Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/24061/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 1 July 2019	**On 17 July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JORDAN

Between

MR RAM MURTI PUNJ
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A. Chohan, Counsel
For the Respondent: Mr E. Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Mr Punj is a citizen of India. He was born on 7 April 1946. He was 72 years old at the date of the decision and is now 73 years old.

2. He entered the United Kingdom on 1 March 2018 and had been previously issued with a visa permitting him to visit the United Kingdom. That visa was due to expire on 14 April 2018. On 14 April 2018 he made a human rights claim asserting that it would be a breach of his human rights were he to be removed from the United Kingdom. By that stage he had been in the United Kingdom for about six weeks.

3. The nature of the claim was probably best set out in a letter he wrote on 11 April 2018. He wrote:

> "Up until 2007 I was supported and cared for by my late wife but after the unfortunate event of her death I was deeply affected … My eldest son Rajiv Kumar who was previously living with me in India and taking care of me now resides in Turkey. In September 2017 he moved to Turkey for work and now lives there and he intends to settle there, leaving me alone without any family member to look after me."

That was the way he advanced his case.

4. It was a matter of some importance identified by the appellant's representatives that adequate evidence be provided by experts to make out a claim that the appellant should remain in the United Kingdom. Pursuant to this, efforts were made successfully to obtain a report from a social worker and a report from a psychologist dealing with the appellant's current medical condition.

5. There was also evidence in the form of a statement from the appellant himself where he said, amongst other things, in paragraph 3 of his statement

> "My daughter's mother-in-law was diagnosed with dementia recently and this is what made me visit my GP. My GP informed me that as I had not visited him for mental health issues previously he would not have them on his record. However, he wishes to now make me undergo certain tests and will then provide me with a report and advise me on the necessary treatment."

That was as far as the allegation of dementia went.

6. The reports that were actually provided and which were before the judge did not suggest that the appellant was suffering from dementia. For example, in a psychological assessment report provided on 18 May 2018 Mr O'Doherty, who has amongst other things a diploma in cognitive behaviour therapy, said that the applicant described how he feels safer and less worried when he is here with family in the UK. He also apparently experiences a degree of sadness and low mood when he is by himself in India. His wife passed away in 2007 in India and the applicant has felt additional loneliness since then.

7. That was as far as the evidence went. The judge recorded that he suffered from anxiety. That was a proper description of the evidence before him.

8. The thrust of the submissions made before me this morning is that the judge erred in law when he failed to adjourn this matter to enable further evidence to be provided. The judge recorded in paragraph 3 that at the beginning of the hearing an application was made for an adjournment to enable a medical report to be prepared and presented:

> "I was told that his son had recently visited the appellant's GP who said that there was nothing on their medical records and that tests could be carried out.

> This was a statement dated 23 January. They said they were still waiting for a date for a consultation."

On that basis the judge refused the application.

9. The determination of the judge on that issue was a perfectly lawful one. There had been opportunity since the decision was made on 14 October 2018 to present medical evidence. Sine the appellant's representative had adduced two reports, it cannot be said the representative was not aware of the need to obtain and present evidence supporting the claim. The appellant's medical condition had been considered by the decision-maker. The decision letter said at paragraph 23:

> "You have claimed that you require monitoring day and night as a result of your medical conditions. You have provided reports from an independent social worker and a psychologist and they are inclined to believe you suffer from anxiety. However, you have not provided any confirmation from the NHS regarding this medical condition or that you are receiving any treatment in the UK for this. Furthermore, you have not provided any NHS documentation that you are receiving treatment for any other medical condition anything confirming you require 24 hour care or anything confirming that you cannot travel."

10. That was an assessment that was made on the basis of the material that was then provided. It was not substantially different when the matter came 2 ½ months later before the First-tier Tribunal Judge on 13 January 2019. The Secretary of State's misgivings had not been addressed. No adequate steps had been taken to pursue the matter and, if it was to be the case that the appellant was not relying on the psychologist's report or the social worker's report then one would certainly have expected steps to have been taken to obtain a formal referral from a GP addressed to a specialist. As it was, all the judge had before him was what the appellant said in paragraph 3 of his statement and what the son said which is also summarised by the judge in paragraph 3 of the determination.

11. It was simply nowhere near sufficient to establish the need for an adjournment. That is the sole matter which is raised before me as to unfairness and a failure on the part of the judge to provide a short adjournment. My assessment of the situation is that there were simply not the building blocks upon which the judge could make the inference that a referral was imminent; that a diagnosis of dementia was a real possibility and that steps had been taken so far to obtain the evidence in view of the hearing date which had been notified to the appellant. In those circumstances I take the view that the judge made no error of law and accordingly the appeal is dismissed.

12. I will say at this stage that it is not the end of the matter. If there comes a change of circumstances, then that may or should result in fresh medical evidence being produced to support that change of circumstances. If that change in circumstances is sufficient to meet the test in paragraph 353 of the Immigration Rules, then it will be for the Secretary of State to consider and to make a decision in the context of a

paragraph 353 fresh claim. At that stage the appellant will have amassed the evidence that he has not provided so far. Only then will the Secretary of State be required to reconsider the matter.

13. I might add something as to the grant of permission that was made in this case.

14. The appellant's representative asserted that it was clear that the appellant's health had deteriorated whilst he was here. There was no evidence of a deterioration in the appellant's health whilst he was present in the United Kingdom. Indeed, he had only been present in the United Kingdom for about six weeks when the application was made. When it came to the decision of the judge, that situation had not materially altered. The judge was left with the same psychologist's report and social worker's report as was before the original decision-maker.

15. The First-tier Tribunal Judge in granting permission said it is arguable that factors capable of further evaluation remain unevaluated to a sufficient degree for the proportionality exercise to encompass consideration in such a way that the correct weight is attached to factors bearing upon the outcome. I am bound to say I do not understand that sentence as identifying a material error of law. It does not assist me in understanding what the First-tier Tribunal considered to be an arguable error.

16. It was also said that the medical report was a central issue in the case. It was *not* a central issue in the case in that there was no evidence before the First-tier Tribunal that the appellant's health had deteriorated or was of sufficient complexity to require additional medical evidence. I am not, therefore, satisfied that the grant of permission identifies anything which amounts to a material error of law in the way the First-tier Tribunal Judge handled the application for an adjournment or the evidence that was before him.

DECISION

The grounds of appeal fail to disclose a material error of law in the determination of the First-tier Tribunal Judge and the decision of the First-tier Tribunal shall stand.

ANDREW JORDAN
DEPUTY JUDGE OF THE UPPER TRIBUNAL
Date: 11 July 2019