Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/02440/2020

THE IMMIGRATION ACTS

Heard remotely via video (Teams)	**Decision & Reasons Promulgated**
On 7 June 2021	**On 22 June 2021**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

VIKAS PURI
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the appellant: Mr A McVeety, Senior Home Office Presenting Officer
For the respondents: Mr Y Din, counsel, instructed by Lova Solicitors ltd

This decision follows a remote hearing in respect of which there has been no objection by the parties. The form of remote hearing was by video (V), the platform was Microsoft Teams. A face to face hearing was not held all issues could be fairly determined in a remote hearing.

DECISION AND REASONS

Background

1. The Secretary of State for the Home Department ("the appellant") appeals against the decision of Judge of the First-tier Tribunal Barker ("the judge"), promulgated on 22 October 2020, allowing the human rights appeals of Mr Vikas Puri ("the respondent") against the decision of the appellant dated 6 February 2020 refusing his human rights claim.

2. The respondent is a national of India born on 24 March 1989. He entered the UK on 12 September 2010 as a student. He was granted further periods of leave, the last valid until 28 August 2014. An appeal against an earlier refusal to grant him further leave was dismissed and he became appeal rights exhausted on 13 June 2016. On this date his leave, extended by virtue of section 3C of the Immigration Act 1971, expired. The respondent has not had lawful leave since this date.

3. On 12 December 2019 the respondent made a human rights claim based on his family and private life. This was refused by the appellant on 6 February 2020. The appellant was not satisfied that the respondent had been in a relationship akin to marriage with Harpreet Kaur Dhariwal, a British citizen, for at least two years, or that there were insurmountable obstacles to the respondent and Ms Dhariwal living together in India. Nor was the appellant satisfied that the respondent would face very significant obstacles to his integration in India, as required by paragraph 276ADE(1)(vi) of the Immigration Rules. The appellant was not satisfied that there were any exceptional circumstances such as to render the refusal of the human rights claim a breach of Article 8 ECHR. The respondent appealed the refusal of his human rights claim to the First-tier Tribunal pursuant to s.82 of the Nationality, Immigration and Asylum Act 2002.

The Decision of the First-tier Tribunal

4. The judge had before her several documents contained in bundles prepared by the respondent and the appellant. This included, inter-alia, statements by the respondent and Ms Dhariwal, and three statements from Dr Anna Valeria Weil, a British citizen who was 75 years old at the date of the First-tier Tribunal hearing. A statement from Dr Weil contained in the respondent's bundle was dated 27 August 2015, a statement from Dr Weil contained in the appellant's bundle was dated 9 January 2020, and a statement contained in a supplementary bundled was dated 26 September 2020. The judge heard oral evidence from the respondent, Ms Dhariwal, and from Dr Weil. All three adopted their statements. There was no cross-examination of Dr Weil.

5. In her decision the judge accurately set out the relevant legislative provisions (Appendix FM, paragraph 276ADE(1)(vi), s.117B of the Nationality, Immigration and Asylum Act 2002) and the applicable legal principles in respect of the assessment of a human rights claim outside of the Immigration

Rules (e.g. Razgar [2004] UKHL 27; MM (Lebanon) [2017] UKSC 10). The judge correctly directed herself as to the appropriate burden and standard of proof.

6. In the section of her decision headed "Findings" the judge found (and it was not disputed) that Ms Dhariwal did not meet the definition of 'partner' contained in Appendix FM because she and the respondent had not been residing together in a relationship akin to marriage for at least two years prior to the respondent's application. The judge acknowledged that no issue had been taken with the genuineness and subsistence of the respondent's relationship with Ms Dhariwal. The judge found that there were no insurmountable obstacles to family life between the respondent and Ms Dhariwal continuing outside the UK. The judge found that there were no very significant obstacles to the respondent's integration in India, although she accepted the respondent's account that he was estranged from his family as a result of his conversion from Hinduism to Christianity and his relationship with Ms Dhariwal.

7. From [55] onwards the judge considered the appeal in respect of the respondent's family and private life under Article 8 outside the Immigration Rules.

