



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

Appeal Number: HU/16586/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 6 June 2019**

**Decision & Reasons Promulgated  
On 13 June 2019**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**PPN**  
(ANONYMITY DIRECTION MADE)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms A Bailey-Perkins, solicitor Solacexis Solicitors  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge H Clark, promulgated on 20 March 2019. Permission to appeal was granted by First-tier Tribunal Judge Hollingworth on 24 April 2019.

Anonymity

2. No direction has been made previously, and there is no reason for one now

### Background

3. The appellant entered the United Kingdom as a student on 18 October 2009. She was granted further leave to remain in the same capacity until 18 August 2014. She made an in-time application for further leave to remain as a student which was refused with a right of appeal. That appeal was dismissed on 12 June 2015 and the appellant exhausted her rights of appeal on 22 October 2015. On 9 November 2015, the appellant made further submissions which were refused in letters dated 25 June 2016 and 14 September 2016 without a right of appeal. On 7 December 2016 an enforcement visit was made to the appellant's home address during which she was served with the decision refusing her further submissions. The appellant's current solicitors made further submissions on 14 December 2016 which were based on her health and a previous relationship with a British citizen. Several additional sets of further submissions were made between 24 November 2017 and 17 July 2018, which culminated in the decision under appeal, dated 26 July 2018 to refuse her human rights claim.
4. In refusing the human rights application, the respondent decided that the appellant's relationship did not fall for consideration under the Rules because of its short duration. Otherwise it was noted that the appellant did not meet the requirements of paragraph 276ADE and there were no very significant obstacles to her integration in India. The respondent considered the appellant's confirmed medical problems, her relationship, her estrangement from her family in India and her closeness to her cousin and her family but concluded that these did not amount to exceptional circumstances. It was noted that her cancer had been treated and that she could obtain follow-up appointments in India. The respondent concluded that the United Kingdom's obligations under Article 3 ECHR would not be engaged.

### The hearing before the First-tier Tribunal

5. The appellant, her cousin and a friend gave evidence before the judge. The Tribunal dismissed the appeal for the same reasons given by the respondent.

### The grounds of appeal

6. The grounds of appeal were fourfold. Firstly, it was argued that the judge made a number of legal errors. Secondly, that the judge made factual errors regarding the appellant's mental and physical health problems, the affordability of care and lack of support in India and aspects of the appellant's private life in the United Kingdom. The third ground contended that the judge failed to attach appropriate weight to the documentary evidence provided by the appellant which addressed her mental and

physical state, her vulnerability, lack of emotional and financial support in India and the pollution and unhygienic living conditions there. Fourthly and lastly, it was submitted that the judge entered into speculation regarding the assistance which she found would be available to the appellant in India.

7. Permission to appeal was granted for the following reasons.

*“It is arguable that the judge has attached insufficient weight to the cumulative effect of the concatenation of issues advanced on behalf of the Appellant. At paragraph 58 the Judge went on to refer to the most obvious difficulty in relation to access to healthcare of the same quality. The judge dealt with that matter by stating that in circumstances where this did not amount to a breach of Article 3 it could not amount to a very significant obstacle. It is arguable that the ostensibly discrete approach adopted by the Judge has militated against the attachment of sufficient weight to the cumulative effect of the issues raised. It is arguable given this approach to the question of the fulfilment or otherwise of the Immigration Rules that the proportionality exercise has been affected.”*

8. Permission was not refused on any ground.

#### The hearing

9. Ms Bailey-Perkins relied on her skeleton argument and argued that there was substantial evidence before the judge which fell within the ambit of Article 8. She referred me to the substantial appellant’s bundle which contained evidence of the appellant’s medical issues; stating that the respondent did not refute any of it. She argued that the judge’s assessment of that evidence was erroneous both in relation to whether there were very significant obstacles to the appellant’s re-integration in India or unjustifiably harsh consequences under section 117B. Ms Bailey-Perkins further argued that the judge’s consideration of the appellant’s claim in the context of her precarious leave did not show the element of flexibility permitted by *Ruppiah* [2017] UKSC 0075. Furthermore, she argued that the judge erred in her findings as to the appellant’s financial independence, given that the appellant was supported by her cousin. She urged me to set aside the judge’s decision.
10. Ms Everett argued that there was no error of law in the judge’s decision. She said that it was a misreading of the decision to say that the judge decided there were no very significant obstacles applied because Article 3 was not breached. Read in isolation it might appear that very significant obstacles were not considered but in the preceding paragraphs the health issue was looked at. Ms Everett conceded that it was a step too far to say that case would not succeed in any event. She contended that the submissions on behalf of the appellant were largely an attempt to reargue the case and that there was no factual disagreement.

