IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002144
First-tier Tribunal Nos:
HU/56332/2022
IA/09141/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 July 2023

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

JYOTSANBEN CHANDRESHKUMAR PATEL
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M West, Counsel, instructed by Solicitors' Inn Limited
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on 13 July 2023

DECISION AND REASONS

(extempore)

1. This is an appeal against a decision of the First-tier Tribunal dismissing the appeal of the appellant against a decision of the Secretary of State refusing her leave to remain on human rights grounds.

2. I propose to deal with the case in extreme summary outline and if that leads me into errors of detail I hope that will be excused.

3. The essential point is that the appellant entered the United Kingdom many years ago lawfully but remained without permission. She suffered the personal tragedy of her husband dying so she was widowed in the United Kingdom but she remained there and formed a close relationship with a person I now identify as her partner. The First-tier Tribunal Judge found that there were no insurmountable obstacles in the way of the appellant and her partner living together in India. This was the subject of challenge and when permission was granted by First-tier Tribunal Judge Mills, he did, if I may respectfully say so, go the nub of the matter and I set out what he said. Judge Mills said:

> "I have concluded that the challenge raises an arguable case that the Judge has erred in law. The Judge's consideration of the sponsor's clearly very serious medical conditions is very brief, and arguably inadequate. The Judge does not refer to any background evidence to support the conclusion that appropriate care would be available in India, and does not deal with the detailed submissions put forward in the skeleton argument suggesting the opposite to be true."

4. There were indeed such contentions put forward in the skeleton argument. Mr West, who had appeared below, had gone to the trouble of perusing the usual sources and put together a package of material suggesting that if treatment were available it would be at considerable cost. This was just not considered.

5. There is a further difficulty, to some extent of the appellant's own making but more to do with the way the judge conducted the case, in that the judge has decided that the sponsor is a wealthy man. There is reference to the sponsor owning a seven bedroom house in London. That suggests considerable wealth but it does not prove it and Mr West told me, on instructions today, that that is just not the position. The sponsor is a part owner of a house in London that is itself subject to a substantial mortgage. There is no evidence about the sponsor's means and really there needs to be before points like that can be taken and investigated properly.

6. It may be that the sponsor is in a position to afford treatment in India but that cannot be deduced from the evidence and I have considerable sympathy in the sponsor not dealing with it because this was just not the way the case was raised by the Secretary of State so the sponsor is not to be criticised.

7. There are other criticisms made which do not stand up.

8. The judge has had things to say about Article 3 but that I agree with Mr Terrell that this a passing reference. It has never been the appellant's case that his is an "Article 3 severe" health case. It does not follow from that that the appeal cannot be allowed properly on Article 8 grounds but it is a point of some relevance. The fundamental problem here is that the judge has just not engaged with the medical evidence about the sponsor and has made findings which do not deal properly with the contrary arguments put forward in the skeleton argument.

9. This may be a case now that the appellant's finances are very much in issue where it is appropriate to adduce further evidence but that is a matter for Mr West to sort out and to make a proper application which will be dealt with no doubt properly by the First-tier Tribunal. I say that because this is an appeal that has to be re-determined and I direct that it be done there because these findings are not repairable.

10. In short, I find the First-tier Tribunal erred in law. I set aside its decision and I direct that the case be heard again in the First-tier Tribunal.

11. Anything I have said here about the progress of that case is simply an observation. I issue no directions. It is for the First-tier Tribunal to decide how to organise its cases. For the avoidance of doubt no findings are preserved. This case has to be heard again. All the findings that are controversial are interrelated and all have to be looked at again.

Notice of Decision

12. The First-tier Tribunal erred in law. I set aside its decision and I direct that the case be redetermined in the First-tier Tribunal.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber
21 July 2023