8. At [56] the judge found that the respondent had established a private and family life with Ms Dhariwal. At [57] to [65] the judge considered the various factors in s.117B of the Nationality, Immigration and Asylum Act 2002 noting, inter-alia, that the respondent had developed a significant life in the UK although this had been established when he was here precariously. At [66] the judge found that the respondent and Ms Dhariwal had "… a particularly close relationship and rely heavily on each other for emotional support" but that although she was obliged to attach little weight to the relationship given the time when it was formed, it is nevertheless appropriate to attach "some weight" to the relationship.

9. At [68] the judge indicated that, although she was struck by the credibility of all those who gave evidence before her, she "… was particularly struck by the evidence of Dr Weil, who made a very impressive witness." At [69] and [70] the judge stated:

> "I have been provided with a comprehensive statement from Dr Weil which detailed her relationship with the [respondent] (ASB 8). It is clear that this relationship is vital to the well-being of Dr Weil, and I accept that she has no family in the United Kingdom and relies on the [respondent] for companionship and emotional and spiritual support.
>
> Dr Weil gave evidence that the impact of the [respondent] being removed from the United Kingdom would be as she put it "*tremendous*". It is evident that the [respondent] provides Dr Weil with support that no one else does could. Dr Weil described the [respondent] as like a son to her, and when asked whether someone could be paid to provide the same care, Dr Weil said, and I accept, that this isn't possible."

10. At [71] the judge found that the relationship between the respondent and Dr Weil went "far beyond that that could be provided professionally" and that Dr Weil relied on the relationship for her emotional well-being. It was noted that the respondent was regarded as Dr Weil's next of kin and the judge found that their relationship was "one akin to a parental relationship" and went beyond that found in normal parental relationships. At [72] the judge found that Dr Weil gave clear, balanced, measured and powerful evidence and concluded that if the respondent was removed this would be detrimental to Dr Weil's emotional health. At [74] the judge found that separation between the respondent and Dr Weil would amount to unjustifiably harsh consequences for both of them and would lead to an inability for Dr Weil to lead a full and fulfilling life.

11. At [76] the judge indicated that she had considered the evidence "… in the round, including that contained within the bundle relating to the [respondent's] religious beliefs and the clear support he receives from leaders and members of his church, and applied a holistic approach, balancing the factors relating to the rights of the [respondent] and the public interest." At [77] the judge concluded given the length of time that the respondent had resided in the UK and his strong private and family life formed whilst in the UK, that his removal would be a disproportionate interference with Article 8. The judge consequently allowed the appeal on human rights grounds.

The challenge to the judge's decision

12. The grounds of appeal, amplified by Mr McVeety in his oral submissions, argue that the judge made a material misdirection of law. The grounds contend that it was unclear how long the respondent and Dr Weil had known each other or how they met, and that there was no finding that their relationship amounted to family life for the purposes of Article 8 beyond an "unreasoned finding" that Dr Weil relies on the respondent for "companionship, emotional and spiritual support." The grounds contend that it is "extraordinary" that the judge therefore made a finding that their relationship was akin to a parental relationship. The relationship was no more than a friendship and in any event a parental relationship between adults did not necessarily amount of family life for the purposes of Article 8 without a finding of additional dependency. The grounds further note that a relationship that is established when an individual's immigration status is precarious is to be afforded little weight and that the judge therefore erred in attaching "any weight" (although Mr McVeety corrected this and submitted that the judge was instead obliged to attach little weight) to the relationship in her proportionality assessment. The grounds further contend that the judge failed to consider that Dr Weil was entitled to the assistance of public services in the UK should she require any support.

13. Mr Din adopted his rule 24 response and submitted that the judge was entitled to her conclusions, that her decision had to be understood by reference to the

statements upon which the judge relied, and that there was a sufficient evidential basis entitling the judge to conclude that the relationship between the respondent and Ms Weil was one akin to a parental relationship with strong elements of dependency.

14. I reserved my decision.

Discussion

15. **Mukarkar v SSHD** [2006] EWCA Civ 1045 (at [40]), **UT (Sri Lanka) v SSHD** [2019] EWCA Civ 1095 (at [19], [26] and [27]), **AA (Nigeria) v SSHD** [2020] EWCA Civ 1296 (at [9], [32] & [38]), and **KB (Jamaica) v SSHD** [2020] EWCA Civ 1385 (at [16]) are support for the propositions that different tribunals might reasonably reach different conclusions in respect of the same evidence, that the Upper Tribunal is not entitled to remake a decision of the First-tier Tribunal simply because it does not agree with it or because it is not as well-structured or expressed as it might be, and that the basis for the First-tier Tribunal's decision may be set out directly or by inference. I bear these principles at the forefront of my mind when assessing the judge's decision.