11. In response, Ms Bailey-Perkins reiterated that the judge had not considered the appellant's circumstances in totality and had separated the health concerns from the Article assessment.

#### Decision on error of law

12. The judge stated at [58], "in circumstances where this does not amount to a breach of Article 3, it cannot amount to a very significant obstacle to integration for the purpose of Article 8." This approach is an overly restrictive interpretation of *GS (India)* [2015] EWCA Civ 40 given that the Court of Appeal said that a claim was unlikely to succeed under Article 8 if an Article 3 claim failed, unless there was "*some separate or additional factual element which brings the case within the Article 8 paradigm.*"
13. A further error made by the judge was in concluding that the appellant was not economically independent in circumstances where it was accepted, including by the judge, that the appellant was financially dependent upon her cousin. In *Ruppiah* at [55] it was held that, financial independence in section 117B(3) means an absence of financial dependence upon the state.
14. The judge applied section 117B (5) of the 2002 Act which required her to give little weight to the appellant's private life owing to her precarious stay at [61]. However, that requirement was subject to section 117A(2)(a), which conferred on her a limited degree of flexibility, *Ruppiah* considered. When considered with the judge's error in relation to section 117B (3), a different outcome may have ensued had the judge considered that she had a small degree of flexibility under section 117A(2)(a).
15. The above-mentioned matters amount to material errors of law. Consequently, the conclusions of the judge are set aside.
16. Ms Bailey-Perkins invited me to immediately remake the decision and the appeal proceeded by way of submissions alone. A full note of the submissions made is set out in my note of the hearing. The appellant was present with SL and did not give evidence, other than to clarify a couple of points. She stated that she was in considerable pain and it appeared to me that she was in some discomfort. Ms Bailey-Perkins argued that there were very significant obstacles to the appellant's reintegration in India and in the alternative that her removal from the United Kingdom would amount to an unjustifiably harsh outcome and a breach of her private and family life.
17. Ms Everett argued that the requirements of the Immigration Rules had not been met and urged me to exercise caution regarding the assertions made regarding the availability of healthcare in India and risks relating to forced marriage, regarding which the evidence before me was inadequate.

She did not challenge the appellant's circumstances in the United Kingdom including her health concerns and her close relationship with her cousin. At the end of the hearing I reserved my decision.

### Remaking

18. From the considerable material before me which includes witness statements and medical evidence, the appellant's circumstances can be summarised as follows. She has been resident in the United Kingdom for 9 years and 8 months having arrived here at the age of 18 with leave to enter as a student. She has not returned to India since. Her studies were sponsored by her cousin SL, who accommodated the appellant following her arrival in the United Kingdom to the present day. SL is married with two children now aged 11 and 15. The appellant studied marketing in the United Kingdom initially and then commenced the ACCA programme after she was granted further leave to remain and continued with that programme until August 2014. Her timely application for further leave to remain was refused, according to the decision of First-tier Tribunal Judge KW Brown (IA/46969/2014) promulgated on 10 June 2015 because the appellant had no Certificate of Acceptance for Studies (CAS) at the time of her application. In her grounds of appeal in relation to that appeal, the appellant explained that she had been unable to obtain a CAS because most of the colleges had been closed down or had their licence suspended and that she requested some time to "get her life settled."
19. In mid-2015, the appellant found a lump in her neck and by September 2016 she had been diagnosed with thyroid cancer. The appellant underwent surgery during October 2016 and had radioiodine treatment in February 2017. Unfortunately, another cancerous lump was found and she had further surgery in July 2017 and radioiodine treatment shortly afterwards. While the appellant remains under the care of an oncologist to date, this mainly consists of further tests to check the appellant remains free of cancer.
20. The appellant has a range of other medical problems. She suffers from severe migraines since being treated for cancer as well as constant pain in her neck and back. These back pains worsened after she was involved in a road traffic accident while a passenger on a bus in 2018. The appellant continues to suffer from thyroid problems which causes her to suffer from dizziness, severe migraines and nausea as well as sensitive teeth. In addition, she suffers with numbness in her hands and cannot grip things. She explains that this has had an impact on her ability to undertake activities of daily living such as squeezing toothpaste, opening medication, getting dressed, doing her hair, cooking and shopping. The appellant's cousin SL provides her with practical support with day to day tasks and attending hospital appointments as well as high levels of emotional support. In addition, SL provides the appellant with free accommodation and food as well as contributing monthly to the costs of the appellant's treatment on the NHS. As well as physical health complaints, the appellant

