Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/09082/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 13th January 2022	**On 1st February 2022**

Before

UPPER TRIBUNAL JUDGE KEITH
DEPUTY UPPER TRIBUNAL JUDGE WILDING

Between

KHUSHDEV SINGH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Rehman, Counsel, instructed by FR Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the remaking of the decision in the appellant's appeal against the respondent's refusal of his human rights claim.

2. The appellant, a citizen of India, had previously applied for a visit visa in 2006 which was refused and he unsuccessfully appealed that refusal. He eventually obtained a visit visa, valid from 25th March to 25th September 2009, overstayed and was served with notice of intention to remove him. On 21st November 2017, he applied for leave to remain outside the

Immigration Rules on compassionate grounds and on 15th January 2019 he applied for an EEA residence card on *Zambrano* grounds, which was rejected on 28th January 2019.

3. The respondent refused the appellant's 2017 application in her refusal letter of 8th May 2019. The application had been based on the appellant's claimed relationship with his British citizen wife, ("HB"), whom it is unnecessary to name. The respondent concluded that HB would not be required to settle in India and the couple could remain in contact with one another in the event of the appellant's return there without her. Alternatively, in the event that the couple returned together to India, HB would be able to access medical treatment for her various medical conditions. The respondent also noted that the couple had started their relationship in 2015 in the knowledge that the appellant was an overstayer. Moreover there were not insurmountable obstacles to family life continuing outside the UK in accordance with Section EX.1(b) of Appendix FM.

4. The respondent also considered, and refused, the appellant's application by reference to his private life as he had only been in the UK for eight years and one month, the majority of which was unlawful, while he had spent the first 24 years of his life, including his formative years, and a significant portion of his adult life, in India.

5. Finally, the respondent considered paragraph GEN.3.2 of Appendix FM and whether there were exceptional circumstances. Whilst the respondent noted the claims of the appellant's partner's significant mental health issues, she was not required to leave the UK. She received support from her mother in the UK, with whom she lived. The appellant could also support his partner from India or alternatively she would be able to access similar treatment in India. The respondent rejected allegations that they would face serious threats due to the difference in their castes and religion. The appellant had not, despite being given the opportunity, pursued an asylum claim.

The FtT's decision

6. As noted in this Tribunal's error of law decision, annexed to these reasons, the First-tier Tribunal Judge, Judge Trevaskis, rejected the appellant's appeal. He concluded that there was no evidence to support the claims of adverse interest in India (a finding which was preserved). The FtT found that the appellant had been living in the UK illegally and clandestinely for many years. The FtT concluded that India has a functioning healthcare system and it would not be impossible for HB to adapt life with India. There was also little evidence of the nature of care which the appellant provided to HB or HB's mother, as claimed. The FtT did not accept that there were insurmountable obstacles to continuation of family life outside the UK, nor that there were very significant obstacles to the appellant's integration in India, where he had lived for the first 24 years (he was now 34). The respondent's refusal of leave to remain would not result in

unjustifiably harsh consequences, as the appellant did not meet the requirements of the Immigration Rules; HB could visit him in India and he could visit her in the UK. The relationship between the two was very recent and attracted little weight, bearing in mind that the relationship had been established when the appellant was in the UK unlawfully. The FtT accepted that the relationship was genuine and subsisting, but the couple did not have the right to choose where they had that family life, regardless of the Immigration Rules. The FtT refused the appellant's appeal.

The appellant's appeal

7. The appellant appealed on six grounds, as set out in our error of law decision. We rejected five of the six grounds, but concluded that there was an error on the basis that the FtT had failed to analyse adequately the contents of a detailed expert report and in particular, the suggestion in the report that the couple's separation could result in a severe and rapid deterioration in HB's mental health symptoms.

The issues in this appeal

8. We identified and agreed with the parties the issues in the case.

9. In respect of the appellant's appeal rights, by virtue of the date of the respondent's decision, the appellant's appeal is limited to one by reference to article 8 of the ECHR, namely his right to respect for his family and private life, although we may take the Immigration Rules as our starting point. In that context, we considered the following provisions in respect of family life:

    9.1. GEN.3.2 of Appendix FM - whether there are exceptional circumstances which would render refusal of leave to remain, a breach of article 8 ECHR because such refusal would result in unjustifiably harsh consequences for the appellant, HB or her mother.

    9.2. Section EX.1 of Appendix FM (noting that this is not a free standing test, as the appellant must still meet the requirements of paragraphs E-LTRP.1.2-1.12. and E-LTRP.2.1-2.2 – see Section R-LTRP); namely there are insurmountable obstacles to family life with HB continuing outside the UK, which means very significant difficulties which would be faced by the appellant or HB in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the appellant or HB.

10. If we concluded that the application did meet the Rules, this would have a significant bearing on the proportionality of the respondent's decision in the context of the well-known test set out in *Razgar v SSHD [2004] UKHL 27*.

11. The respondent accepted that the genuineness of HB's relationship with the appellant was not in doubt.

12. In considering the appeal, and by reference to *Razgar*, the questions remained:

    12.1. Whether such interference would have consequences of such gravity as potentially to engage the operation of article 8?

    12.2. Whether such interference is in accordance with the law?

    12.3. Whether such interference is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?

    12.4. If so, is such interference proportionate to the legitimate public end sought to be achieved?

13. In considering the appellant's right to a family life, it was also necessary for us to consider Sections 117A and 117B of the Nationality, Immigration and Asylum Act 2002.

Documents

14. The respondent provided a bundle including the appellant's immigration history, its refusal decision, the FtT's decision and the appellant's subsequent appeal, as well as this Tribunal's error of law decision. The appellant provided a 274 page bundle ("AB") which included the witness statements of the appellant; HB; and HB's mother, whom we refer to as "RB". The bundle also included statements that had been provided to the First-tier Tribunal but for the avoidance of doubt, the witnesses only adopted their updated witness statements for this Tribunal. The appellant's bundle also included expert medical evidence of Dr Kashmiri of 1st April 2019 beginning at page [88] AB and a subsequent updated report of 16th June 2020, beginning at page [123] AB, as well as other medical information.

