Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/23938/2018

THE IMMIGRATION ACTS

Heard at The Royal Courts of Justice	**Decision & Reasons Promulgated**
On 2 September 2019	**On 12 September 2019**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SIMARJIT KAUR
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr T Lindsey, Senior Home Office Presenting Officer
For the Respondent: Mr A Mackenzie, Counsel, instructed by Cooper Tuff Consultants

DECISION AND REASONS

1. The Secretary of State for the Home Department (hereafter Appellant) appeals against the decision of Judge of the First-tier Tribunal Hoffman (the judge) who, in a decision promulgated on 28 May 2019, allowed the appeal of Ms Kaur (hereafter Respondent) against the Appellant's decision of 13 November 2018 to refuse her application for leave to remain on human rights grounds.

Background

2. The Respondent is a national of India, born in June 1956. She entered the UK on 18 June 2005 as a visitor. She remained in the UK after the expiry of her entry clearance.

3. The Respondent, who left school at a young age and who is illiterate, was subjected to domestic violence from her husband when she lived in India. The domestic violence was perpetrated over a long period of time and sometimes occurred in the presence of the Respondent's children. The Respondent has no money or property in her name, has never worked and has no qualifications.

4. The Respondent's daughter was married when she was 18 years old to a British citizen in 1997 and she entered the UK in March 1998. She has two children born in October 2001 and March 2004. After a particularly violent incident of domestic violence in October 2004 the Respondent's daughter made arrangements for her mother to visit the UK. Although the Respondent did not intend to remain in the UK the sense of safety she experienced in this country and her growing anticipation of the abuse she feared would continue from her husband caused her to overstay. She remained living with her daughter and helped raise and look after her grandchildren.

5. The Respondent's youngest son arrived in the UK in April 2011 and was granted leave to remain on 13 March 2015 under the 10-year partner route. He had a son born in June 2014 and the respondent moved into her son's property in order to help with the child who suffered from eczema and to do the cooking and household chores. Another grandchild was then born. The Respondent continues to have a close relationship with her two children and her four grandchildren.

6. On 20 November 2015 the Respondent made a human rights claim for leave to remain but this was refused and certified under S.94 of the Nationality, Immigration and Asylum Act 2002. After further representations the Appellant refused the application under paragraph 276ADE of the immigration rules. The Appellant was not satisfied there were very significant obstacles to the Respondent's integration in India given that she lived in the country until the age of 49, spoke Punjabi and would have retained knowledge of how life was carried on and the culture of the country. The Appellant acknowledged that the Respondent was caring for her to grandchildren but found that she did not have parental responsibility as this laid with the Respondent's adult children. In reaching her decision the Appellant had regard to s.55 of the Borders, Citizenship and Immigration Act 2009. The Appellant acknowledged the Respondent's claimed to be a victim of domestic violence but considered that she could move to another part of the country. The Respondent's family and friends in the UK could provide her with financial support. The Respondent had not made an asylum claim and this was an option available to her. The

Respondent exercised her right of appeal under s.82 of the Nationality, Immigration and Asylum Act 2002.

The decision of the First-tier Tribunal

7. The judge had before him a number of documents including a statement from the Respondent, statements from the respondent's daughter and son, and two expert country reports authored by Dr Livia Holden, the first written in September 2016, and the addendum report written on 30 April 2019. The judge also had a report by Peter Horrocks, and Independent Social Worker, dated 21 February 2019.

8. The judge set out the requirements of paragraph 276ADE and s.117B of the Nationality, Immigration and Asylum Act 2002 and properly directed himself in respect of the burden and standard of proof. The judge heard oral evidence from the Respondent and her son. Their evidence was also subject to cross-examination by a Presenting Officer. The judge summarised the submissions from both representatives.

9. In the section of his decision headed 'Findings of fact' the judge accepted that the Respondent was a victim of domestic violence perpetrated from her husband in India. There has been no challenge to this factual finding. From [38] onwards the judge considered whether there were any 'very significant obstacles' preventing the Respondent from returning to India. The judge noted Dr Holden's evidence that women who did not comply with their male family members were said to bring dishonour to the family and that this could lead to ostracism or even honour killings. The judge noted that the Respondent left her husband in India in 2005 and that there had been no suggestion that she had been ostracised by her family either in the UK or India. The judge did not therefore accept that the Respondent was likely to be ostracised by her own family, and in particular her sister, if she returned to India on the basis that she left her husband.

