Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: HU/03673/2018
HU/05039/2018

THE IMMIGRATION ACTS

At Manchester CJC (remote hearing)	**Decision & Reasons Promulgated**
Heard on 27th January 2021	**On 3rd June 2021**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

PD
VM
(anonymity direction made)

Appellants

and

Secretary of State for the Home Department

Respondent

For the Appellant: **Mr Ahmed, Hussain Immigration Law Ltd**
For the Respondent: **Mr McVeety, Senior Home Office Presenting Officer**

DECISION AND REASONS

1. The Appellants are a husband and wife. They are nationals of India who seek leave to remain in the United Kingdom on human rights grounds.

Anonymity Order

2. Reference is made herein to medical evidence relating to the mental health of the First Appellant. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

> "Unless and until a tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies to, amongst others, both the Appellants and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

Case History

3. There has been some delay in this appeal being determined in the Upper Tribunal for which the parties have my apologies, particularly as it has latterly been caused by (my own) administrative error and illness.

4. The matter first came before me on the 4th August 2020. The Appellants had permission to appeal against the decision of the First-tier Tribunal (Judge Monaghan) to dismiss their linked human rights appeals. By my written decision of the 4th August 2020 (appended) I found the alleged errors of law to be made out, and I set the decision of Judge Monaghan aside. I need not go into the substance of that decision here, save to note that until that point the focus of the appeal had been on the First Appellant, Mr PD. My concluding paragraph read:

> "Time having marched on, there has been a development in the facts. As of today it is the Second Appellant, VM, who takes the lead. That is because she has now herself held lawful leave for a continuous period of over ten years and as such *prima facie* qualifies for a grant of indefinite leave to remain. Unlike her husband, VM returned to the United Kingdom within the 180 days specified by the Rules, and although her last formal grant of leave expired some time ago, she has since held leave conferred by section 3C of the Immigration Act 1971. In light of this Mr McVeety very sensibly suggested that before this Tribunal proceeds to the remaking he will seek a review of the Appellants' applications from the relevant casework team. I agree to adjourn the appeal pending that review, and direct that the matter be listed before me as a Case Management Review (to be conducted over 'Skype for Business' or other medium to be identified) in the week commencing the 12th October 2020".

5. I pause to note that this paragraph, and my agreement to adjourn the remaking, was based on what I was told by the parties, specifically in respect of Mrs VM's immigration history. The matter came back before me for a 'case management review' hearing on the 22nd October 2020 when I was informed by Mr McVeety that the Home Office were still considering their position vis-à-vis Mrs VM. I decided that there had already been too long a delay and proceeded to list the matter for substantive hearing so that the decision in the appeal could be remade.

6. That hearing took place on the 27th January 2021. On that date I was informed by Mr McVeety that the caseowner had determined that it would not be appropriate to grant either appellant leave, and that if Mrs VM wished to make a paid application for indefinite leave under paragraph 276B of the Rules it remained open to her to do so. Mr Ahmad of Counsel, assisted by his instructing solicitor Mr Hussain, made submissions to the effect that it would be disproportionate to expect her to do so, and that in this human rights appeal her *prima facie* qualification under the Rules demonstrated that there was nothing weighing in the Respondent's favour in the proportionality balancing exercise and so the appeal should be allowed. The parties also made submissions, further and in the alternative, on the position of Mr PD. I reserved my decision.

7. Unfortunately when I came to make my decision, I found that the information on file did not tally with the information provided to me by the parties at the hearings on the 4th August 2020, 22nd October 2020 and the 27th January 2021. Specifically, upon closer inspection, and contrary to my own *obiter* comments in my decision of the 4th August 2020, it was not clear to me that Mrs VM *had* accrued in excess of ten years' continuous lawful residence in the United Kingdom. I therefore issued Directions on the 1st March 2021 in the following terms:

> "Now I have come to make my decision (with apologies, with some delay) I find that there is no evidence at all before me to indicate that the Second Appellant has in fact spent ten years' continuously living in the United Kingdom. On the contrary the only immigration history that I have been given indicates that this is not the case. The Secretary of State's refusal letter of the 2nd January 2018 simply notes that she was refused leave to remain as a Tier 1 Entrepreneur in 2017, following an application made in 2014. The First-tier Tribunal appears to have been under the impression that the Second Appellant was at all material times in the company of her husband when he returned to India between 2011-2013 [paragraph 62 of Judge Monaghan's decision]. I am asked to make a finding that the Second Appellant qualifies for leave under paragraph 276B of the Rules but in light of this contradictory evidence, I am at this stage unable to do so. I therefore direct that the parties furnish me with a complete immigration history for the Second Appellant, within 14 days of these directions being sent".