The hearing

15. The appellant, HB and RB all gave oral evidence in person on which they were cross-examined. The appellant and RB gave evidence via a Punjabi interpreter and we established at the beginning of the hearing that the interpreter and the witnesses were able to understand one another. We were also conscious that RB was agreed as being a vulnerable adult (see: Joint Presidential Guidance Note No 2 of 2010) by virtue of her significant mental health issues. We indicated to Mr Rehman that should he have any concerns about RB's ability to effectively engage in questions and evidence he should let us know straightaway and we would also monitor the progress of RB's evidence ourselves. Whereas at various stages RB indicated that she was distressed and anxious, we are satisfied that she was able to understand the questions put to her and gave measured answers in respect of these questions. There were stages at which she

candidly accepted that she was unsure of chronology of events but we do not draw adverse inferences from her difficulties in recalling that chronology. We turn to the evidence of each of the witnesses which we summarise briefly before addressing the more detailed expert evidence.

The appellant's witness evidence

16. The appellant confirmed, and it is not disputed, that he has been in a continuous relationship with HB since 2015. They had married on 23rd November 2018. HB had been struggling with her mental health since an early age because RB, her mother, had been in an abusive marriage and HB had witnessed her mother being the victim of domestic violence. HB herself had married in 2012 and suffered similar emotional and physical abuse. During that marriage HB had also suffered the loss of two pregnancies resulting in her first depressive episode.

17. The appellant and HB met in 2013. The appellant believed straightaway that HB was in an abusive relationship and had supported HB to divorce her husband in 2015. The appellant described having responsibility for all aspects of HB's care, emotionally and physically. There were also times when his mother-in-law, RB, needed assistance as she was now only able to work part-time through ill health. RB suffered from diabetes. The appellant described attending all of the medical appointments for HB as she could not travel by herself due to experiencing disassociation, low mood and social anxiety. She was unable to travel by public transport and crowded places frightened her. The appellant therefore booked taxis in advance, or his cousin drove the appellant and HB to appointments.

18. The appellant described HB's intracranial hypertension (fluid pressure on her brain) which required regular lumbar punctures due to fluid building up in her skill. She suffered headaches, dizziness, tinnitus, nausea, blurred vision, swelling of her eyes and optic nerves. After each lumbar puncture, HB suffered back pains and headaches so that she could hardly do anything and her ability to carry out everyday tasks such as going to the toilet or taking a shower would be affected.

19. The appellant assisted HB going to the toilet, showering, prepared food for her and did her laundry. He did not work, as he provided her 24 hour care. He also ensured HB took her medication, which he described in oral evidence. HB suffered from panic attacks around two or three times a week and as a result the appellant made sure HB took Propranolol and Acetazolamide to control her hypertension; and Sertraline for her depression and low moods. Since losing her two pregnancies and having suffered domestic violence, she often experienced vivid nightmares, hearing children crying all of the time. HB also believed that people, such as their neighbours, also spoke about her in negative terms, although the appellant regarded these as irrational fears. The appellant described HB's mental health as having deteriorated since 2019, due to appointments being cancelled and medicines being difficult to source during the Covid pandemic. The appellant also described it as unsafe for HB to relocate to

India, because of societal prejudice against those with mental health issues.

20. The appellant indicated that he would not be able to work, were he permitted to stay in the UK, as he needed to care for HB. In terms of the support that the family currently received financially, RB owned the family property in which the family lived. She contributed to house expenses a little bit and he did not believe HB currently received any benefits although on one occasion she received £150 to £200 during the pandemic. He later clarified in evidence that in fact she was now in receipt of Universal Credit. The couple had sought help from the NHS about care for HB but they were still waiting for an outcome of that request. Their request had been made to HB's GP, but her GP kept changing. The appellant accompanied HB to her in-person GP appointments, although a number had taken place by telephone. It was suggested to the appellant that HB had failed to attend a number of appointments. The appellant accepted that on occasion, she had not attended because she was unwell. The appellant described the medication regime that HB was subject to by reference to the specific dosages and he indicated that his level of support increased when he married HB in 2018.

21. The appellant was also challenged that Dr Kashmiri's recent report of 2020 suggested that HB's condition had recently deteriorated and that she needed cognitive therapy but the very appointments that she had missed related to cognitive therapy sessions in March and June 2020. It was these appointments that the appellant indicated were because HB had been unwell. The appellant was challenged how his presence helped in the improvement or the stabilising of HB's medical condition, when the medical reports suggested that her condition had deteriorated. The appellant described looking after her when she suffered panic attacks and ensuring she took her medication. The appellant did not think that HB's medical treatment would be the primary reason for her recovery. His role in her emotional wellbeing was likely to play a greater part. He gave as an example of his concern about the effectiveness of the medical treatment the fact that when HB had a lumbar puncture, she would sometimes not be able to get out of bed for weeks at a time. He indicated that there were several reasons why HB could not return to India, including the unbearable weather; the fact that she was not fit to fly; and she would not feel comfortable amongst a large number of strangers.

22. In terms of support for HB and RB, the appellant believed that HB had previously applied for Universal Credit but had been rejected on more than one occasion because HB had not been well enough to attend appointments, as her illness had deteriorated. He was not aware whether she had applied for carer allowance. When the appellant was asked to comment on a letter from Dr Viegas dated 12th July 2021 which referred to her mood being up and down but not being too bad and being asked whether her condition had improved, he suggested that Dr Viegas was a neurologist rather than a psychologist. It may have accurately recorded what HB had said in a telephone call, but she may have been reticent in

describing her mood with him. Her mental state had certainly not improved in his view and he knew this because of his need to manage her.

23. The appellant described receiving around £150 to £200 a month from his cousin for food. When asking about funding for IVF treatment and whether he might be charged for this (correspondence from the NHS had indicated that if either one or both of the partners were not entitled to free IVF treatment, the couple could be charged), he indicated that they would need to ask relatives to support them financially but they had not yet done so.

24. The appellant was also asked about RB. He explained that she worked in the NHS as a cleaner in a dialysis unit. She also provided the couple with financial support.

25. Finally, the appellant referred to additional obstacles to HB integrating into India including her mental health issues for which she would face ostracism and the absence of medical treatment for mental health issues in India.

HB's evidence

26. HB's written witness statement largely recited facts also contained within the appellant's witness statement, albeit in different terms. HB confirmed that the last time she had worked was in 2012. She was currently in receipt of Universal Credit. She was unable to recall in terms of a precise chronology when she had applied previously for jobseeker's allowance but she had received Universal Credit for around the last seven to eight months.