is suffering from symptoms of mental illness for which she has been receiving counselling since March 2019.

21. There is a wealth of supporting medical evidence before me which confirms that the appellant has been treated and is currently being treated or investigated by the oncology, endocrinology, dermatology, ENT, MRI, neurology, neurophysiology, pathology, physiotherapy, cardiology and pain management departments of the Surrey and Sussex Healthcare NHS Trust. In addition, there is confirmation of her counselling sessions. The appellant's presentation before me was not incongruous with the medical evidence, in that she appeared physically frail and vulnerable.
22. The appellant brought up to date evidence of her forthcoming appointments and investigations which was not before the First-tier Tribunal. Of note were the following items.
23. Correspondence from Surrey and Sussex Healthcare confirming that the appellant underwent surgery and radioiodine treatment in 2016 and that she also underwent a "total thyroidectomy with level 2, 3, 4 neck dissection and excision of a mass between the internal jugular vein and subclavian" in July 2017 owing to thyroid carcinoma and that she had radioiodine treatment for the second time.
24. The appellant has been diagnosed with bilateral carpal tunnel syndrome, which was most recently referred to in a letter from the Sussex MSK Partnership dated 30 April 2019. The letter states that the appellant's endocrinologist was of the view that her high thyroid levels were causing this issue and that if the levels were stabilised the symptoms in the hands may settle. It is apparent from this letter as well as other evidence that the appellant has declined injection therapy and would prefer that her symptoms were monitored. The appellant's symptoms are to be reviewed by both the endocrinology and Hand and Wrist departments.
25. An ultrasound report dated 28 May 2019 revealed that a 32mm cyst had been observed on the appellant's left ovary.
26. A detailed letter dated 13 May 2019 from a physiotherapist who examined the appellant explained that she had reduced sensation to light touch on the left side, that she had reduced range of movement in her shoulder on one side and that her grip strength was 50% reduced. The therapist remarked that even very light touch to the patient's spine provoked high levels of pain which she was unable to tolerate. The goals of treatment were described as "pain relief, increased movement and increased ease in getting dressed."
27. The clinical impression formed by the physiotherapist was that the appellant's symptoms were neurogenic in nature and originating in the neck and that he had cautioned that a target of pain management rather than resolution was realistic. The appellant was referred to the spinal clinic to determine if the pain originated in the cervical spine.