16. Although it would have been preferable for the judge to have more clearly set out the context of the respondent's relationship with Dr Weil, she expressly identified and referred to the "comprehensive statement" from Dr Weil which "detailed her relationship with the [respondent]" [69]. The full circumstances as to how the respondent and Dr Weil met are clearly set out in Dr Weil's statement, including the care and supported provided by the respondent to her when she was hospitalised in 2014, his registration as her Next of Kin with her GP surgery and his authorisation to conduct her "final things" on her passing. The statements and unchallenged oral evidence from Dr Weil indicated that she had no other relatives in the UK, that the respondent had never been a paid employee, and described the depth of the emotional relationship established through the respondent's care for Dr Weil and their mutual journey converting to Christianity.

17. The judge was entitled to refer to statements that supported her conclusions without necessarily setting out all the relevant content of those statements if her reasoning was apparent from her decision, read as a whole. The basis for the judge's decision can readily be inferred by reference to the statements upon which she expressly relied. The tenor of Dr Weil's statements (and her unchallenged oral evidence) indicated that the respondent provided her with strong emotional support, akin to that of a son. The evidential basis for the judge's conclusion that the relationship between the appellant and Dr Weil involved strong bonds of emotional care and support was supported not just by the documentary and oral evidence of the appellant and Dr Weil, but by the unchallenged statement of Rev Millen Bennet who indicated that Dr Weil loved the appellant "as her son".

18. The grounds note that there was no finding that the relationship between the respondent and Ms Weil amounted to family life. So far as it goes, this is correct. The respondent and Ms Weil do not have a consanguineous relationship and there is no other legal relationship that could give rise to family life (such as adoption). But the judge was clearly aware of this and did not suggest that there was a family life relationship. At [71] the judge found that the relationship was one "akin to a parental relationship." The judge found that the relationship between the respondent and Dr Weil displayed strong elements of attachment and emotional dependency usually found in the context of a family life relationship. On the basis of the evidence before her the judge was rationally entitled to conclude that the relationship contained strong elements of emotional reliance and dependency. The judge was also rationally entitled to find that this is not the type of support that could be replicated by the public services to which Dr Weil will be entitled in this country.

19. Nor can it be said that the judge erred in law by failing to attach only "little weight" to the private life relationships established by the respondent given that his presence has only ever been precarious or unlawful. A holistic consideration of the decision makes apparent that the judge was acutely mindful of the requirement of s.117B(4) & (5) (see [64] to [66]). S.117B(4) & (5) are not to be regarded as a straightjacket and have within them some limited flexibility to ensure that any decision made is compatible with the UK's obligations under Article 8 (s.6 of the Human Rights Act 1998) (see Rhuppiah [2018] UKSC 58, at [49]). At [53] Lord Wilson stated:

> "Although a court or tribunal should have regard to the consideration that little weight should be given to private life established in [the specified] circumstances, it is possible without violence to the language to say that such generalised normative guidance may be overridden in an exceptional case by particularly strong features of the private life in question …'"

20. The judge was legitimately entitled to consider that there were particularly strong features of the private life relationship between the respondent and Dr Weil and that the impact on this relationship for Dr Weil required the attachment of greater weight in the overall proportionality assessment. Moreover, it is apparent from [76] and [77] that the judge's final proportionality assessment did not rely solely on the respondent's relationship with Dr Weil but that she also took into account her finding relating to the strength of the respondent's family life relationship with Ms Dhariwal and the length of his residence in the UK. Whilst another tribunal may have reached a different overall conclusion, I am not persuaded that the judge's decision was one she was not entitled to reach on the evidence before her and for the reasons given.

21. I find that the making of the decision did not involve the making of the decision did not involve the making of an error on a point of law requiring the decision to be set aside.

Notice of Decision

The judge did not make an error on a point of law.

The Secretary of State's appeal is dismissed.

D.Blum 8 June 2021

Signed Date
Upper Tribunal Judge Blum