Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/06755/2020
(UI-2022-001228)

THE IMMIGRATION ACTS

Heard at : Field House	**Decision & Reasons Promulgated**
On : 8 August 2022	**On : 20 September 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

ADDAR SINGH

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Ahmed, instructed by Charles Simons Immigration Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his human rights appeal.

2. The appellant entered the UK on 13 November 2014 with his wife, with entry clearance as visitors valid until 22 April 2015. On 20 April 2015 they both applied for leave to remain on the basis of their family and private life. Their applications were refused on 27 July 2015 and certified under section 94 of the Nationality, Immigration and Asylum Act 2002. They sought, but were refused, permission to seek judicial review to challenge the decision. On 9 February

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2017 they applied again for leave to remain in the UK on the basis of their family and private life, but their applications were considered as further submissions under paragraph 353 of the immigration rules and were refused without a right of appeal on 23 May 2018. They then made a human rights claim, on 8 January 2020, for leave to remain in the UK on the basis of their family and private life. Their claims were refused on 31 July 2020, but this time with a right of appeal.

3. The appeals were listed for hearing in the First-tier Tribunal on 3 September 2021, by which time the appellant's wife had sadly passed away, on 26 February 2021. The appellant's wife's appeal was treated as abated, and the appeal proceeded for the appellant alone.

4. The appellant's appeal was heard by Judge Cartin. The appellant chose not to give oral evidence owing to his state of health and relied instead upon his written statement. The judge considered that he was in fact competent to give evidence and drew an adverse inference from his failure to give evidence and to make himself available for cross-examination by the respondent. The appellant's daughter and son-in-law gave oral evidence before the judge. The evidence of the appellant's daughter was that her father had memory loss and mental health problems and that he also had prostate cancer and a problem with his eye, that he was unable to do anything for himself in respect of day-to-day activities and that he had no family in India and could not afford to pay for anyone to care for him there. The judge had before him medical reports from the appellant's GP, Dr Mathukia, who wrote about his multiple medical problems including prostate cancer, depression, recent eye surgery and frailty; from his consultant urological surgeon Mr Bhanot, who wrote about his recent diagnosis with low grade and low stage prostate cancer; from a consultant general adult and addiction psychiatrist Dr Nnatu who had seen the appellant and was reporting on his symptoms of anxiety and depression; and from his GP Dr Mitchell, who wrote about his anxiety and depression, his prostate cancer, his deteriorating eyesight and his knee pain from severe osteoarthritis.

5. Judge Cartin accepted that there was an established family life between the appellant and his daughter and her family. He considered that the appellant's application was effectively an adult dependent relative one but noted that it had properly been conceded that the requirements of the relevant immigration rules could not be met on that basis. He found that there were no very significant obstacles to the appellant's integration in India and considered that the only reasons given by the appellant for not being able to integrate, namely his absence of 7 years from India, his age and his health difficulties, were not obstacles to integration. The judge found the evidence of the appellant's care needs to be unconvincing. He considered that the medical evidence did not confirm that the appellant had memory problems, only that his son-in-law had stated to the doctor that he had such problems, and he noted that there had been no mention of memory problems in the appellant's application or in the letter from the GP. The judge was therefore doubtful as to the assertions about the appellant's memory problems. The judge accepted that the appellant had prostate cancer but noted that it was being monitored and that no treatment was currently necessary. He considered it to be an exaggeration that the

appellant was unable to do anything by himself and that there was an overall exaggeration about his health problems and care needs. Having weighed the factors in favour of the appellant and against him, the judge concluded that the refusal decision was proportionate, and he accordingly dismissed the appeal.

6. The appellant sought permission to appeal to the Upper Tribunal on the grounds that the judge had made findings that were inconsistent with the medical evidence and had not attached the correct weight to the evidence when deciding whether there were very significant obstacles to integration in India, in light of the appellant's health and medical needs. It was asserted that the judge had been wrong to find that the medical evidence did not confirm the appellant's memory problems, when it did.

7. Permission was refused in the First-tier Tribunal but was subsequently granted upon a renewed application by Upper Tribunal Judge (UTJ) Canavan.

