IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003641
First-tier Tribunal No: HU/59026/2022
LH/00582/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 October 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE &
DEPUTY UPPER TRIBUNAL JUDGE BLACK

Between

HINESHKUMAR KIRITBHAI PATEL
NIRALI PATEL
KIA HINESHKUMAR PATEL
(no anonymity order made)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr H Broachwalla, instructed by FR Solicitors
For the Respondent: Ms H Gilmour, Senior Home Office Presenting Officer

Heard at Field House on 18 October 2023

DECISION AND REASONS

1. The main appellant is a citizen of India born on 23 August 1987. He appeals with permission, together with his wife and daughter, born on 2 May 1991 and 1 October 2018 respectively, against the decision of the First-tier Tribunal dismissing their appeals against the respondent's decision to refuse their human rights claim.

2. The main appellant arrived in the UK on 20 November 2009 with entry clearance as a student valid until 30 September 2011. He made several applications for further leave to remain as a student between 2011 and 2013, all of which were refused and he also made an unsuccessful

application for leave to remain outside the immigration rules in 2013. On 17 December 2021 he applied, together with his wife who had entered the UK in September 2017 with entry clearance as a student, for leave to remain on family and private life grounds.

3. The respondent refused the appellants' application in a decision dated 15 November 2022. The respondent considered that the first appellant did not meet the eligibility requirements under Appendix FM because his wife and child were not British or settled in the UK. His case was considered under the private life route. The respondent concluded that the requirements of paragraph 276ADE(1) could not be met and that there were no exceptional or compelling circumstances justifying a grant of leave outside the immigration rules.

4. The appellants appealed against that decision to the First-tier Tribunal and their appeal was heard by First-tier Tribunal Judge Norris on 5 July 2023. The judge noted that the first and second appellants had had a second child by then, a daughter born on 1 February 2022. An adjournment request was made on behalf of the appellants to enable them to make an asylum claim and be interviewed in relation to the first appellant's account, in his statement, about threats having been made in India when he failed to repay money which he had previously borrowed. The judge did not grant the adjournment request and considered that the issue of the threats could be undertaken as part of the assessment of 'very significant obstacles to integration' under Article 8. In regard to that issue, the judge did not accept that the first appellant had borrowed money as he claimed and found his account to be inconsistent and lacking in credibility. The judge considered the best interests of the two children, rejecting the claim that they were stateless and according little weight to an independent social worker's report, given that it was based to a large extent on a misunderstanding as to the children being stateless. The judge found that the best interests of the children were to remain in the family unit with their parents and concluded that it was reasonable to expect them to live in India. The judge rejected the appellants' claim to have lost contact with friends and family in India. Having considered the appellants' claimed medical issues and the psychiatric reports upon which they relied, together with the evidence of their circumstances on return to India in terms of employment and financial support, the judge found there to be no very significant obstacles to integration in India. The judge concluded that the appellants were unable to meet the immigration rules in relation to family and private life and, having considered the various public interest and other factors, found that the appellants' removal to India was proportionate and would not be in breach of their Article 8 human rights.

5. The appellants sought permission to appeal to the Upper Tribunal against the judge's decision on three grounds: firstly, that the judge had erred by refusing to adjourn the matter so that the appellants' asylum claims could be considered and determined by the respondent; secondly, that the judge had given inadequate and unsubstantiated reasons for her adverse credibility findings; and thirdly, that the judge had failed properly to consider the evidence and the factors in the appellants' favour.

6. Permission was granted in the First-tier Tribunal on all grounds, but primarily on the first ground.

7. The matter then came before us for a hearing. Both parties made submissions and those are addressed in the discussion below.

Discussion

8. We say at the outset that this is a case where the grounds are without any merit and we are somewhat surprised that permission was granted in the first place. Mr Broachwalla accepted that the second and third grounds were weaker grounds and he therefore focussed on the first ground,

which was the judge's failure to adjourn the hearing in order for the appellants to have their asylum claims considered and determined by the respondent.