28. A report from the Pain Medicine Department dated 21 May 2019 written after the appellant's examination on the same day confirmed her complaint of neck pain and headaches which became much more severe since the thyroidectomy in 2016 and that she was suffering from tingling and numbness in both sets of fingers, but more so on the left side. The consultant who examined the appellant formed the impression that the appellant was suffering with "*migraine with post-surgical neuropathic neck pain and possible radicular left arm pain,*" booked an MRI spinal scan to rule out any "radicular component" and prescribed topical creams in the interim. The MRI scan took place on 3 June 2019, the results of which were not apparent in the evidence before me.
29. The appellant has a number of further appointments arranged. In June 2019 there are two appointments with physiotherapists at the Hand and Wrist Clinic and another with the Endocrinology department.
30. In July 2019, the appellant has an ENT appointment, in September 2019 she has an appointment with the Neurology department as well as a further appointment with the Pain Management department in October 2019.
31. In relation to the appellant's mental health, there is confirmation in the form of a letter from Sussex Community NHS Foundation Trust dated 8 May 2019. The letter states that the appellant was referred for help in February 2019 regarding her low moods and anxiety and underwent a telephone assessment on 13 March 2019. The appellant was referred to the Olive Tree and has received support. During the hearing, I saw the appellant's appointment cards which showed appointments arranged for 17 April, 15 May, 29 May and 12 June 2019.
32. An affidavit from the appellant's parents signed on 4 January 2019 sets out their circumstances in India. They live in a named village, described as remote, in Gujarat State in a bedroom house with one of their daughters who works as a labourer to support the family. The appellant's father no longer works owing to mental health issues and her mother can no longer work as a labourer because of her bad back. They are not in a position to support the appellant let alone pay for her care and treatment for her medical conditions and they are concerned about her life being at risk due to a lack of any hospital in the area as well as owing to a lack of hygiene and the prevalence of various diseases including malaria.
33. The appellant's cousin SL provided a detailed statement which confirms her close relationship to the appellant and the appellant's close relationship to SL's sons who were aged 1 and 4 when the appellant arrived in the United Kingdom in 2009. The statement explains that the children refer to the appellant, whom they adore, as their big sister and that the appellant takes an active interest in the children and their education. SL considers that her children will feel a tremendous loss if the appellant is removed. SL confirms that she has been providing the appellant with personal care, accommodation, emotional and financial

support. In particular, SL takes the appellant to her medical appointments, attends those appointments, contributes to the cost of NHS treatment and helps the appellant with basic personal tasks such as getting dressed, combing her hair, cooking and shopping. She further confirms that the appellant suffers from severe neck and back pain, migraines, nausea, tooth sensitivity, a lack of taste, skin allergy, numbness and mental health issues.

34. SL is concerned with the obstacles and struggles the appellant would have to face if removed to India. SL also expresses concern that the appellant will be forced to endure an arranged marriage, which she considered a shame given the appellant's previous educational achievements.
35. The appellant's concerns regarding being removed to India can be summarised thus. That she would lose the support provided by SL, that she is concerned about her survival owing to her health problems, that she is concerned that she would be unable to find work due to her illness, that her presence would adversely affect her parents and that she is worried that she would get an infection owing to the lack of hygiene in her family home in India or owing to air pollution. That home was described as a one-bedroom house which lacked running water or toilet facilities and which was situated in a remote village. In addition, the appellant doubted that she would be able to access appropriate medical treatment and that she believed that her parents would try to marry her off, perhaps by force. On the last two points, I was referred to no objective evidence to support the claim that there was no treatment for the appellant's conditions anywhere in India nor any evidence she was at risk of being forced to marry. I do, nonetheless, accept that the appellant's parents may wish to arrange a marriage for her, as they have for her older sisters and are in the process of doing for the sister who is currently still at home.
36. There has been no challenge raised as to the appellant's medical condition or the level of pain and disability she experiences and no challenge has been raised that the appellant, although an adult remains financially, emotionally and practically dependent on her cousin.
37. Considering all of the evidence in the round, I conclude that the appellant would face very significant obstacles to her reintegration in India because of the longstanding severe pain she experiences in her neck and back which is unlikely to resolve according to her consultant, as well as her inability to care for herself owing to the carpal tunnel syndrome, without considerable assistance. Whilst the appellant has parents and sisters in India, the evidence is that her parents are not in a position to take care of her practical needs because of their own health issues, two older sisters are married and the last remaining sister at home supports the family from labouring and efforts are being made to find her a husband in any event.