8. The matter then came before me and both parties made submissions.

Hearing and Submissions

9. Mr Ahmed relied upon the grounds and also the grant of permission by UTJ Canavan, submitting that the judge's Article 8 assessment was flawed. He submitted that the finding that family life had been established between adult family members was in itself an indication of exceptional circumstances and also was an acceptance of the appellant's dependence upon his family members in the UK. He submitted that, together with the medical evidence, those were factors which should have been considered when assessing the question of very significant obstacles to integration and proportionality.

10. Mr Tufan submitted that the judge's decision was a detailed one which took account of all the medical evidence and that the judge had given a plethora of reasons why the respondent's decision was proportionate.

Consideration and Findings

11. As Mr Tufan submitted, the judge's decision is a very detailed and comprehensive one and involves a very careful analysis of the medical evidence. It is clear from the judge's findings that the medical evidence available before him was significantly lacking and, at [62], the judge made a comparison between the limited supporting evidence for this appeal as against the evidence, including medical records, provided in support of the appellant's wife's application. Indeed, I note that the focus, in the various previous applications and submissions made to the respondent following the expiry of the appellant's and his wife's visitor visas, had always been upon the appellant's wife's medical condition with little or no reliance placed upon the appellant's health application until this appeal hearing.

12. It was on the basis of that very limited evidence that the judge considered that the claims being made about the appellant's medical condition and care needs had been exaggerated and that the medical evidence did not support the claims about the extent of his conditions. That was in particular in relation to the claims about his memory loss, where Dr Nnatu's opinion in that regard appeared to be based upon what the appellant's son-in-law was telling him

rather than upon any independent assessment. I find no merit in the assertion that the judge did not have sufficient regard to the medical evidence, when he clearly did, and the grounds are essentially little more than a disagreement with the conclusions the judge drew from the limited medical evidence and the weight he accorded to that evidence.

13. It is asserted by Mr Ahmed that the judge, having found that family life existed between the appellant and his adult daughter and her husband, then failed to take account of that dependency when considering the question of 'very significant obstacles' and proportionality under Article 8. However, I find no merit in such an assertion. The fact that the judge concluded that family life had been established for the purposes of engaging Article 8 did not require him then to conclude that the appellant was entirely dependent upon his daughter and her husband, when it is clear from his findings that he found that the level of dependency had been exaggerated, for the reasons given at [52] and [61] to [64].

14. The judge, at [42] to [50], considered the nuanced distinction between the question of 'very significant obstacles' and the question of obstacles to daily life in terms of age and health problems. The grounds challenge that distinction. I do not find merit in the assertion that such a distinction was necessarily legally erroneous but consider in any event that the judge properly found that the high test of demonstrating 'very significant obstacles' was simply not met, owing to the lack of evidence of how the appellant's health and care needs could or could not be met in India and in view of his findings as to the exaggerated evidence of the level of care actually required.

15. On that basis too, the judge's findings on proportionality were fully and properly open to him. The judge carefully set out factors in the appellant's favour and those against in accordance with the 'balance-sheet' approach. He had full regard to the appellant's age, medical needs and family ties to the UK and gave them appropriate weight. It is clear that the appellant's past bereavements were taken into account by the judge and specific reference was made to that when considering the diagnosis of depression at [63]. The judge was perfectly entitled to conclude that the appellant's adverse immigration history and other factors, including his inability to meet the requirements of the adult dependent relative immigration rules, meant that ultimately his interests and those of his family members were outweighed by the public interest.

16. In conclusion, the judge's decision was one which was made upon a complete assessment of the evidence and a proper application of the relevant legal provisions and caselaw, and was supported by cogently reasoned findings. The judge was entitled to reach the conclusion that he did and to dismiss the appeal on the basis that he did. I find no merit in the grounds and I therefore uphold the decision of the First-tier Tribunal.

DECISION

17. The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring it to be set aside. The decision to dismiss the appeals stands.

Signed: S Kebede
Upper Tribunal Judge Kebede Dated: 9 August 2022