9. It was Mr Broachwalla's submission that Judge Norris had failed to grapple with the test of fairness in Nwaigwe (adjournment: fairness) [2014] UKUT 00418. He submitted that the judge had failed to acknowledge the unfairness of the appellants being deprived of an opportunity to present their asylum claim and to have that claim assessed through a screening and substantive interview. As a result of the judge considering the protection issue under the heading of 'very significant obstacles', she had assessed the claim under the wrong standard of proof. It was particularly relevant, Mr Broachwalla submitted, that the Home Office Presenting Officer had not opposed an adjournment and it was only in exceptional circumstances that a judge would depart from what had been agreed by both parties.

10. Addressing the last point first, it is indeed the case, as Mr Broachwalla submitted, that the judge recorded the fact that the Home Office Presenting Officer did not object to the adjournment application, but it is also the case that, as the judge recorded at [8], the Home Office Presenting Officer put forward reasons why the appeal could proceed without an adjournment. This was not the case of a joint adjournment application made by both parties and neither was it a wholesale and unequivocal concurrence by the presenting officer with the application. The judge clearly preferred the alternative view presented by the presenting officer, as she was entitled to do, and accepted the respondent's observations in the Respondent's Review to which she was directed, that the appellants had decided to make their claim on the basis of private life alone despite having had plenty of opportunity to make an asylum claim.

11. That was the point made by Ms Gilmour in her submissions and is a view which we entirely accept. The appellants had been in the UK for several years – the first appellant since 2009 – and there had therefore been ample to opportunity to make an asylum claim. As Judge Norris noted at [9], the appellants had been represented by solicitors throughout and therefore had the benefit of legal advice and representation and, additionally, they had been prompted by the respondent in her review a month previously to the fact that it had been open to them to make an asylum claim, but had not done so. Their claim was made on private life human rights grounds only and the skeleton argument produced for the appeal referred only to private life issues. Whilst the first appellant's statement made a brief reference to threats to kill him if he returned to India, there was no such mention in any of the other statements and neither did the skeleton argument make any reference to protections issues. It could hardly be considered unfair, in such circumstances, for the judge to find it inappropriate to postpone the hearing on the basis of matters upon which the appellants had never previously relied. As for the assertion that the judge failed to 'grapple with' the test of fairness in Nwaigwe, that is simply not correct, given that she expressly considered the overriding objective at [9] of her decision.

12. In so far as Mr Broachwalla suggested that the appellants were disadvantaged by the protection issue being assessed under the higher standard of proof in 'very significant obstacles', it is simply unarguable that applying the lower standard of proof could possibly have made any difference, given in particular the lack of any merit in the appellants' claim and the inconsistencies identified by the judge in that regard.

13. As for Mr Broachwalla's submission that the judge failed to give proper reasons for finding the appellant's claim unreliable, that is clearly not the case. The judge's rejection of the first appellant's account of borrowing money from moneylenders and being threatened because of non-payment of the loan was not based solely on his evidence being vague, as Mr Broachwalla suggested, but was based upon various inconsistencies in the evidence. As the judge found at [36] to [40], the second appellant had made no mention of the issue in her statement and the first appellant's oral evidence

differed from the account he had given to Dr Hussain in terms of who had lent him the money, why he had borrowed the money and the nature of the threats made to him. For the reasons properly and cogently given, the judge was perfectly entitled to find the appellant's account lacking in credibility and to conclude that it had been fabricated in order to enhance his human rights claim.

14. There is, likewise, nothing of any merit in Mr Broachwalla's submission that the judge failed to consider the impact of the first and second appellants' mental health problems on their children. It is relevant to note that the judge, for reasons cogently given, accorded little weight to the reports of Dr Hussain and concluded that the appellants had no significant mental health issues. There was no evidence before the judge to suggest that the first and second appellants had any medical or mental health concerns likely to impact upon their ability to care for their children on return to India. The judge gave detailed and careful consideration to all the evidence relevant to the appellants' circumstances in the UK and on return to India and reached a properly reasoned conclusion that the children's best interests lay in remaining with their parents and that it was not disproportionate for the family to be expected to return to India.

15. For all these reasons the grounds fail to identify any errors of law in the judge's decision. The judge considered all relevant and material matters and reached a decision which was fully and properly open to her on the evidence before her. We uphold her decision.

Notice of Decision

16. The making of the decision of the First-tier Tribunal did not involve a material 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

Judge of the Upper Tribunal
Immigration and Asylum Chamber

19 October 2023