27. When it was suggested to her that she had missed a number of cognitive therapy appointments as indicated in correspondence, HB said that on occasion she might be unwell but that the correspondence within the appellant's bundle did not comprise the entirety of the correspondence and she confirmed and was willing to provide updated evidence that she had completed a full course of six cognitive therapy treatments, following which she was eligible for reference to a further specialist treatment centre, Med House. There was a bit of a wait for this but she was engaged in that treatment. However, there had been a shortage of medication in the past which, for example, meant that her neck swelled and she had not been able to have a lumbar procedure during the COVID lockdown. HB confirmed the full range of her husband's support. When she was ill she could not get out of bed, the room would be spinning and she could not even brush her teeth. He cooked for her, cleaned for her and loved her and she did not believe that she would be able to live apart from him even with the support of RB. She saw no future without him and would kill herself, were she separated from him. She described the circumstances of her first abusive marriage and the contrast with the appellant. She was nothing without him.

28. HB was asked about the period of time that she had spent in India on the last occasion she had done so. She had been to India around six or seven times to Nurmahal in the Punjab province of India where her maternal relatives lived. She had most recently visited there in 2012 when she got married. She and RB had hired a house as these were readily available. However, she had not spent a period any longer of three to four weeks in India and had found the heat oppressive. She and RB no longer spoke to family members in India and she had not been able to return because of her health which had deteriorated during her marriage.

29. When describing having worked previously, HB had not worked since her marriage in 2012 and had worked before that as a receptionist in a beauty parlour. HB was unclear about the chronology but had previously applied for benefits unsuccessfully. She was not aware of carer's allowance and had not applied for it. She was currently assessed as being not fit to work and was happy to provide documentation from the Department of Work and Pensions which confirmed this. HB and the appellant were not currently looking into IVF or adoption in India. She was currently not mentally well enough to undergo IVF in any event and was not fit to travel. HB was asked about missing appointments for cognitive therapy and confirmed that she could not identify the precise dates but reiterated that she had completed the course of treatments to now be referred to Med House. She accepted that the letter from Dr Viegas in 2021 had referred to her headaches as manageable and her moods going up and down but not too bad, but said that this reflected the fact that her condition varied and that when she felt low, she was really low. When she was asked about whether one of or the main reasons for her depression was uncertainty over the appellant's immigration status, HB explained that it was more complex than that and that she had suffered from mental health illness as a child, was fine when she was married in 2012 but then her illness worsened again. She would be unable to return to India where she would not be accepted and her mental illness would be regarded as "black magic". When asked about whether there was anything stopping her from having a child in India, HB said that there was no means of financially supporting that child and that RB, her mother, also provided her with significant support. RB herself had her own needs and as a family they supported one another. She accepted that the appellant did not provide financial support and that she was in receipt of benefits, but added that the family would not have means of supporting themselves in India.

RB's evidence

30. RB's witness statement confirmed very broadly speaking the evidence given by HB and the appellant. She confirmed the appellant's role in all aspect of HB's life by virtue of HB's complex medical needs. She further asserted that the couple would not be able to relocate to India bearing in mind that HB had never lived there, was continuing to receive healthcare treatment in the UK which would be difficult to access in India and where she would face stigmatism for cultural reasons because of her mental

health. There would be a risk of further self-neglect, isolation and a suicide risk.

31. In oral evidence, RB confirmed that whilst HB had two siblings in the UK, a brother and a sister, neither lived with the family. RB's other daughter was married and lived elsewhere and her son had drug dependency issues. She said that the appellant and his cousin were the only people other than herself, able to provide support to HB. The doctors who treated HB did not provide carer support. RB did not wish HB to have to have professional care assistance and would do everything she could to provide for HB, but was simply unable to keep that role up, which is where the appellant had stepped in.

The respondent's submissions

32. Ms Cunha accepted that the refusal letter, predating as it did much of the updated evidence, had not engaged with the current situation but nevertheless refusal remained proportionate. There were simply not the obstacles to family life continuing as described. The medication which HB took was available in India where there are also medical facilities. The same family financial support that was provided to the couple in the UK could continue to be provided. HB had engaged in some cognitive therapy sessions and these could continue to be accessed with financial support in India.

33. One of the reasons for the deterioration in HB's health was because of the uncertainty of the appellant's immigration status, which would soon be resolved and the couple could then make plans including the possibility of further attempting to have children, something which was a key cause of HB's ill-health. IVF treatment was available in India and even if it were argued that the couple not afford it, they equally could not afford to pay for it in the UK. The couple were able to integrate into India, noting that HB on her account spoke Hindi. The question of whether HB could fly was a practical matter which could be resolved after she completed cognitive therapy. In terms of the expert reports, Dr Kashmiri had relied upon HB's own view of matters and whilst Ms Cunha did not say that they should be disregarded they should have more limited weight attached to them. In particular the various medical records which the experts had referred to had not been disclosed so this Tribunal could not review them. There was no evidence that the appellant's own care had progressed HB's health in any way and in fact there was at least a suggestion or implication that the appellant did not believe in conventional medicine, but his own emotional support for HB, which was clearly not efficacious, as her health had deteriorated.

The appellant's submissions

34. The appellant met GEN.3.2 and section EX.1. HB's health issues were summarised as follows: suicidal ideation; major depressive disorder which was severe; social anxiety disorder with panic disorder; psychotic

symptoms; panic attacks (twice a week); attempted suicide in HB's teens; HB having previously suffered two miscarriages; HB suffering from nightmares where she heard children crying; paranoia; persecutory delusions and auditory hallucinations; a neurological condition; polycystic ovary syndrome; headaches; dizziness; tinnitus; nausea; blurred vision; hypersomnia; sharp intermittent chest pain; her fear of crowded places; a formal medical diagnosis that she was unfit to travel; her low mood and energy levels; her lack of feelings of enjoyment and low self-esteem; comfort eating and compulsive behaviour. She took medication already outlined but also crucially was awaiting further psychological treatment at Med House.

35. The appellant provided the following support: emotional support; physical support; round-the-clock care; comfort to HB when she had nightmares; assistance with her daily medication regime; attending medical appointments with her; doing household chores; cooking and cleaning for HB; taking her to the bathroom when she suffered from blurry vision; doing her hair; massaging her when she was in pain and taking her out on walks. RB also suffered from health issues with chronic diabetes and required the assistance of the appellant to remember her to take medication and also to take her to the bathroom at night.

36. Mr Rehman then cited Dr Kashmiri's expert medical evidence, which corroborated all of HB's medical conditions and which we come on to discuss further in our findings.

