



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

Appeal Number:
UI-2022-001860 (HU/52796/2021); IA/08304/2021
UI-2022-001861 (HU/52798/2021); IA/07972/2021

THE IMMIGRATION ACTS

**Heard at Birmingham CJC
On 27 October 2022**

**Decision & Reasons Promulgated
On 4 December 2022**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**PARAMJT SINGH
JASWINDER KAUR**
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Din instructed by Hatton Klein Solicitors.
For the Respondent: Mr Bates, a Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Athwall ('the Judge') promulgated on the 10 March 2022 in which the Judge dismissed the appeals of both appellants.

- 2.** Mr Singh was born on the 20 March 1962 and is a citizen of India. Mrs Kaur, his wife, was born on the 15 January 1962 and is also a citizen of India.
- 3.** Both appellants entered the UK lawfully on 11 March 2020 as visitors to stay with their daughter Mrs Bains and her children. Their visas were valid to 17 June 2020 but were extended to 31 July 2020 as a result of the restrictions on travel imposed during the Covid-19 pandemic. On 29 July 2020 the appellants' applied for leave to remain in the UK outside the Immigration Rules, an application which was refused on 7 June 2021 and which is the subject of this appeal.
- 4.** The Judge considered the documentary evidence provided and also had the benefit of seeing and hearing oral evidence being given by the witnesses.
- 5.** The Judge sets out findings of fact from [30] of the decision under challenge. The Judge highlights material aspects of the evidence including inconsistency between the oral evidence and witness statement of Mrs Kaur. At [32] the Judge was satisfied the appellants have a home in India and that neither of them are dependent upon their daughter in the UK.
- 6.** The Judge notes that it was not disputed that the appellants have lived in India as their home for the vast majority of their lives and always returned there despite regular visits to the UK since 2010, and finds that whatever problems may have been experienced in India, the appellants have their own property/accommodation, land, and savings [38].
- 7.** The Judge took into account the medical evidence concerning Mrs Kaur at [39 - 42] finding in the latter paragraph inconsistencies in the medical evidence that warranted little weight being placed upon it although it was accepted that antidepressant medication was being taken by Mrs Kaur, but finds there was no evidence that such medication will not be available to her in India.
- 8.** The Judge concludes at [43] that there was insufficient evidence of very significant obstacles to integration into India that would entail very serious hardship.
- 9.** The Judge then goes on to consider an issue headed as 'Family Life - Exceptional Circumstances' from [44]. The Judge accepts the appellants have lived with Mrs Bains since they arrived in the UK, that both Mrs Kaur and Mrs Bains suffer from mental health issues and that the appellants have supported their daughter through criminal proceedings where she was the victim.
- 10.** The Judge considers Mrs Bains dependency upon the appellants from [46]. Evidence from a Dr Hussein dated 17 November 2021 was specifically considered that the Judge who noted the author of the report did not take into account Mrs Bains GP medical records. At [48-49] the Judge writes:

48. Dr Hussein did not take into consideration Mrs Bains medical records when preparing this report. The report records that Mrs Baines statement and instructions from the representatives were considered. There is an inference that Mrs Bains was spoken to but

there is no indication about when that interview took place, how long it lasted and where it took place. Mrs Baines gave evidence to me in Punjabi because she did not believe that she spoke English fluently. There is no indication of which language Mrs Baines used when speaking to Dr Hussein. For all of these reasons I cannot be satisfied that Dr Hussein adequately considered all the circumstances in this case. I therefore attach very little weight to Dr Hussein's report.