8. The Appellants' representatives responded to these directions on the 17th March 2021 providing a detailed chronology in respect of the various grants of leave etc. In the absence of any contradictory information having been supplied by the Home Office, I am prepared to accept that this is accurate, and it forms the basis of my decision below.

Background and Matters in Issue

9. Both Appellants assert that the decision to refuse them leave to remain in the United Kingdom would be a disproportionate interference with their private lives, as protected by Article 8 ECHR. In particular each Appellant claims to qualify for

indefinite leave to remain under paragraph 276B on the basis of continuous lawful residence in the United Kingdom for in excess of ten years.

10. The Respondent has refused to grant leave for the following reasons.

11. In respect of the First Appellant Mr PD it is not accepted that his lawful residence in the United Kingdom has been continuous. Mr PD arrived in the United Kingdom in October 2006 with entry clearance as a student. He remained, with continual leave, until the 10th October 2011 when he returned to India. He then re-entered the United Kingdom in March 2013. The Respondent calculates that this was an absence from the United Kingdom of 519 days. Although the First Appellant asserts that he was unwell, and so had good reason for his absence, the Respondent is not prepared to exercise her discretion in the First Appellant's favour. In respect of the First Appellant I am therefore asked to decide:

    i) Whether the 519 days he spent in India between 2011-2013 should be overlooked in accordance with the Respondent's policy in respect of continuous residence;

    ii) If not, whether the decision to refuse leave today is nevertheless disproportionate.

12. The Second Appellant Mrs VM has hitherto been treated as her husband's dependent. As I have set out above, however, she now has a claim in her own right on the grounds that she has spent ten continuous years here and qualifies for leave under paragraph 276B. The questions in her appeal are therefore:

    i) Whether she qualifies for indefinite leave having regard to the requirements of paragraph 276B;

    ii) If so whether it would be disproportionate to dismiss her appeal on the basis that she should be expected to make a paid application;

    iii) If not whether it is nevertheless disproportionate to refuse to grant her leave.

13. I note that neither party pursues an appeal on 'private life' grounds with reference to paragraph 276ADE(1) of the Rules: this ground was lost before Judge Monaghan and did not feature in the appeal before the UT.

The Second Appellant

14. Given the extent of the agreement between the parties about the Second Appellant's circumstances, it is appropriate that I begin by addressing her claim. In their written submissions of the 17th March 2021 her representatives provided a chronology as follows (edited for brevity and relevance):

    20.1.10 A enters United Kingdom with leave to enter

    23.12.11 In-time application to vary lodged. Further leave granted (Tier 4)

15.3.12 In-time application to vary lodged. Further leave granted (Tier 1)

23.7.14 In-time application to vary lodged. Further leave granted (Tier 2)

26.3.16 In-time application to vary lodged (Tier 1)

24.7.17 Application to vary (Tier 1) refused

27.8.17 Application for Administrative Review rejected

7.9.17 Application made for limited leave to remain within permitted 14 day 'grace period'

14.2.18 Leave to remain refused

16.2.18 Appellant lodges appeal in First-tier Tribunal

8.10.18 First-tier Tribunal dismisses appeal

15.11.18 Permission to appeal sought to Upper Tribunal. Granted. This is the appeal currently under consideration

15. I am satisfied that this chronology demonstrates that the Second Appellant certainly had valid leave to remain between the 20th January 2010 and the 27th August 2017 when her Administrative Review of a Points Based Refusal was rejected. What is less clear is whether she had any valid leave after that.