38. The appellant has not returned to India since leaving in 2009 at the age of 18. I further accept that the conditions the appellant would be returning to would present additional difficulties in terms of self-care. During the hearing, I heard that the appellant would have to travel to a source of water in order to wash and that she would be required to use the outdoors for her toilet needs as she did during her childhood. This is relevant given the evidence of the support she requires from SL to dress and attend to her appearance. The evidence before me is that it is SL who accompanies the appellant to medical appointments since she was first diagnosed with cancer in 2016. I am bound by *GS (India)* and fully accept that a claim is unlikely to succeed under Article 8 if an Article 3 would not succeed, unless there was "*some separate or additional factual element which brings the case within the Article 8 paradigm.*" The additional element in this case, is the appellant's dependence upon SL and the private and family life she has developed with her and her family over close to a decade.
39. The background evidence shows that, in general, medical treatment is available in India and I find that it is likely that SL would do her best to continue to support the appellant financially in the same way she and her husband pay for the medical costs relating to her parents-in-law who live in India.
40. It is difficult to see how the appellant would access this medical treatment given her frailty and need for constant support. I accept that it is likely that without the practical support of someone who can care for her in a similar manner to that provided by her cousin including accompanying her to see specialists, that her physical and moral integrity would deteriorate. I consider that these factors amount to very significant obstacles to her reintegration in India and that the requirements of paragraph 276ADE(1)(iv) are met.
41. If I am wrong on the foregoing conclusion, I consider that Article 8 outside of the Rules is engaged for the same reasons. The appellant has established a private and family life in the United Kingdom based on her length of lawful residence and as a dependent on her cousin who is a British citizen. The appellant's entire adult life has been spent in the United Kingdom and she has been educated here. In addition, she suffers from a number of serious and debilitating physical conditions which stem from the life-saving treatment she received for cancer which require ongoing treatment and investigation. The removal of the appellant to India would create an interference because she would be separated from her cousin's support, the ability to access ongoing medical treatment and this would place her at risk of infection and further deterioration of her health. The appellant's relationship with SL is akin to mother and daughter as opposed to cousins and amounts to family life owing to her high level of dependency on SL. I consider that the extensive support provided by SL since the appellant became unwell has led to strengthened bonds with her cousin and goes beyond the normal emotional ties between adult relatives. SL's children treat her as an older sister. That level of support

cannot be replicated by the appellant's parents because of their own health issues. Nor can an equivalent level of support from SL be provided via modern means of communication and financial remittance.

42. Such proposed interference would ordinarily be in accordance with the law, putting to one side my earlier decision in relation to paragraph 276ADE(1)(iv). In terms of proportionality, the Tribunal is required to strike a fair balance between the rights of the individual and the interests of the community. The public interest in this case is the preservation of orderly system of immigration control. I find that in this case, the level of interference would be significant, that it would result in unjustifiably harsh consequences for the appellant and that it would not be proportionate. In carrying out the proportionality assessment, I have taken account of my findings above. In assessing the public interest, I have taken section 19 of the Nationality, Immigration and Asylum Act 2002 into account. Section 117B (1) provides that the maintenance of effective immigration controls is in the public interest.
43. The appellant speaks English and obtained qualifications in the United Kingdom before her cancer diagnosis. She is financially dependent on her cousin. While her medical treatment is arguably a reliance on public funds, there is evidence that SL is contributing to that cost and in any event, the appellant has lived in this country without breaching immigration laws. These are neutral issues in the balancing exercise and I have therefore attached no weight to the appellant's side of the balance sheet in considering them.
44. The appellant was granted limited leave to enter the United Kingdom as a healthy 18-year old and could have had no expectation that she would be permitted to stay permanently. Indeed, she had no such intention. Regrettably, her stay was extended owing to her to her cancer diagnosis and treatment and she is still dealing with the medical repercussions of that.
45. Whilst the appellant's stay in this country is precarious to the extent that she entered the United Kingdom for a temporary purpose and sought to extend her leave on either the same basis or on human rights grounds, given the length of residence she has now attained of close to 10 years and the reason for her continued presence here, I place less weight on that matter. The public interest lies in maintenance of fair and consistent immigration controls. In this instance the exceptional factors are such that when taking all matters into account, the interests of the appellant outweigh the public interest. I find that the balance comes down in favour of the appellant. I find that the appellant has shown, on the balance of probabilities, that the decision is a disproportionate breach of her rights, and those of SL and her family, to a family and private life under Article 8 ECHR.

## Conclusions

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision to be re-made.

I substitute a decision allowing the appeal on human rights grounds.

**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.

Signed

Date

Upper Tribunal Judge Kamara

**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a whole fee award of any fee which has been paid or may be payable for the following reason. The appeal is allowed on the same or similar evidence to that which was before the Secretary of State prior to the decision under challenge.

Signed

Date:

Upper Tribunal Judge Kamara