49. I have considered all of the medical evidence and whilst I accept that Mrs Baines suffers from anxiety and depression, it is not clear whether Mrs Bains is still receiving any treatment other than Sertraline. I am not satisfied on the basis of the medical evidence that Mrs Bains is heavily dependent upon her parents for their support and that without it her condition would significantly deteriorate. Even if it did deteriorate, the medical evidence is not clear about how that deterioration would manifest and the impact upon Mrs Bains and her ability to care for her children as the primary carer.
- 11.** The Judge noted that the criminal proceedings ended in June 2021 and were no longer an issue [50].
- 12.** The Judge noted the letter from a counselling support worker who had offered emotional support to Mrs Bains who expressed an opinion that Mrs Bains was experiencing controlling behaviour from a husband who controlled every aspect of her daily life, which the Judge notes at [52] was not mentioned in Mrs Bains oral evidence. The Judge finds Mrs Bains evidence was at odds with that of the Counsellor, finds no explanation for the contradictory evidence, and was not satisfied Mrs Bains disclosed the true relationship between her and her husband and what support he provides to her and her children [53].
- 13.** It was also found that as British citizens both Mrs Bains and the children are entitled to support from Social Services if there was a need for further support.
- 14.** Having summed up the evidence in relation to the specific issue the Judge writes at [55]
 55. I have considered the evidence as a whole and for the reasons set out above I do not find to refusal of leave to remain will result in unjustifiably harsh consequences for the appellants, Mrs Bains or her family. I have the greatest sympathy for this family and I accept that they have experienced difficulties and challenges since 2019. I am however satisfied that these difficulties and issues do not amount to exceptional circumstances. Mrs Bains has been supported by social service agencies in Scotland and has continues to have access to this. The evidence before me does not establish that the appellants are the only source of support available to her and that without it she or her children would suffer from unjustifiable harsh consequences. Nor is there sufficient evidence before me to establish that the appellants are emotionally or financially dependent and that they too would suffer from unjustifiable harsh consequences if they were separated from Mrs Bains.

- 15.** The Judge considers the merits of the appeal pursuant to Article 8 ECHR outside the Immigration Rules from [46]. The Judge sets out a legal direction, referring to section 117B Nationality, Immigration Asylum Act 2002, and confirms the adoption of the balance sheet approach as recommended in Hesham Ali [2016] UKSC 60.
- 16.** The Judge sets out factors taken into account at [49-50] pursuant to this exercise before concluding at [51] that having balanced the relevant factors the public interest in maintaining effective immigration control significantly outweighed the rights of the individuals and that removal was proportionate.
- 17.** The appellants sought permission to appeal asserting the Judge erred by giving weight to a material matters and not properly weighing up the evidence contained in the report of Dr Hussein, arguing the Judge erred when finding at [48] there was an inference Mrs Bains had spoken to Dr Hussein but no indication when the interview took place or how long it lasted, when it was set out within the report that the interview was conducted on 16 November 2021, occurred via Skype, and lasted 90 minutes.
- 18.** In relation to the Judge's statement Dr Hussain did not take into consideration the medical notes of Mrs Bains, this finding is not disputed in the grounds seeking permission to appeal, but it is argued no error arises as Dr Hussein's conclusions are in accordance with Mrs Bains medical notes, meaning the absence of medical notes was not fatal to Dr Hussein's assessment, which should have increased the weight given to the report by the Judge.
- 19.** The grounds also assert the Judge to take into account all the evidence and placed an emphasis on language in relation to the interview between Dr Hussein and Mrs Bains, suggesting that from the medical evidence it was possible to "glean" that Mrs Bains could communicate in the absence of an interpreter and that had Dr Hussein been unable to communicate with her that would have been addressed.
- 20.** The grounds also assert legal error in relation to the weight that should have been attached to the report of Dr Hussein when it came to assessing the dependency of Mrs Bains upon her parents, argues the Judge erred when undertaking the balance sheet exercise by attaching little weight to the report, arguing the Judge lost track of the issues as family life had been engaged and was wrong to find separation proportionate on the facts.
- 21.** The Grounds also assert the Judge erred in failing to treat Mrs Bains as a vulnerable witness and in relation to considering the extent of Mrs Bains relationship with her partner; for the reasons set out in the pleadings dated 23rd March 2022.
- 22.** Permission to appeal was granted by another judge of the First-tier Tribunal on 29 April 2022 on the basis it was said the grounds are arguable.
- 23.** A Rule 24 response has been filed by the Secretary of State dated 19 May 2022, the operative part of which is in the following terms:

2. The respondent opposes the appellant's appeal. In summary, the respondent will submit inter alia that the judge of the First-tier Tribunal directed himself appropriately.
3. The Respondent does not have the Appellant's grounds of appeal and as such her response is based solely on the grant of permission.
4. The Respondent respectfully submits that the absence of any evidence of when and for how long the psychiatric assessment took place was not the sole reason for rejecting the contents of the medical report of Dr Hussein. The FTTJ notes several shortcomings in the report, notably the absence of any of the Appellant's GP records
5. The Respondent respectfully relies on the decision of the Upper Tier Tribunal in HA (expert evidence, mental health) [2022] UKUT 00111 at headnote 4 & 5 where the Tribunal found inter alia,
"4) Notwithstanding their limitations, the GP records concerning the individual detail a specific record of presentation and may paint a broader picture of his or her mental health than is available to the expert psychiatrist, particularly where the individual and the GP (and any associated health care professionals) have interacted over a significant period of time, during some of which the individual may not have perceived themselves as being at risk of removal.
(5) Accordingly, as a general matter, GP records are likely to be regarded by the Tribunal as directly relevant to the assessment of the individual's mental health and should be engaged with by the expert in their report."
6. The respondent requests an oral hearing.

Error of law

- 24.** It was not disputed before me that the Judge had made some errors of fact as recorded in the grounds, but it was submitted by Mr Bates that such errors were not material to the decision to dismiss the appeal.
- 25.** The Judge was entitled to find that little weight should be attached to the medical report of Dr Hussein especially in the absence of consideration of the GP records. I do not find it made out, however, that the Judge failed to attach proper weight to Mrs Bains medical issues as a whole, as the Judge clearly took note of the GP records which sets out her medical condition and treatment which it is said Dr Hussein's diagnosis is in accordance with.
- 26.** I find the Judge adequately engaged with all the evidence, including the medical evidence considered as a whole, and the challenge to the weight the Judge gave to that evidence does not establish arguable legal error when the determination is read in full. It is a settled principle that the weight to be given to the evidence is a matter for the Judge. In this appeal the Judge considered the relevant evidence relating to Mrs Bains condition and the challenges relates more to the findings of the Judge concerning the procedures followed by Dr

Hussein in the information gathering process for the report. If the conclusions of the report are consistent with the GP notes which were considered by the Judge and given due weight, it cannot be said the Judge's assessment of the medical evidence as a whole has been shown to be irrational or outside the range of findings reasonably open to the Judge on the evidence. Factual errors in the steppingstones by which certain parts of the evidence was obtained does not undermine the finding that reduced weight should be given to Dr Hussein's report which had been written without considering what is recognised as a very important part of an individual's medical history, namely the GP notes, when there is no reason made out for why the same were not provided to Dr Hussein.

- 27.** In relation to the issue of vulnerability, it is asserted the Judge should have considered Mrs Bains as a vulnerable witness but there is no evidence the Judge was asked to do so, that any issues of vulnerability were brought to the Judge's attention, or that the Judge was asked to conduct the proceedings in a particular manner to assist Mrs Bains. Whilst it is recognised that in some circumstances a judge should raise this issue with the parties the appellant was represented by Ms Khan of Council who is an experienced advocate in this field and who would no doubt have raised these matters at the outset of the hearing if it was thought relevant.
- 28.** Whilst the grounds raise this point they fail to establish how the manner in which the Judge conducted the appeal or determined the merits of the appeal is undermined. The Judge was aware of Mrs Bains medical condition when considering the evidence and the weight that could be given to the same. The Grounds fail to establish any issue based upon Mrs Bains presentation that casts doubt upon the findings made in relation to her evidence.
- 29.** Having considered the available material, including the evidence before the Judge, the determination, grounds of challenge, grant of permission to appeal, and submissions made, I do not find the appellants have established legal error material to the decision to dismiss the appeal.
- 30.** While certain factual errors have been conceded I do not find they are material. Article 8 ECHR does not give a person the right to choose where they wish to live which is why it is necessary for an individual to establish why their circumstances, or those of family members impacted by the decision, are sufficient to outweigh the public interest. The Judge's conclusion that having considered the evidence the balance fell substantially in favour of the Secretary of State is a conclusion that is supported by adequate reasons and has not been shown to be outside the range of those available to the Judge on the evidence.
- 31.** Whilst the appellants and Mrs Bains disagree with that conclusion and would prefer a more favourable outcome that does not establish arguable legal error per se. As no such material legal error is made out, the determination shall stand.

Decision

32. There is no material error of law in the Immigration Judge’s decision. The determination shall stand.

Anonymity.

33. The First-tier Tribunal made no order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated 2 November 2020