16. The Appellant's written submissions point out that her application made on the 7th September 2017 was made within the 14 days grace period provided for by paragraph 39E of the Rules. The material part of paragraph 39E provides:

> 39E. This paragraph applies where:
>
> (1) the application was made within 14 days of the applicant's leave expiring and the Secretary of State considers that there was a good reason beyond the control of the applicant or their representative, provided in or with the application, why the application could not be made in-time; or
>
> (2) the application was made:
>
> (a) following the refusal of a previous application for leave which was made in-time; and
>
> (b) within 14 days of:
>
> (i) the refusal of the previous application for leave; or
>
> (ii) the expiry of any leave extended by section 3C of the Immigration Act 1971; or
>
> (iii) the expiry of the time-limit for making an in-time application for administrative review or appeal (where applicable); or
>
> (iv) any administrative review or appeal being concluded, withdrawn or abandoned or lapsing.

17. I accept, on the information provided, that Mrs VM made her application for leave to remain within the 14-day period specified at paragraph 39E(b)(ii). I do not however

understand how that assists her in the present appeal. The purpose of 39E is to prevent migrants with otherwise compliant histories being refused indefinite leave on grounds of a short gap, falling between periods of valid leave: ie, where their period of overstaying is 'book-ended' by periods of valid leave. Here the application in question, made on the 7th September 2017, was rejected. The Second Appellant has not held any valid leave since the 27th August 2017. Her overstaying has been open-ended. Any suggestion that she may somehow, by operation of 39E, have leave conferred by s3C of the Immigration Act 1971 is wrong. As Lord Justice Underhill explains at [§6] of Hoque and Ors v Secretary of State for the Home Department [2020] EWCA Civ 1357:

> "It is important to appreciate that section 3C only operates where the application for further leave is made before the expiry of the current period ("in time"). If it is made after the expiry of the current period, the application may in due course be granted, but during the intervening period the applicant will have no leave and will be an overstayer".

18. The material requirements of paragraph 276B are:

> "The requirements to be met by an applicant for indefinite leave to remain on the ground of long residence in the United Kingdom are that:
>
> (i) he has had at least 10 years continuous lawful residence in the United Kingdom.
>
> (ii) having regard to the public interest there are no reasons why it would be undesirable for him to be given indefinite leave to remain on the ground of long residence, … and
>
> (iii) the applicant does not fall for refusal under the general grounds for refusal.
>
> (iv) the applicant has demonstrated sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom ….
>
> (v) the applicant must not be in the UK in breach of immigration laws, except that, where paragraph 39E of these Rules applies, any current period of overstaying will be disregarded. Any previous period of overstaying between periods of leave will also be disregarded where –
>
> (a) the previous application was made before 24 November 2016 and within 28 days of the expiry of leave; or
>
> (b) the further application was made on or after 24 November 2016 and paragraph 39E of these Rules applied."

19. In Hoque the Court of Appeal considered the argument that paragraph 276B (i) had to be read in line with sub-paragraph (v) so as to mean that as long as the overstayer had made an application within the 14 day grace period – regardless of whether that application was successful – his continued, open-ended, overstaying would be overlooked for the purpose of calculating the period of continuous residence under (i). Describing the drafting in the rule as "seriously problematic" [at §30] the Court

rejected that contention. That is precisely the situation in which the Second Applicant finds herself. Since the 27th August 2017 her overstaying has been open-ended, and cannot be remedied by 39E.

20. If I am wrong in my reading of Hoque, I note that the further written representations of the 17th March 2021 do not address at all the question specifically raised in my Directions (set out at my §7 above and at §62 of Judge Monaghan's decision) about whether or not the Second Appellant remained in India with her husband during his absence in 2011-2013. I note that in her witness statement of the 12th January 2021 she asserts that she has only ever been away for "around weeks": this vague assertion is unsupported by evidence and does not address the finding of Judge Monaghan that actually she was also absent for almost 17 months. I would further note that I have been provided with no evidence to demonstrate that the Second Appellant meets the requirements of paragraph 276B(iv), in particular I have not been shown an English language certificate to the appropriate standard.

