psychotherapist ... found him to have ‘still significantly reduced mental health’, that was ‘improving’, with no current ‘active suicidal thoughts’ (p.196).”

And at [30] that;

“In terms of physical health, the appellant receives... medication, and the spinal implant, and has loss of function and use of his right hand and arm. He has also reported pain in his shoulders and back. He reports high level of pain.”

And at [31];

“in terms of the appellant’s care needs, his psychotherapist described him as being ‘mostly independent with self care’, but needing help to wash his hand and forearm, and relying on support from his friend to shop, cook and clean, although as above, Dr Bremer found he was doing some shopping and was getting out and about.”

14. The Judge found at [32]:

“that the appellant does have mental health problems, but they are currently improving, although he still suffers with symptoms of his PTSD and low mood. The evidence is not sufficient to demonstrate that the appellant would suffer catastrophic or major deterioration or increased risk of suicide if removed, although I find it likely that the appellant would suffer some deterioration in his mental state. However, steps could be taken to manage that, such as support, therapy, and communication with doctors in India and in advance of any removal date. The respondent can take steps to provide mental health support during the process of removal. He would also be returning to the support of family, and could live with his parents, with whom he maintains a close relationship. In terms of his mental health, I find that it has not been established

that the actual process of removal would have such an impact upon his mental or physical health, that it would breach the high threshold in Article 3.”

15. The Judge then considers the availability of treatment in India and states:

At [33];

“that the respondent has referred to evidence of available mental health services, specialist psychiatric care and medication for mental health problems, and the appellant has not established that such treatment would not be available or accessible to him. I find his friend has not addressed why, if he is currently supporting the appellant financially, paying for all of his living costs and providing free accommodation for many years, as well as supporting the appellant’s parents in India, he would suddenly stop providing such support if the appellant were sent to India. The evidence also does not support a finding that the appellant could not work. While I accept he suffers from mental health problems, he is currently doing part time work in this country, albeit with support, and also has family close by in India, who are already supporting his parents. He has not established why he could not also work in India, although I accept heavy physical work or similar would of course not be suitable, he already works in two shops, and his qualified and educated. He was previously hoping to qualify as an accountant.”

At [34] in relation to the experts report that;

“it has not been established that the writers of that report are sufficiently expert in the distribution, accessibility and access to medication and treatment in India.... I find that while treatment of a specialist nature may not be to the same standard as that available in the United Kingdom, and there may be more issues in rural areas, there is a functioning healthcare system, with access to doctors and medication both in rural areas and cities.”

At [35] the Judge stated;

“I do accept that the appellant suffers from high levels of pain and loss of function in his hand and right arm, but he does have other physical function. He says the specific type of implant he uses is not available in India, but the respondent says other similar types of implant are available there, and the appellant has not said that he could not use them. It has not been established that treatment for his condition would be beyond his reach, financially, practically, or that despite living in a rural area, he could not travel further afield to seek treatment. I accept that the photographs of his home suggest that the conditions are basic there, but he is largely independent with self care, and this is his home, where he lived most of his life and where his parents live, and he has not established that he would be destitute, homeless, or that the conditions there breach Article 3.”

16. The Judge then considers the availability of treatment in India and states:

At [37];

the “appellant does not have family life here.... it has not been established that the appellant would suffer very significant obstacles in his re-integration in

India... his health and vulnerability would make things more difficult for him, but it has not been shown that he could not revisit his ties and connections to the country of his own nationality. He speaks the languages, and will have strong cultural, familial and social ties there, built up through childhood and adulthood. His family do live in a rural area, but he could return to live with them... while his family home may be basic and in poor repair, those are the same conditions the appellant was raised in and are not unusual for many parts of the world... they are not a very significant obstacle to his re-integration, and even taking into account his mental and physical health problems, it has not been established that he could not access treatment, further education or employment if he so chooses."

And at [38];

"I accept that removal may impact upon his health, but his family could support him emotionally and there are health services available in India. Nor do I believe that his friend here, who has been so supportive for so many years, would abandon the appellant and his family only because he has returned to India."

And at [39];

"It is not clear what, if any, quantum of damages the appellant will ultimately receive through his personal injury claim. However... quantum now appears to be the main issue in dispute and the appellant has already been receiving interim payments, after some initial acceptance of liability. If he does receive further money from this claim, that money would also serve to facilitate the appellant's access to services and support, as well as treatment, and would go a considerable way towards improving his living circumstances in India."