37. The insurmountable obstacles were described as HB's host of complex medical issues; and the likelihood of a swift and significant deterioration in HB's mental health if she were to go India, as noted in the expert report. HB would lose the support of RB who was described in the medical evidence as having an immense impact on her. Neither HB nor RB would be able to cope with the separation of one another. Moreover, the CPIN: India - Medical and healthcare provision October 2020, noted the financial constraints in accessing medical treatment, in particular mental health. The expert reports noted a risk of deterioration in HB's mental health if she failed to comply with her medical treatment, which was highly likely without the support of the appellant; an inability to pay for medical treatment in India; and HB being at high risk of self-harm. HB could not be left on her own and was afraid of crowded places, suffering frequent panic attacks. The appellant and HB would become destitute in India because of their lack of finances and their ability to access healthcare would be difficult not only because of HB's mental health but also because as a woman, she would face further discrimination. On a basic practical point, HB had been assessed by her doctor as unfit to travel.

38. By reference to the well-known authority of GM (Sri Lanka) v SSHD [2019] EWCA Civ 1630 the test was whether a fair balance was struck between the public interest in the maintenance of immigration control and the appellant's, HB's and RB's interests. This needed to be a real world analysis, on proper evidence. The list of relevant factors was not closed

and the disproportionality of refusal was reflected in the following: a significant deterioration in HB's mental health if the appellant were removed to India; a significant impact on HB's physical health; the risk of HB attempting suicide increasing dramatically; HB's avoidance of taking medication in the absence of the appellant; HB's long term prognosis as good with the appellant, but without him, it being poor; HB's loss of support provided by the appellant; RB's loss of support provided by the appellant; a burden on public benefits, NHS and carers who would otherwise have to provide the care provided by the appellant; and, neutrally, the fact that the appellant spoke English and was, it is claimed, financially independent.

39. In oral submissions, Mr Rehman referred to the explanation for the lack of fitness to fly at page [130] AB as being HB's fear because of cabin pressure when her condition was not stable and she had not been able to access treatment during the COVID pandemic. The medical evidence all corroborated the assertions that HB's symptoms had worsened recently; the appellant's role in caring for HB; the current medical treatment provided to her and the viability of access to treatment in India; the risk to HB were the appellant returned; and most importantly, the declaration by the expert that they understood their duties as an independent witness to this Tribunal. This was in the context of any suggestion, as is often made, that a medical report should somehow have less weight attached to it by virtue of its reliance upon a narrative provided by either HB or the appellant which, in the latter case would be self-serving. The societal discrimination which HB was likely to face was described at §11.8.4 of the CPIN.

The Law

40. We do not set out again the provisions of paragraph GEN.3.2 or section EX.1 of Appendix FM, which we have considered. Whether these tests are met is an objective question and the list of factors we may consider is not an exhaustive one. Crucially the focus for the purposes of section EX.1 is whether there are insurmountable obstacles to family life continuing outside the UK. It is not, for example, an assessment of whether HB could cope living in the UK, while separated from the appellant in India. Nevertheless, for completeness, we will come on to our findings in respect of the totality of the alternative scenarios.

Discussion and conclusions

41. We turn first to the most recent expert evidence report of Dr Kashmiri, whom as Mr Rehman points out, has included a statement confirming her understanding of her obligations as an independent expert witness to this Tribunal. In particular at §18.5, page [138] AB, she states:

> "I have not, without forming an independent view, included or excluded anything that has been suggested to me by others (in particular my instructing party)".

42. The report is consistent with Mr Rehman's submissions as to the severity of HB's condition. We include the following relevant citations but for the avoidance of doubt we have considered the entirety of the evidence before us:

> "5.1 ... her conditions had worsened as she had been unable to have the regular lumbar punctures for her condition, idiopathic intracranial hypertension. She has had to rely on medication which makes her drowsy and spends most of her time in bed as she feels constantly dizzy and lightheaded. This has meant that her husband [the appellant] has had to provide care round the clock for HB. Although her mother also lives in the same house, she works part-time and has herself been struggling with uncontrolled diabetes due to stress related to her daughter's illness and uncertain future which has continued to loom over them for a prolonged period of time.
>
> 5.3 ... She told me she spends her time, "sitting down, looking at the walls£. She has feelings of lethargy and anhedonia as well as hypersomnia with sleep reversal. Her sleep is disturbed with nightmares of "flashbacks from the past" and "frightening things". She has told me that she has been overeating which is comforting.
>
> 5.4 She has panic attacks with physical symptoms of shakes and shortness of breath. The episodes occur about twice a week. ... she has been experiencing sharp and intermittent chest pain since March 2020….
>
> 5.5 HB has suicidal ideations, she said "(I) maybe want to end everything, my life as well if he is returned to India, I will not be able to cope without him, He is the reason I live.
>
> 5.6 She added that she is struggling to recover from her mental health symptoms as they have been exacerbated by her husband's immigration issues. He provides her with care from the time she gets up to the time she goes to bed. He cooks the meals when her mother is working and helps with other household chores such as cleaning. He also supervises her when she has a shower due to incidents in the past and cannot be left on her own.
>
> 5.7 ... At her age [35] and with her chronic physical and mental health problems she would not be able to go to India with her husband for several reasons. Importantly the health conditions are not stable and she will struggle to get appropriate care as she would not be able to afford it. She also fears flying as flying would aggravate her clinical condition whereby the cabin pressures would increase the intracranial hypertension particularly when her condition is not stable and she has not been receiving treatment at present….
>
> 5.8 She added her mother has been a very strong influence in her life who supports her emotionally. This kind of support is very important due to her current struggle with her health. Being separated from her mother would be unbearable to both of them. ...
>
> 14.3 Her mood was subjectively low, objectively she appeared low….
>
> 14.4 HB has been feeling low in mood with difficulty concentrating. She has feelings of anhedonia and lethargy. She has also been experiencing hypersomnia, sleep reversal and nightmares. She has an increased appetite. She has persecutory delusions and experiences auditory hallucinations. She also has panic attacks with physical symptoms of shortness of breath and shakes.

14.5 She is worried about her uncertain future ... she is currently under the care of a neurologist, ophthalmologist and a gynaecologist and is struggling with her health. HB is also very close with her mother who supports her a lot.

14.7 Due to her several mental and physical ailments she is constantly dependent on her husband for support, both emotional and physical ...

14.8 She expressed suicidal ideations and a desire to end her suffering if her husband was returned to India ...

15.2 HB has .... been diagnosed with multiple physical and mental health problems due to which she is unfit to travel and relocate to India with her husband.