21. In those circumstances I cannot be satisfied that the Second Appellant meets the requirements of paragraph 276B. I therefore need give no consideration to the submissions made about whether she should be expected to make a paid application.

22. In the alternative I am asked to consider whether dismissing this appeal would nevertheless be a disproportionate interference with her private life.

23. I accept that the Second Appellant probably has a private life capable of engaging Article 8 protection. Although I was given no substantive evidence of it, on the accepted facts she has lived primarily in this country since 2010. I accept that in that time she will have become accustomed to life in the United Kingdom and I infer that she will have made friends etc. I further accept that the refusal to grant her leave will *prima facie* interfere with that private life in that the consequence of that refusal is that she will be required to return to India. There is no dispute that the decision is one that the Secretary of State is lawfully permitted to take.

24. The question is whether the decision is proportionate. In making my assessment I must have regard to the public interest factors delineated in s117B of Nationality, Immigration and Asylum Act 2002:

> **117B Article 8: public interest considerations applicable in all cases**
>
> (1) The maintenance of effective immigration controls is in the public interest.
>
> (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
>
> (a) are less of a burden on taxpayers, and
>
> (b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

25. I have taken into account my finding that the Second Appellant does not meet the requirement of the Rules, and that she does not currently have leave to remain in the United Kingdom. The maintenance of effective immigration control is in the public interest.

26. It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English are less of a burden on taxpayers, and are better able to integrate into society. I have been provided with no information about whether the Second Appellant can speak English. I do however note her (unevidenced) assertion that she has completed a Masters course here, and that she has completed the Life in the UK test. I am prepared to accept, even if the absence of any formal certification such as required by the rules, that the Second Appellant can therefore speak English well enough to permit her to integrate into society.

27. It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such person are not a burden on taxpayers, and are better able to integrate into society. I have been shown no evidence to demonstrate that the Second Appellant is financially independent. She speaks of financial difficulties in her statement but does not explain how she and her husband are surviving.

28. Section 117B(4) mandates that "little weight" should be given to a private or family life with a partner that is established when the person is in the United Kingdom unlawfully. For the purpose of this appeal I disregard this provision since I am satisfied that the Second Appellant's private life was "established" when she was here with valid leave, and her relationship with her husband was formed long before either arrived here.

29. Sub-section (5) must however be applied. Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious. In Rhuppiah v Secretary of State for the Home Department [2018] UKSC 58 the Supreme Court held that any leave other than indefinite leave is "precarious". It follows that the periods of leave held by the Second Appellant under the Points Based System constituted precarious leave.

30. Sub-section (6) has no application in this appeal since there are no qualifying children involved. The Appellants' dependent child was not born until 2018.

31. I have taken all of these matters into account. I have also taken into account that the Second Appellant has spent a considerable amount of time and money investing in a future in the United Kingdom and that she would like to stay here. Although I have no evidence of this before me, I assume by the fact that she pursues this appeal that she also regards her child's future as lying in the United Kingdom. In the absence of any evidence I am unable to make any finding on that child's best interests other than to accept the presumption that they must lie with remaining with both her parents. I have however been unable to identify any factor or factors capable of founding a claim to remain under Article 8. There is nothing particular about this case which would warrant a grant of leave outside of the rules, or which would render a refusal to grant leave unreasonable or disproportionate.

32. The Second Appellant's appeal, insofar as it rests on her own case, must therefore be dismissed. It is common ground between the parties that should her husband succeed, she would however be granted leave in line with him. I therefore turn to consider his appeal.

The First Appellant

33. As outlined above, the basis of the Respondent's refusal of the First Appellant's claim was his prolonged absence from the United Kingdom between October 2011 and March 2013. The Respondent asserts that this gap in residence prevents the Appellant from meeting the first requirement of 276B:

> (i) he has had at least 10 years continuous lawful residence in the United Kingdom.