10. At [42] the judge referred to Dr Holden's assessment concerning the lack of proper shelters in India. The judge found however that the Respondent would be able to live with her sister in India and that her children in the UK would make financial contributions to mitigate any risk that the Respondent would be a burden on her sister. At [43] the judge noted Dr Holden's assessment that poverty continued to be a decisive factor in the quality of life of the elderly in India but found that, as the Respondent would be able to live with her sister, she was unlikely to become destitute on return.

11. At [44] the judge was however satisfied that the Respondent's husband would discover, through family members or friends, that she had returned if she went to live with her sister. The judge found that, in the circumstances, the Respondent was likely to be subject to further abuse from her husband. At [45] the judge stated,

> "It is important to note that the [Appellant] has not sought to challenge either of Dr Holden's reports, not in the decision letter or at the hearing. I have carefully considered Dr Holden's most recent report where she writes of the difficulties that women face in seeking protection from the Indian authorities: see paragraphs 29 to 45. At paragraphs 29-31, Dr Holden writes that the [*sic*] it is difficult for women and [*sic*] India to bring domestic abuse cases to court due to an inadequate legal aid system, a poor disposal rate in courts for crimes against women and a lack of protection officers. At paragraphs 36 to 39, Dr Holden refers to inefficiency and corruption of the police. At paragraph 40, Dr Holden writes about the fear that women in India have of reporting family problems too, and, at paragraph 41, about general lack of trust that women have of the (mostly male) police. I therefore conclude that if the [Respondent's] husband was to discover that she had returned to the Punjab, it is unlikely that the [Respondent] could seek adequate redress from the authorities. Furthermore, the [Respondent's] brother has moved to Canada and she would be living in an all-female house while her nephew works in Dubai, which means they would be no males you could offer some level of protection from her husband."

12. At [46] the judge stated,

> "… finally, I find that it would not be reasonable to expect the [Respondent] to relocate to another part of India. Were she to do so, in the absence of family to live with, I find that it would be likely that she would be forced into destitution for the reasons set out in Dr Holden's reports."

13. The judge then considered the ISW's report relating to the Respondent's relationship with her son's two children but found that this was the sort of relationship that one would expect the average grandmother to have. The judge found that the Respondent was not the primary carer of the children and that, whilst it was in the best interests of the children for the Respondent to remain in the UK, this was not a paramount consideration. The judge stated,

> "Absent my findings of fact in relation to the risk that the [Respondent's] husband would pose to her in India, on its own I would not have been satisfied that the best interests of the [Respondents]'s grandsons would have outweighed the public interest in her removal."

14. At [50] the judge concluded that, although the Respondent could live with her sister in India and be financially supported by her children in the UK, her husband was likely to try to abuse her were she to return there and that the Indian authorities would be unlikely to provide her with an adequate degree of protection or legal redress against him. The judge found that this amounted to a very significant obstacle to her integration back into Indian life. He found that the Respondent met the requirements for leave to remain on the grounds of private life under paragraph 276ADE(1)(vi). The appeal was allowed on human rights grounds.

The challenge to the judge's decision

15. The written grounds contend that the judge "failed to utilise any objective evidence relating to the availability of protection for the [Respondent] from her husband and that there are no significant obstacles to her return to India." The written grounds contend that the judge failed to provide adequate reasons as to why internal relocation would not be a viable option. Given that the Respondent and her husband have lived apart since 2005 the judge's finding that the authorities were unlikely to offer her protection in India was speculative. The judge failed to refer to "recent objective evidence" in his determination. Country information for India apparently indicated that the authorities would offer adequate protection to the Respondent. The Respondent could return to India and live with her sister and receive financial support from her son.

16. In granting permission judge of the First-tier Tribunal P J M Hollingworth found it arguable that the judge gave insufficient reasoning on the issue of protection and made insufficient reference to "objective material in this context."

17. In his oral submissions Mr Lindsey accepted that the Appellant had not provided any "objective evidence" to the First-tier Tribunal, and that no application had been made to adduce any background country evidence pursuant to rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. Whilst it was not problematic for the judge to rely on the country expert's report, it was not sufficiently clear which of the reasons contained in the expert report were relied on by the judge in concluding, at [46], that the Respondent would be destitute if she was unable to live with her sister. The judge had already found that the Respondent's children in the UK could financially support her and there was no adequate finding as to why the children would be unable to financially support their mother even if she was not living with family members in India. It was submitted that the judge failed to apply the substance of the guidance provided in **SSHD v Kamara** [2016] EWCA Civ 813.