15.10 Given her severe mental and physical health issues she is presently dependent on her husband who provides her with care throughout the day and night. He provides her with love and emotional support ... he helps prepare her meals, have a shower, administer medication, accompany her to hospital, take her out....

15.11 I have considered --- HB fulfils the criteria for the following mental disorders:

15.12 Severe Major Depressive Disorder....

15.15 ... Social Anxiety Disorder with Panic Disorder.

15.16 Other psychotic disorder. She has symptoms of fixed persecutory delusions and auditory hallucinations...

15.19 In my clinical opinion HB has a complex presentation. She has deteriorated from the time I last assessed her [2019] ...

17.2 HB would most benefit from additional antipsychotic medication. She will need a review of [her current medication] following a further neurological opinion due to adverse effects. This will need close monitoring and titration of the dose to achieve therapeutic dose. Her response to treatment is limited due to her husband's current immigration matter with psychosocial stressors in association with having to relocate to India where she will be away from her mother who has an immense impact on her life in terms of emotional support. ...

17.3 ... Given her complex presentation she would need intensive and prolonged period of engagement in therapy.

17.4 Given HB's mental health difficulties further stress concerning her husband's immigration issue and the possibility of being separated from him is highly likely to exacerbate both her mental and physical wellbeing. She is highly dependent on him for her day-to-day needs and would not be able to cope without him. It is highly likely that the undesired separation from her husband would lead HB to consider ending her life as expressed by her ... her risk of suicide will be high at the point of her husband's removal from the UK.

17.5 HB has several physical conditions for which she is receiving treatment through the NHS. ... Given the complex picture her treatment provision in India would be unaffordable to the family and risk further deterioration.

17.6 With appropriate treatment and alleviating the stress of her husband's immigration issue her prognosis with long term treatment can be good. Without appropriate treatment her prognosis is poor.

17.7 In my clinical opinion, due to her physical health condition cabin pressures during a flight can adversely worsen her physical health condition of intracranial hypertension and would therefore deem her unfit to travel at present".

43. We have considered whether to attach less weight on the accuracy of the report by virtue of the narrative having been provided by HB and the appellant. We considered this in the context of both of their general credibilities and also the letter which referred to them, more recently of 12th July 2021 at page [182] AB from consultant neurologist Dr Viegas which had referred to HB's headaches coming and going but largely manageable and her mood up and down but not too bad. We assess and find that Dr Kashmiri's report is an accurate picture of HB's current circumstances and one which we find is supported by the general credibility of HB in particular. She was able to describe the circumstances of her dependency upon not only the appellant but also RB and how the family operate as a single unit, each fulfilling a role so that without the other, the family would not be able to survive. In particular, RB provides the accommodation which she owns and she contributes financially whilst in turn the appellant supports RB and HB. We do not regard Dr Viegas' letter as contradicting Dr Kashmiri's report or suggesting that it is somehow out of date. We accept the explanation given by HB that Dr Viegas in a telephone call with HB was not undertaking a psychiatric assessment and had the comments repeated to him, namely a variability in condition. The symptoms which HB describes as suffering from and the role that the appellant plays in supporting her is consistent with the severity of HB's condition.

44. We do not accept Ms Cunha's challenge that HB's condition is not mitigated to any material extent by the appellant's presence or is somehow made worse by a lack of engagement in cognitive therapy. We accept that the HB's condition has deteriorated, but this does not mean that the appellant's presence and support has not had a mitigating effect, in circumstances where HB's condition may have worsened even more. We further accept that there may have been a number of cancellations of various appointments due both to HB's ill health but also the circumstances of the COVID pandemic but importantly that HB is engaging with her mental health treatment as a result of which she has then been referred on to Med House. The picture as described by Dr Kashmiri is severe. HB suffers psychotic symptoms, severe depression, suicidal ideation and is dependent upon the appellant and also in some respects, on RB. Ms Cunha's submissions had no substantive answer to the point that HB is not fit to fly. In these circumstances, there could not be a continuation of family life outside the UK, as HB could not leave the UK and given the closeness of the relationship and HB's needs, family life could not realistically be continued by means of modern communication. Ms Cunha's submission that the problem is an immediate one that will be resolved once the appellant's immigration status is resolved, is undermined by Dr Kashmiri's reference to HB's medical needs as being complex and requiring intensive and prolonged period of engagement in

therapy. Given the many years over which HB's mental health issues have endured, there is no reason to suppose that there will be an early resolution or that HB's ability to travel is likely to change any time soon.

45. Moreover, we also do not accept as sustainable Ms Cunha's submission that HB could access medical treatment for her complex medical needs in India. She and the appellant lack the financial resources to do so. We reach this conclusion, noting the passages of the CPIN to which we were referred:

[§2.1.1, page [240] AB]:

> "2.1.1 In principal, all services at government facilities including preventative and primary care … and outpatient and inpatient hospital care, are delivered free of charge. In practice, severe shortages of staff and supplies limit access to care … more than 63 million Indians are faced with impoverishment every year because of catastrophic healthcare costs.
>
> 2.1.3 Medicines are available either free of charge or at subsidised prices at public hospitals; the degree of subsidisation varies to an extent from state to state. In the state of Punjab, for example, medications for outpatients are provided at a subsidised rate…. In private facilities, medication must be paid for by the patient".

[§11.1.1, page [251] AB]:

> "11. Mental health
>
> 11.1.1 … Despite recent policy measures to strengthen mental healthcare, resources are extremely limited. Across India, there is only one trained psychiatrist for every 250,000 people and fewer than one mental health worker for every 100,000 people. In addition, few hospital beds are dedicated to inpatient psychiatric care".

[§11.2.2, page [252] AB]:

> "11.2.2 … Only about 1 in 10 people with mental health disorders were thought to be receiving proper (evidence-based) medical treatment in India. This was a global problem: a large multi-country survey supported by the WHO showed that 35% to 50% of serious cases in developed countries and 76% to 85% in less developed countries had received no treatment in the previous 12 months".

46. We have also considered §§11.5 and 11.6 of the same CPIN in relation to the availability of psychiatric treatment in principal urban areas and medication. Having considered all of the objective evidence in relation to HB's particular circumstances, we accept Mr Rehman's submission that given HB's complex physical and mental needs as well as her inability to fly to India, HB could not travel to India or remain there without a rapid and serious decline in her health. Our conclusion is also consistent with Dr Kashmiri's report.

