



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

Appeal Number: HU/11430/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15 January 2020**

**Decision & Reasons  
Promulgated  
On 30 January 2020**

**Before**

**THE HON. LORD UIST  
SITTING AS A JUDGE OF THE UPPER TRIBUNAL  
UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**FAROOK MOLA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr E Waheed, Counsel, instructed by Shuttari Paul & Co,  
Solicitors

For the Respondent: Mr Kotas, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Kainth (“the judge”), promulgated on 12 September 2019, in which he dismissed the Appellant’s appeal against the Respondent’s refusal of his human rights claim in the context of a deportation order.
2. The Appellant, who claims to be a dual national of Portugal and India (the former claimed nationality having been disputed by the Respondent throughout), allegedly arrived in the United Kingdom in 2000. Between 2006 and 2017 he was convicted of a number of offences concerning, amongst other matters, theft, possession of Class A drugs, and driving a vehicle with excess alcohol. As a result of convictions accrued in the midst of this period, on 2 October 2014 the Appellant was made the subject of a deportation order. Representations based on Article 8 ECHR had been submitted to the Respondent prior to the making of that order. These representations were then treated as a human rights claim, and that claim was refused on 9 May 2018. It is this decision which led to the appeal before the First-tier Tribunal.
3. In essence, the Appellant’s case has always been as follows. As a result of the claimed dual Portuguese/Indian nationality, the Respondent should have considered any deportation proceedings in the context of EU law (in particular under the Immigration (European Economic Area) Regulations 2016). Thus, the decision made in May 2018 was unlawful. Although the Appellant has no children, he has been in a relationship with an Irish citizen, Mary Mongal (erroneously referred to as Ms “Mongan” by the judge), for some time. He has relied upon this relationship in resisting deportation. In addition, he has asserted that he provides significant care for a woman described as his adopted grandmother, Mrs Devi. His removal from the United Kingdom would have a significant impact upon her. These factors, together with other ties said to have been established in this country, permitted him to satisfy the exceptions to deportation contained in section 117C of the Nationality, Immigration and Asylum Act 2002, as amended (“NIAA 2002”), and paragraphs 399-399A of the Immigration Rules.
4. In refusing the human rights claim, the Respondent did not accept that the Appellant had a genuine and subsisting relationship with Ms Mongal, that the Appellant held Portuguese nationality, that he was socially and culturally integrated into the life of the United Kingdom, that there would be very significant obstacles to his reintegration into Indian society, or that there were any very compelling circumstances over and above those set out in the exceptions.

### **The judge’s decision**

5. The Appellant’s claimed dual nationality was raised as a preliminary issue and dealt with at length by the judge at paras 11-27 of his decision. In light of inconsistencies and omissions in the evidence, the judge concluded that the Appellant did not hold Portuguese nationality. For reasons set out at paras 38-40 the judge did not accept that the Appellant

was in a genuine and subsisting relationship with Ms Mongal and therefore he was unable to rely on the family life exception. At para 43 the judge found that the Appellant was not socially and culturally integrated into the United Kingdom by reason of his criminality. On the basis of additional matters stated within the same paragraph and those contained at para 45, the judge in effect concluded that there were no very significant obstacles to the Appellant's reintegration into Indian society. As result, he could not rely on the private life exception.

6. In considering whether or not there were any "very compelling circumstances over and above" those described in the two exceptions, the judge went on at para 50 to consider the Appellant's claimed assistance to Mrs Devi. On the basis of the evidence before him the judge concluded that there was no relevant dependency or "exceptional/compelling/compassionate circumstances". The appeal was duly dismissed.

### **The grounds of appeal and grant of permission**

7. Five grounds of appeal were put forward by the Appellant. Grounds 1-4 all state in terms that the challenges were based on "perversity". The grounds may be summarised as follows. Firstly, that it was not open to the judge to conclude that there was no genuine and subsisting relationship between the Appellant and Ms Mongal simply because there was an absence of evidence from Mrs Devi on the issue of cohabitation. It is said that Mrs Devi's silence on the issue simply did not constitute a contradiction at all. Secondly, that in the absence of an allegation by the Respondent that the Appellant had entered the United Kingdom illegally it was not open to the judge to conclude that he was not a Portuguese national. Thirdly, that on the evidence as to the claimed dependent relationship with Mrs Devi, it was irrational for the judge to have concluded that no such relationship in fact existed and for him to have concluded that this did not constitute a very compelling circumstance. Fourthly, that in relying solely upon the Appellant's criminality it was irrational for the judge to have concluded that he was not socially and culturally integrated into the United Kingdom. The fifth ground of appeal asserts that the judge had failed to conduct what is described as "a fair and balanced consideration of the evidence as a whole".
8. In granting permission to appeal, First-tier Tribunal Judge Osborne made reference to ground 1, regarding it is arguable that there was "a considerable difference between one witness not having stated something in evidence and not having been asked questions about a matter and another witness stating that something is true". Judge Osborne went on to state that having identified this arguable error, all other grounds were also properly arguable.