18. Mr MacKenzie relied on his Rule 24 Response. There had been no challenge to the judge's finding that the Respondent was a victim of domestic violence. The judge was entitled to find that the Respondent's husband would locate her and abuse her if she went to live with her sister. The judge properly considered the unchallenged expert reports and was entitled to accept the expert's opinion that the Respondent would be unable to seek adequate protection from the authorities. Dr Holden explained in her report why the Respondent could not obtain protection from the authorities or move to another part of India, in particular because she would be socially excluded and stigmatised, and the judge was entitled to accept the expert's opinion. Extracts from the CPIN had in any event been provided to the judge in the skeleton argument and these supported the expert's conclusions. Dr Holden's conclusions relating to the

possibility of the Respondent living in another part of India did not depend on any financial support provided to her.

19. I reserved my decision.

Discussion

20. There is no merit in the contention that the judge failed to consider "objective evidence" in reaching his conclusion. The judge demonstrably relied on the expert country report to support his conclusions. The Appellant did not make any reference to background evidence such as the CPIN or human rights reports in the Reasons for Refusal Letter, and the Appellant does not appear to have provided the First-tier Tribunal with any such evidence at the hearing on 3 May 2019. It was open to the Appellant to provide her own evidence concerning the situation for separated or single women in India but she failed to do so. A judge can only make a decision on the basis of the evidence made available to him or her. Dr Holden carefully examined the state protection available to women in India and concluded that there was a lack of effective means to protect women from domestic violence. She considered evidence relating to corruption and inefficiency within the police force and gave examples of recent cases of police failures. Given the absence of any challenge to Dr Holden's standing as an expert, and given that her report was properly referenced, the judge was entitled to attach weight to the expert's conclusions.

21. Nor is it made out that the judge failed to consider the financial contributions that could be provided from the Respondent's two children in the UK. The judge specifically considered this financial contribution at [42] and [43] in relation to the possibility of the Respondent living with her sister. It is unlikely that the judge would have failed to consider the possibility financial contributions three paragraphs later when considering whether there were very significant obstacles to the Respondent integrating into Indian society if she moved to another part of the country. The judge specifically relied on Dr Holden's reports in reaching this conclusion. Although the judge could have more clearly articulated the specific reasons identified by Dr Holden it is readily apparent from the expert's 1st report that the Respondent, if she wanted to relocate, would be met with suspicion and hostility as a single woman with no family network, especially in medium and lower income neighbourhoods. Newcomers were heavily questioned on their ethnicity, caste, family, belonging and reasons for relocating and Dr Holden referred to the stigma attached to single women in India and that single women in particular faced multiple barriers to their access to and use of public and private healthcare services in both rural and urban areas of India. Dr Holden also considered evidence relating to the neglect and abuse of elderly women in India, and that the Respondent would be considered to be an elderly woman. In her addendum report Dr Holden further described the problems facing the elderly in India and concluded that the Respondent, who is illiterate and lacks the support from relatives within the country, would be at risk of abuses and violence if

relocating to another part of the country. As a lone woman she would be vulnerable and would be unlikely to obtain support from the general public in the Indian context. In her reports Dr Holden described the inadequacy of existing shelters to respond to the demands of single women and women headed households, and that reliance on the private sector has generated an even greater discrimination of these vulnerable groups in society. It is apparent from the judge's reliance on Dr Holden's reports that there were other powerful factors at play unrelated to financial support entitling him to conclude that this particular Respondent would face very significant obstacles in integrating if she moved to another part of India. This was a conclusion rationally open to the judge for the reasons he gave. The judge's conclusions were also consistent with the broad evaluative judgment necessary assessing integration for particular individuals. Whilst another judge may have reached a different conclusion on the basis of different background evidence provided by the parties, it cannot be said that this judge reached a conclusion not open to him on the evidence before him.

Notice of Decision

The First-tier Tribunal's decision does not contain an error on a point of law requiring it to be set aside.

The Secretary of State for the Home Department's appeal is dismissed.

D. Blum 4 September 2019

Signed Date

Upper Tribunal Judge Blum