17. In relation to Article 8 the Judge found that:

At [42];

The "appellant has a private life here, established over the nine years of his residence, formed through friendships, work and studies. He does not have a family life here and his family all live in India... He was initially resident here only as a student, which is a route that does not lead to settlement. His leave was only precarious and since then he has been unlawfully present. He would have at all times have been aware that he could be returned at any time to India."

And at [43];

"The appellant has also not demonstrated that he is integrated here, through speaking English. While he is not a burden on the social assistance system now, he is receiving a significant amount of specialist healthcare and intervention, and has not paid for the majority of that treatment. It is likely that he will continue to be reliant upon support and treatment for some time, although if he does receive a settlement from his claim that would reduce the likely burden of his care that lies upon the state."

And at [44];

"The evidence does not support a finding that his removal would trigger a substantial deterioration in his mental or physical health. There is insufficient

evidence to establish that adequate and appropriate treatment is not accessible, affordable or available there ...even while he may not regain the use of his hand and arm, the prognosis is not so bleak that he cannot work again, even taking into account his mental health problems. He is already doing some part-time work that requires some physical tasks, and can manage money. I find that it has not been established that with support, he could not return to work again."

18. In relation to this personal injury claim the Judge stated [45]:

"The appellant's solicitors in that claim say that at times it is difficult to take instructions from him, and it would be easier to pursue the claim if he was physically present at meetings. However, I find it has not been established that the appellant could not instruct the solicitor by modern means of communication, by telephone and the use of the internet and online video conferencing. If his physical attendance at trial is required... it will be open to him to seek a visit visa, if he cannot give evidence and instructions by video conferencing. Such facilities are available in India ... litigation can and does continue with an appellant in a different country."

### Discussion

19. I have set out the evidence and findings in detail as one only has to read them to see that great care was taken by the Judge to consider the evidence, and that the Judgement was detailed. The Judge does not have to set out every single piece of evidence.
20. The Judge considered the evidence regarding his parents' circumstances and support available in India (see Judgement at [15, 19, 20, 22, and 23]) and made findings available regarding how that would continue and adequately provide for him on his return (see [32, 33, 34, 37, and 38]). It has not been evidentially established that he would be stigmatised by his parents or other family in India or discriminated against due to his condition, or that consequently they would reduce the support he requires for that. In essence, the Appellant has guessed based on a generality that is not supported by specific evidence that his parents and other family members would act in that way. The Judge did not therefore need to particularise the country evidence any more than was done, and which did not materially differ from the other evidence available.
21. The Judge was aware that the technology to support the implanted pulse generator is not available currently in India (see Judgement at [35]), and made evidence-based findings that alternative treatment was available. The fact that alternative treatment for a non life-threatening ailment may require additional surgery to ensure it can be subsequently supported by the technology and medication available in India does not mean that it would be disproportionate to remove an Appellant.
22. The Judge was aware of the difficulties in pursuing his personal injury claim from India, (see Judgement at [15]), and made evidence-based findings (at [39]) that such litigation as remained could be pursued either with him being in India or by him applying for a visit visa to return should it be required.



23. The Judge considered the expert evidence carefully (see Judgement at [15]) and made evidence-based findings (see [34]) as to why the opinion contained therein was not accepted.
24. The Judge considered the evidence regarding the Appellant's ability to work (see Judgement at [14, 20, 21, 27, and 28]) and made findings available on that evidence (see [33 and 37]).
25. The Judge considered the evidence regarding his integration here (see Judgement at [20, 23, and 27]) and made evidence-based findings (see [42 and 43]) on its limited weight.
26. I am satisfied that all of the findings made by the Judge were available on the evidence. The grounds amount to nothing more than a disagreement with those findings. The Judge was well aware of the concerns about his physical and mental health problems he may have on his return to India. The Judge was entitled to find that no factor individually, and no combination of factors, tipped the proportionality balancing exercise in the Appellant's favour.
27. I am not satisfied there is a material error of law and I dismiss the appeal.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

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.

Deputy Upper Tribunal Judge Saffer  
23 May 2019



**TO THE RESPONDENT - FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Deputy Upper Tribunal Judge Saffer  
23 May 2019