34. The Respondent permits some gaps in residence. In her published policy 'Long Residence[1]' she explains:

> If the applicant has been absent from the UK for more than 6 months in one period or more than 18 months in total, the application should normally be refused. However, it may be appropriate to exercise discretion over excess absences in compelling or compassionate circumstances, for example where the applicant was prevented from returning to the UK through unavoidable circumstances.
>
> This must be decided at senior executive officer (SEO) level with a grant of leave outside the Immigration Rules being the appropriate outcome.
>
> Things to consider when assessing if the absence was compelling or compassionate are:
>
> • for all cases – you must consider whether the individual returned to the UK within a reasonable time once they were able to do so
>
> • for the single absence of over 180 days: you must consider how much of the absence was due to compelling circumstances and whether the applicant returned to the UK as soon as they were able to do so; you must also consider the reasons for the absence
>
> • for overall absences of 540 days in the 10 year period: you must consider whether the long absence (or absences) that pushed the applicant over the limit happened towards the start or end of the 10 year residence period, and how soon they will be able to meet that requirement; if the absences were towards the start of that period, the person may be able to meet the requirements in the near future, and so could be expected to apply when they meet the requirements; however, if the absences were recent, the person will not qualify for a long time, and so you must consider whether there are particularly compelling circumstances
>
> All of these factors must be considered together when determining whether it is reasonable to exercise discretion.

35. Boiling this somewhat repetitive policy down to its core, these are the relevant principles to be extracted. Single absences of 6 months or less will be overlooked, as will cumulative absences of 18 months or less. Anything over that and there is a presumption that the application will be refused. It may however be appropriate to exercise discretion in the applicant's favour if there are compelling or compassionate circumstances, for example where the applicant was prevented from returning to the UK through unavoidable circumstances. The decision maker must consider the reasons for the absence and whether the individual returned to the UK within a reasonable time once they were able to do so.

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[1] At the date of the decisions of the Respondent and the First-tier Tribunal the applicable guidance was dated 3rd April 2017. It has since been updated and I am referred to the document dated 28th October 2018, although I note that in the material part the words have remained the same.

36. The parties agree that the question raised by that policy is, in the context of this appeal, one for me to decide on the merits: I am not restricted to a judicial review of the considerations taken into account by the Respondent. It is for me to decide whether there were compelling circumstances preventing the Appellant from returning to the United Kingdom.

37. The reasons advanced by the First Appellant are set out in the evidence given to the First-tier Tribunal, and various medical documents emanating from institutions in India. In brief summary the evidence is that in October 2011 he returned to India for a family holiday where he was struck down with severe back pain. His parents took him to Sigma Hospital, a private clinic in his home town of Dilsukhnagar, Hyderabad. There he was diagnosed with Lumbar Disc Disease, Radiculopathy and Acute sciatica. The evidence indicates that he an in-patient at Sigma Hospital between the 4th November 2011 and the 19th November 2011. Thereafter he was discharged with instructions to "complete bed rest for 12 months and to visit the doctor as an outpatient until further notice". His last visit to the doctor was on the 18th December 2012 when he was given some more medication. He was advised on that occasion that he could "carry on his activities as usual".

38. The decisions before mine have subjected the medical evidence provided to some scrutiny. The Respondent was concerned that she had not been able, despite attempts to contact Sigma Hospital, to verify the documents provided; Judge Monaghan had found the advice of "complete bed rest" and the prescription of antibiotics to be implausible in light of current practice in the NHS. For my part I do not consider it necessary to take such matters into account. That is because even on the Appellant's own evidence, the account is not capable of meeting the terms of the policy.

39. The Appellant left the United Kingdom on the 10th October 2011. He was permitted, within the terms of the policy, to remain out of the country until the 10th April 2012. By the 10th April 2012 he was living with his parents, whilst making fairly regular outpatient visits to his doctors. Although he remained under advice for "complete bed rest" it is apparent from his trips to the clinic that he was not incapable of movement at that point. It has not been demonstrated that the Appellant's back pain was so severe at this point that he could not have made the journey back to the United Kingdom. "Compelling" indicates a high test. I am not satisfied that having a sore back meets it, particularly since it appears that the Appellant was being prescribed a number of painkillers at the time.