47. Having considered all of the evidence in the round, the current circumstances are of a family unit where there is significant interdependency. Either the appellant's removal to India alone; or HB and

the appellant relocating to India without RB, would in our view either in the first scenario result in insurmountable obstacles to family life continuing (in the event of separation of the appellant and HB); or in the circumstances where the appellant and HB relocate together in India, would in our view result in harsh consequences, namely a significant deterioration in HB's physical and mental health.

48. We considered whether such harsh consequences are unjustifiable, which imports a proportionality assessment. We do not recite the list of factors that Mr Rehman invited us to consider, but which we accept are valid factors. We do not accept that the risks to HB's health could be mitigated to a significant extent by the provision of professional care. HB is emotionally dependent on the appellant, and it is that vital emotional support that professional carers cannot replicate. Against this, we note that the couple established their relationship at a time when both knew that the appellant did not have leave to remain. The appellant may speak English, but we are also far from satisfied that the family unit as a whole would be financially independent. There was inconsistent evidence, between RB and the appellant, as to whether, in the event of being granted leave to remain, he would continue to care for HB full-time or would work part of the time and with RB fulfilling part of that carer role. Nevertheless, noting the high test for unjustifiably harsh consequences, and notwithstanding the limited weight that should be applied to the family life established between the appellant and HB and RB when the appellant never had leave, we may still attach some weight. The consequences of the appellant's removal on HB and RB are so harsh and significant, so as to be unjustifiably harsh. There is no doubt in our mind that family life could no continue between the appellant and HB outside the UK. She could not travel to see him and her health would rapidly deteriorate without him. In the circumstances, at the date of this hearing, the appellant meets the requirement of paragraph GEN.3.2 and section EX.1 of Appendix FM.

49. The fact that the appellant meets the provisions of the Immigration Rules at the date of the hearing is not a determinative factor, but the proportionality assessment under a wider article 8 analysis by reference to Section 117B of the 2002 Act reaches the same outcome. There is undoubtedly family life between the appellant, HB and RB. Refusal is undoubtedly significant enough so as to engage the appellant's rights under article 8. Assuming, for one moment, that the decision to refuse leave was in accordance with the Immigration Rules at the time the decision was made, the issue remains of whether refusal is proportionate now. Returning to the balance sheet analysis, we have considered Section 117B of the 2002 Act and the little weight to be attached to family and private life as well as the fact that we are not satisfied that the appellant would be financially independent. Against that is, in our view, the overwhelming weight of the consequences of the appellant's removal upon HB and RB. We reiterate the risk of a rapid and serious decline in HB's mental health; her unfitness to fly and the significantly increased risk of suicide. This is one of those rare cases where, without hesitation, we

conclude that there are exceptional circumstances and the refusal of leave to remain is disproportionate and would breach the appellant's rights under article 8 ECHR.

50. On the facts established in this appeal, there are grounds for believing that the appellant's removal from the UK would result in a breach of his rights and those of HB and RB under article 8 ECHR.

Decision

51. The appellant's appeal on human rights grounds is upheld.

Signed: J Keith

Upper Tribunal Judge Keith

Dated: **21st January 2022**

TO THE RESPONDENT
FEE AWARD

The appeal has succeeded. We regarded it as appropriate to make a fee award of £140.

Signed: J Keith

Upper Tribunal Judge Keith

Dated: **21st January 2022**

ANNEX: ERROR OF LAW DECISION

IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/09082/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 30 January 2020	**On**

Before

UPPER TRIBUNAL JUDGE KEITH

Between

KHUSHDEV SINGH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr M Ilahi, Counsel, instructed by FR Solicitors
For the respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. These are a written record of the oral reasons given for my decision at the hearing.

2. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Trevaskis (the 'FtT'), promulgated on 16 September 2019, by which he dismissed the appellant's appeal against the respondent's refusal on 8

May 2019 of his human rights claims. The gist of the appellant's appeal was that he was now in a relationship with a British national partner and acted as her carer. She had complex medical needs, including mental health issues; fertility issues; and vision disturbance and migraines. She was particularly vulnerable as the victim of previous domestic violence by a former partner.

3. The core points taken against the appellant by the respondent were that his partner could remain in the UK and continue to receive treatment and support; or alternatively, there were no obstacles to the partner living in India, where she could continue to receive medical support and support from the appellant.

The FtT's decision

4. The FtT noted that while the appellant referred to a fear of adverse attention in India, he had been offered the opportunity to claim asylum and had not done so ([32]) and there was no evidence of this risk beyond bare assertions. The appellant's partner was described, it appears erroneously, as being an Indian citizen by birth and with familiarity of Indian culture and customs and could adapt to life in India. The FtT found that the appellant's removal would not result in unjustifiable harsh consequences of the appellant and his partner. The FtT found that the appellant's primary motive in entering into a relationship with his partner was to avoid removal ([54]) and even if the relationship were genuine, it had begun only recently. The appellant's partner could remain in the UK without the appellant or choose to live with him in India.

5. Having considered the evidence as a whole, the FtT dismissed the appellant's appeal.

The grounds of appeal and grant of permission

6. The appellant lodged grounds of appeal which are, in parts, generalised, but essentially argue:

6.1 Ground (1) the FtT should have considered adverse family interest in India as an obstacle to living there;

6.2 Ground (2) the FtT had not placed sufficient weight on an expert report dealing with the partner's mental health issues;

6.3 Ground (3) the FtT erroneously considered that the couple had not thought about the consequences of removal ([54]);

6.4 Ground (4) the FtT ignored that the partner was undergoing IVF;

6.5 Ground (5) the FtT made a factual error in assuming that the partner had been born an Indian citizen;

6.6 Ground (6) the FtT had failed to consider evidence of the appellant's partner's mother;

6.7 Ground (7) the FtT erred in assessing that the partner had health issues which existed prior to her relationship with the appellant and because she had coped before, could cope afterwards;

6.8 Ground (8) the FtT had erred in considering the appellant's adverse immigration history in considering the unjustifiably harsh consequences of the appellant's removal.

7. First-tier Tribunal Judge Neville granted permission on 5 December 2019. While he regarded the other grounds as weaker, he regarded it as arguable that the FtT failed to consider the expert psychiatrist evidence and impermissibly imported an assessment of proportionality into the analysis of very significant obstacles. The grant of permission was not, however, limited in its scope.