### **The hearing**

9. Mr Waheed relied upon the grounds of appeal and his skeleton argument. He made additional succinct oral submissions based upon those two documents and referred us to specific aspects of the evidence that had been before the judge, in particular a witness statement from Mrs Ayub, photographs, and other additional materials.
10. Mr Kotas asked us to bear in mind that where perversity is alleged, a high threshold must be met. Addressing each of the grounds of appeal in turn, he submitted that there were no material errors in the decision. In certain respects, he went further and submitted that even taking the Appellant's case as its highest there was no rational basis upon which the appeal could have succeeded.

### **Error of law decision**

11. In our judgment, when it is considered as a whole, there are no material errors of law in the judge's decision.

#### *Ground 1*

12. The first ground is misconceived on two bases. First, at para 39 the judge was rationally entitled to take account of the fact that one of the Appellant's witnesses, Mrs Devi, was entirely silent in her evidence about a material aspect of his case, namely whether or not he had cohabited with Ms Mongal. It may well be the case that Mrs Devi was not cross-examined on this omission, but of course it was for the Appellant to make good his case and if no relevant evidence was led on his behalf, that is not a matter which materially undermines the judge's assessment. Whether or not the absence of evidence from Mrs Devi should have been described as a "contradiction", it was clearly a relevant omission. This discrete point has of course to be read with the rest of the judge's findings on the relationship issue.
13. The second reason for rejecting ground 1 is that it entirely fails to acknowledge the additional reasons set out by the judge at paras 38-40, in respect of which there has been no challenge. [38] contains reasons relating to clear inconsistencies in the evidence relating to the relationship. The first part of para 39 itself contains a further reason relating to an inconsistency as to the place of residence. Para 40 makes reference to yet more inconsistencies in addresses contained within the evidence.
14. At para 41 the judge makes it very clear that he had considered "all the evidence" when reaching the composite conclusion that the Appellant was not in a genuine and subsisting relationship with Ms Mongal. We have no hesitation in finding that that conclusion and the reasons in support thereof were not irrational in any way.

#### *Ground 2*

15. The judge dealt with the issue of the claimed Portuguese nationality with care, dedicating numerous paragraphs to an analysis of the evidence before him. The reasons set out at paras 14-25 in particular were manifestly rational. The judge quite rightly approached the issue on the basis that it was for the Appellant to prove the claimed Portuguese nationality. In light of the numerous inconsistencies in the evidence, and the absence of any positive evidence from the Appellant as to the claimed nationality, we cannot see any perversity on the judge's part. The sole basis of the challenge under ground 2 is that the Respondent had apparently not asserted that the Appellant was an illegal entrant. The argument offered is that in the absence of such an allegation, the Appellant *must* have arrived in this country lawfully, and that this in turn indicated that he was probably a Portuguese national.
16. We reject this contention. It is clear from the reasons for refusal letter that the Respondent deemed the Appellant to have resided in this country unlawfully. There is no evidence at all that he had ever been acknowledged as an EEA national. The judge had considered the nationality issue on a holistic basis, including the complete absence of any evidence from the Appellant as to that claimed Portuguese nationality. It simply cannot be the case that a failure of the Respondent to provide evidence of one sort or another to the effect that the Appellant was an illegal entrant had such a bearing on the judge's consideration as a whole that his conclusion on the issue is rendered irrational.

### *Ground 3*

17. There is no merit in the argument that it was perverse to conclude that there was no relationship of dependency and/or that this constituted an important factor in the appeal.
18. The judge accepted that the Appellant accompanied Mrs Devi to hospital appointments in a taxi and that he helped with household chores. It was also accepted that he provided "support and comfort" to her. The judge (quite correctly) noted that there was no corroborative evidence to suggest that there had been any enquiries made of social services (or for that matter any other relevant body) to establish what type of care could be provided to Mrs Devi if the Appellant were to be deported. The judge went on to note the absence of any blood relationship and, as had been described elsewhere in the evidence, the absence of any residence together for a number of years.
19. The ground of appeal makes the point that the absence of a shared residential address cannot preclude the existence of a relationship of dependency. In principle, that must be right: all depends on the particular circumstances of any given case. However, as with other aspects of the Appellant's challenge, the totality of the judge's reasoning has been ignored. The conclusion that there was no relationship of dependency was not based simply on the absence of shared residence. This was only one among a number of (otherwise unchallenged) factors taken into account.