40. The policy instructs decision makers to further consider whether the applicant returned to the United Kingdom as soon as he was able to do so. He was discharged from outpatient care at Sigma Hospital in December 2012 when the doctor noted that he was "able to walk freely". The Appellant did not receive any further medical care at that point but did not return to the United Kingdom until the 13th March 2013, some three months later. I note that at that time he still had valid leave as a Tier 1 'highly skilled person' which was valid until the 15th September 2013 and could

therefore have re-entered the country. He did not return to the United Kingdom as soon as he was able to do so.

41. Having taken these matters into account I am not satisfied that the Appellant has shown that there were "compelling" reasons why his absence from the United Kingdom was as long as it was. In those circumstances I am unable to find that discretion should be exercised in his favour under 276B(i).

42. I move on to consider whether the decision to refuse to grant the First Appellant leave to remain is nevertheless a disproportionate interference with his Article 8 rights.

43. I am prepared to accept – although again there is no evidence of this before me – that the First Appellant has established a private life in the time that he has spent in the United Kingdom. I accept that requiring him to return once again to India would interfere with that private life. There is no dispute that the Secretary of State is lawfully empowered to take the decision that she has. The question is whether the decision is disproportionate. In my assessment I am bound to have regard to the public interest as set out in s117B Nationality, Immigration and Asylum Act 2002.

44. I recognise that the First Appellant has in the past always had valid leave to be in the United Kingdom. I must however also take into account my finding that the First Appellant does not today meet the requirement of the Rules for a further grant of leave. The maintenance of effective immigration control is in the public interest.

45. It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English are less of a burden on taxpayers, and are better able to integrate into society. I have been provided with no information about whether the First Appellant can speak English to the required standard but I am prepared to infer from the evidence, in particular the repeated grants of leave as a Points Based Migrant, that he is able to do so. I accept that the First Appellant can therefore speak English well enough to permit him to integrate into society.

46. It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such person are not a burden on taxpayers, and are better able to integrate into society. I have been shown no evidence to demonstrate that the First Appellant is financially independent. His most recent statement, of 12th January 2021, is to the contrary. Therein the Appellant states that he has lost his job and that he is finding it difficult to feed his family. This must therefore be weighed against him in the balance.

47. Section 117B(4) mandates that "little weight" should be given to a private or family life with a partner that is established when the person is in the United Kingdom unlawfully. For the purpose of this appeal I disregard this provision since I am satisfied that the First Appellant's private life was "established" when he was here

with valid leave, and his relationship with his wife was formed long before either arrived here.

48. Sub-section (5) must however be applied. Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious. In Rhuppiah v Secretary of State for the Home Department [2018] UKSC 58 the Supreme Court held that any leave other than indefinite leave is "precarious". It follows that the periods of leave held by the First Appellant under the Points Based System constituted precarious leave.

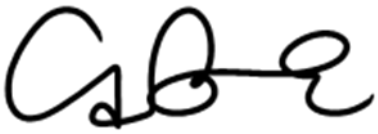
49. Sub-section (6) has no application in this appeal since there are no qualifying children involved. The Appellants' dependent child was not born until 2018.

50. I have taken all of these matters into account. I have also taken into account that the First Appellant, and his family, has spent a considerable amount of time and money investing in a future in the United Kingdom. I am prepared to accept, for the purpose of this appeal that he continues to suffer from back pain and that he has since childhood suffered from anxiety. As in his wife's appeal I accept, even in the absence of any actual evidence, that it would be in the best interests of their child to remain with them both. None of these matters, even weighed cumulatively, come close to outweighing the public interest in refusing leave to those who are unable to meet the requirements of the rules. It is apparent from the evidence that the Appellant has family in India who are not without resources, and that he would therefore receive some assistance in resuming his life there. His immigration history shows him to be educated and highly skilled and I have been shown no reason why he would be unable to work in India as he has worked here. There is nothing in the evidence before me to say that the Respondent's decision is a disproportionate response in light of the legitimate aim of protecting the economy through the imposition of immigration controls.

Decision

51. The appeals are dismissed.

52. There is an order for anonymity.



Upper Tribunal Judge Bruce
Date 14th May 2021