The hearing before me

The appellant's submissions

8. Mr Ilahi submitted that the FtT had inadequately considered the insurmountable obstacles to the couple's family life continuing in India. The appellant's partner could not live in a hot climate and her oral testimony on the point was potentially sufficient, as noted by paragraph [41] of the authority of the Court of Appeal of Cathrine Lal [2019] EWCA Civ 1925. This needed to be considered in the round with the appellant's partner's medical conditions, in particular the condition for which she needed a lumbar puncture, which she believed may get worse if she had to travel to India, and in conjunction with her mental health issues. The reasoning on this point was inadequate and not considered at length.

9. In terms of a protection issue (although there had been no protection claim), Mr Ilahi suggested that in oral evidence before the FtT, the appellant had referred to a property dispute although he accepted that in a first witness statement referred to by the appellant's partner, this had referred to fear of persecution on an entirely different basis, namely disapproval of her family rather than adverse interest from the appellant's family because of a property interest. There was, before me, a significant degree of confusion on the basis on which the protection issue was said to have been ignored by the FtT; and having discussed with the representatives, it was also clear that neither the grounds of appeal to the FtT nor the lengthy written skeleton argument produced by the appellant's representative before the FtT had made any reference to the protection issue.

10. Mr Ilahi also suggested that the expert medical report and in particular, references to the suicide risk for the appellant's partner had failed to be adequately considered by the FtT. The FtT had needed to consider this,

together with the couple's IVF treatment, as a whole, even if IVF treatment were available in India. Mr Ilahi also asserted, although no evidence had been put before the FtT, that the couple might not be able to afford IVF in India.

11. Mr Ilahi also submitted that while the expert report did not deal with any obstacles to the appellant's partner's relocation to India with him, the absence of any reference to such obstacles was because the authority of Cathrine Lal post-dated the respondent's decision. He added that the appellant's mother had given evidence which suggested her dependency on the appellant; and that the partner's need for lumbar punctures had only begun in 2015, after she began a relationship with the appellant.

The respondent's submissions

12. In response, Mr Lindsay resisted the grounds on all bases. First, the protection issue had not been pursued in the way now asserted. The detailed written skeleton argument simply referred to the appellant having lost all contact with his family and this was confirmed in the appellant's own written witness statement. Whilst there may be a reference on an entirely different basis in the appellant's partner's second written witness statement and in asserted oral evidence, that could not begin to be the basis of obstacles to integration, which were entirely unparticularised.

13. Second, in respect of the assertion that the report of the medical expert, Dr Kashmiri, had not been considered, the key point was that the risk to the appellant in relation to her mental health had clearly been referred to by the FtT and crucially, the report did not suggest anywhere that the appellant would undergo any difficulties in relocating to India.

14. More fundamentally, the skeleton argument did not explain why there would be difficulties to the couple's integration into India and the statements of the couple, in particular at page [29] onwards of the appellant's bundle did not deal with it in any way. The sole issue recorded in the appellant's oral evidence was her assertion that she could not relocate because of a 'hot climate', but it was clear that there was no real prominence given to that factor and the FtT was only obliged to deal with it in the way that it was presented. Whilst the Cathrine Lal authority might superficially give support to the appellant, as paragraph [42] of Cathrine Lal indicated, the absence of evidence or explanation beyond the statement about an absence of a hot climate did not assist the appellant. It also failed to deal with the question of why it was not reasonable for the appellant to return to India without his partner.

15. In terms of the mistaken fact concerning the appellant's partner's birth nationality, this was not material as the operative part of paragraph [35] of the appellant's decision referred to familiarity with the customs and culture of India and there was no challenge to that. With regard to the written witness statement of the appellant's partner's mother, there was, contrary to assertions, no suggestion of a necessity of care. In any event,

this could only possibly engage unjustifiably harsh consequences under paragraph GEN.3.2 and not any obstacles to the couple's integration into India, where they could return. In any event, the notion of unjustifiably harsh consequences, bearing in mind that it sought to article article 8 of the ECHR, naturally included the concept of proportionality.

The appellant's response

16. In response, Mr Ilahi added that the psychiatric report did briefly refer to both the appellant and his partner's mother as support and protective factors in relation to the appellant's partner's suicide risk. This was an indirect reference, it was said, to obstacles to her integration and if she remained in the UK it was clear evidence that her condition may become worse.

Discussion and conclusions

17. There are a number of grounds which I do not regard as having merit but there are two which I do regard as amounting to errors of law, which I will come on to describe below.

18. In relation to ground (1) and the issue of the claimed adverse interest and in particular even in the absence of a formal protection claim the extent to which that should have been considered by the FtT, I am not satisfied that the issue of protection was at all clear, had any focus attached to it or that the basis of it as explained to the FtT was as now claimed.

19. In particular, I accept the submission of Mr Lindsay that the initial statement as opposed to a later more detailed statement from the appellant's partner had referred to adverse interest from her family in opposition to the partnership whereas, although there is no precise record of the oral testimony, Mr Ilahi suggested that an entirely different basis was put to the FtT, specifically a property dispute.

20. There are no further particulars identified in the grounds of appeal and in the absence of any agreed production of notes or in particular the stark contrast between the two bases on which the ground was put I am not satisfied that this was put with any precision and any vigour before the FtT. I am fortified in this, noting that the appellant's written witness statement refer to family connections in India having been lost and a lengthy skeleton argument produced by the appellant's legal representatives made no reference whatsoever to a protection issue because of a property dispute. There was also no reference to it in the grounds of appeal to the FtT. In the circumstances, I am satisfied that it was not properly an issue that the FtT should have considered beyond the brief consideration which discounted no more than a bare assertion; and that this ground discloses any error of law.

21. In relation to ground (3), I do not accept that the FtT's reference to the couple's lack of consideration of what would happen if the appellant were

removed to India amounted to an error of law. The FtT was entitled to note the absence of substantive consideration of this issue, and this finding is in the context of the FtTs' reference to the appellant's partner's inability to cope with the heat in India . The FtT was entitled to consider the limited reasons given for an inability to integrate in India and whether that reflected the couple's limited consideration of that scenario. That was relevant to their assertions of obstacles to integration to India and discloses no error of law.

22. In relation to ground (4) that the FtT had ignored that the appellant's partner was undergoing IVF, I accept the force of the submission by Mr Lindsay that the FtT need not deal with each and every piece of evidence and may, in particular where there was limited evidence, refer to it succinctly. It is clear that the FtT did consider at [18] of his decision that the appellant's partner was undergoing IVF and that the couple were attempting to have children by those means. It is also clear that this was considered in the round, together with the appellant's partner's mental health issues, at [32] of the decision. In the circumstances, I am satisfied that the FtT was entitled to conclude that there were not such insurmountable obstacles and indeed, the appellant's representative was unable to identify the basis on which IVF would not be available in India beyond speculating that there might be charges for doing so.