20. On the evidence before him and in light of the reasons stated, even if the very narrow issue of a lack of shared residence should not have been accounted for at all, the judge was plainly entitled to conclude that there was no relevant relationship, bearing in mind the relevant legal framework in adult dependency cases (as set out in, for example, Kugathas [2003] INLR 170 and Raj [2017] EWCA Civ 320) and the elevated threshold applicable to perversity challenges.
21. Further, even if the judge was bound to have concluded that there was such a relationship of dependency, this does not come close to reaching the very high threshold of a “very compelling circumstances over and above” the two exceptions. Any error would be entirely immaterial.

#### *Ground 4*

22. With reference to the judgment of the Court of Appeal in CI (Nigeria) [2019] EWCA Civ 2027, the judge does appear to have erred in apparently basing his conclusion that the Appellant was not socially and culturally integrated into the United Kingdom solely on the basis of his criminality. A wider assessment is required, having regard not simply to criminal conduct, but ties established in this country over the course of time. However, any error on this issue is entirely immaterial. In order for it to have had any favourable bearing on the Appellant’s ability to meet the private life exception under section 117C(4) NIAA 2002 and paragraph 399A of the Rules, the Appellant would have had to meet the other two limbs, namely that he had resided lawfully in the United Kingdom for “most of his life” and that there would be “very significant obstacles” to his reintegration into Indian society (see Tirabi (Deportation: “lawfully resident”): s.5(1)) [2018] UKUT 199 (IAC)). On the basis of the judge’s sustainable findings on the Appellant’s claimed Portuguese nationality and the absence of any lawful status in this country, together with the unchallenged findings on his good health, linguistic abilities, and time spent in India in the past, the Appellant was clearly unable to meet either the first or third the first of these limbs.

#### *Ground 5*

23. We see no merit in the final ground of challenge. The judge had clearly considered the evidence of Mrs Ayub, making specific reference to it when considering the issue of the Appellant’s claimed relationship with Ms Mongal in [39].
24. As regards her evidence on the issue of the claimed relationship of dependency with Mrs Devi, the witness statement of Mrs Ayub (at pages 88-89 of the Appellant’s bundle) contains only the barest assertion that the Appellant was an important part of Mrs Devi’s life. At paragraph 3 of that statement we find the following:

“His grandmother Champa [Mrs Devi] also depends on him. She is able to live and enjoy her home life because Farook [the Appellant] is there looking after her and making sure she takes part in all the social activities.”

25. A failure by the judge to specifically mention that rather threadbare evidence at para 50 of his decision in no way materially undermines the sustainability of the findings and ultimate conclusion reached.
26. Finally, the judge's failure specifically to refer to photographic and other evidence concerning the claimed relationship with Ms Mongal does not assist the Appellant when the decision is viewed sensibly and in the round. It is well-settled that a judge need not refer to each and every item of evidence adduced when setting out their analysis and reasons for a decision. In light of the totality of the judge's reasoning the absence of express reference to this other evidence could not rationally have made a difference to the outcome.
27. In view of the above, the judge's decision is sustainable and the Appellant's appeal to the Upper Tribunal must fail.
28. We add a comment on the grant of permission in this case. In light of the judge's decision and the way in which the grounds of appeal were put – squarely on a perversity basis in almost all respects – it is somewhat difficult to see why permission was granted on ground 1. It is all the more difficult to see why, even if that ground was deemed to be properly arguable, it followed that the remaining grounds were also arguable. This, it seems to us, was a *non-sequitur*.

### **Notice of Decision**

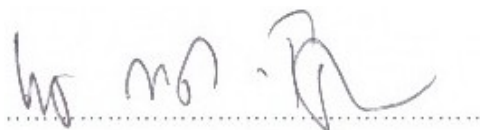
**The decision of the First-tier Tribunal does not contain any material errors of law.**

**The Appellant's appeal to the Upper Tribunal is dismissed.**

**The decision of the First-tier Tribunal shall stand.**

**No anonymity direction is made.**

Signed



Date: 20 January 2020

Upper Tribunal Judge Norton-Taylor