23. In relation to ground (5), I also accept Mr Lindsay's submission that whilst there was a clear factual error by the FtT that the appellant's partner had merely acquired British citizenship rather than being born a British citizen, as noted at paragraph [35], that this was not a material error of fact and in particular that the paragraph has to be read in context as follows:

> *"Although his wife has acquired British citizenship, she is by birth an Indian national <u>who is familiar with the culture and customs of that country, and I do not accept that she would find it impossible to adapt to life there with the appellant, should she choose to accompany him.</u>"*

24. What is clear is that whilst the appellant's partner is a British citizen, there was no challenge to the finding that she would be familiar with the customs and culture of India, being of Indian ethnic origin, and therefore, in the circumstances, that is not a mistake of fact that discloses a material error of law.

25. In relation to ground (6), I also accepted Mr Lindsay's submission that the FtT had clearly considered the evidence of the appellant's partner's mother, which was referred to at paragraphs [20] to [22] of the decision, and also at paragraph [36], where the FtT refers to the limited evidence of the nature and degree of care which the appellant provides to his wife or indeed her mother. It was suggested that the handwritten witness statement of the mother before the FtT substantially elaborated on it and there had been insufficient consideration. Having reviewed the written

witness statement myself, I do not accept that submission. There is a briefest reference, at paragraph 5 stating:

> *"My son-in-law is very supportive and at times when my sugar level drops in the night my son-in-law helps me to manage the sugar. In such situations I cannot even sit or walk. He brings me some things to eat for me."*

I do not accept that on the basis of the limited evidence before the FtT that there was an insufficient consideration of that evidence and or that such evidence would begin to go to demonstrate dependency as claimed.

26. In relation to ground (7), the FtT was entitled to consider, as the medical evidence in the appellant's bundle makes clear, that the appellant's partner had complex medical needs (primarily mental health issues) which predated the start of her relationship with her partner in 2015; and yet had been able to access support via doctors and her family in the UK. The FtT's consideration of this does not amount to an error of law.

27. In relation to ground (8), I further accept the submission that the FtT was entitled to, and did, consider the appellant's adverse immigration history in assessing, for the purposes of GEN.3.2 the unjustifiably harsh consequences of the appellant's removal on his partner and his partner's mother.

The grounds where there is an error of Law

28. Having identified where I do not accept there were errors of law, I go on to identify where there were, in ground (2). There was a detailed expert report to which I have already referred, which was before the FtT. This noted a complex medical history in the context of previous domestic violence. It also discussed a neurological condition which required the appellant's partner to undergo a lumbar puncture on a regular basis.

29. The report went on to discuss the risk of deterioration in the appellant's partner's mental health if she failed to comply with medical treatment as recommended and that in light of persistent symptoms and a traumatic background, any attempt to force her husband to return to India was likely to result in a severe and rapid deterioration of her mental health symptoms. The report referred to her risk of self-harm as being high.

30. I conclude that the FtT erred in law in relation to his analysis of the report and the extent to which it impacted on two potential scenarios, the first scenario being where the appellant returned to India, leaving his partner behind, and a second scenario when the couple lived in India together. In relation to the separation scenario, whilst I accept Mr Lindsay's submission that the FtT had considered suicidal ideation, the analysis of the appellant's partner's ability to cope with separation was limited. Paragraph [36] of the FtT's decision states:

"There is little evidence of the nature and degree of care which the appellant provides to his wife or indeed her mother without which he claims they will be unable to cope."

It continues:

"I am not satisfied that the appellant has shown that his support is now essential for the wellbeing of his wife or her mother."

31. While that may be the case in respect of the appellant's partner's mother, the report clearly suggests that the couple's separation could result in a severe and rapid deterioration of her mental health symptoms.

32. In those circumstances, I regard the lack of analysis, even if an FtT were eventually to reach the same decision, as one that cannot safely be concluded and that there needs to be a further consideration of what role the appellant plays in support for his partner's mental health in terms of the 'separation' scenario.

33. In relation to the alternative scenario, I accept Mr Lindsay's submission that the evidence about what obstacles were said to be for the couple integrating as a couple together in India was extremely limited. The report of Dr Kashmiri largely does not deal with this and there is an entire absence of this in the written witness statements and in the skeleton argument. Indeed, it was limited to the appellant's partner's oral evidence about not being able to cope with the heat in India.

34. However, there appears to be a reference by Dr Kashmiri to the support, not only from the appellant, but also the partner's mother; and that if the partner failed to comply with medical treatment as recommended that this could have a significant impact on her mental health. In the circumstances, her ability to comply with medical treatment as recommended, in particular in the absence of her mother, was not something that was considered by the FtT. Whilst I accept that the emphasis and weight attached to this issue before the FtT may have been limited, in the context of the appellant's partner's mental health issues being core to the original appeal, I do regard that the failure to consider that specific evidence about the appellant's mother and to resolve it, in the context of the brevity of the conclusions about couple's ability to live in India, did amount to an error of law.

Decision

35. **On ground (2) alone, I find a material error of law and I set aside the First-tier Tribunal decision.**

36. **I preserve the First-tier Tribunal's rejection of claimed adverse interest in India as amounting to an obstacle to either the appellant alone; or returning with his partner as a couple, integrating into India. That does not of course prevent a future**

protection claim being brought, but I am only considering the appeal before me.

37. The following directions shall apply to the future conduct of this appeal:

37.1 The Resumed Hearing will be listed before Upper Tribunal Judge Keith or any other Upper Tribunal Judge sitting at Field House on the first available date, time estimate 3 hours, to enable the Upper Tribunal to substitute a decision to either allow or dismiss the appeal.

37.2 The appellant shall no later than 14 days before the Resumed Hearing with the Upper Tribunal and serve upon the respondent's representative a consolidated, indexed, and paginated bundle containing all the documentary evidence upon which he intends to rely. Witness statements in the bundle must be signed, dated, and contain a declaration of truth and shall stand as the evidence in chief of the maker who shall be made available for the purposes of cross-examination and re-examination only.

37.3 The respondent shall have leave, if so advised, to file any further documentation he intends to rely upon and in response to the appellant's evidence; provided the same is filed no later than 7 days prior to the Resumed Hearing.

37.4 There are no anonymity directions.

Signed J Keith Date: 7 February 2020

Upper Tribunal Judge Keith