



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-003370

First-tier Tribunal Nos:
HU/52069/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

15th February 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

KULDIP KAUR
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms U Sood, Counsel by Direct Access

For the Respondent: Mr Basra, Senior Home Office Presenting Officer

Heard in a hybrid hearing at Field House on 12 January 2024

DECISION AND REASONS

1. In a decision dated 18 October 2023, I found an error of law in the decision and reasons of the First tier Tribunal, following a concession by the Secretary of State that the Judge had not dealt appropriately with the question and issue of emotional dependency, which constituted a material error of law. The appeal was adjourned for re-making with the findings of fact uninfected by error of law preserved and directions for the service of further evidence. That decision and reasons is appended.
2. At the resumed hearing before the Upper Tribunal, Ms Sood and the Appellant and her witness and son, Harpinder Singh, appeared remotely by videolink. Ms Sood sought to admit a supplementary bundle of further evidence, albeit late. I agreed to admit the evidence given that it was material to the issues to be decided as it included a "socio-care report" by Surrinder Kaur; a psychiatric report from Dr Junaid, a care diary and an

affidavit from Gurnam Singh, a municipal counsellor and neighbour of the Appellant in her home village of Bilga and a skeleton argument. Mr Basra did not object to admission of this evidence.

3. In light of the report of Dr Junaid dated 7 March 2023 that the Appellant lacks litigation capacity, Ms Sood sought and at my request made an application in writing for the Appellant's son to be appointed her litigation friend. I acceded to this request in line with R (on the application of JS and Others) v Secretary of State for the Home Department (litigation friend - child) [2019] UKUT 00064 (IAC) citing AM Afghanistan [2017] EWCA Civ 1123 at [44]. Mr Harpinder Singh confirmed that he agreed to take on this role on his mother's behalf.

Hearing

4. The issues are whether the removal of the Appellant would be contrary to article 8 of ECHR/GEN 3.2 of Appendix FM of the Rules and whether there would be very significant obstacles to her integration in India. The following findings of fact made by the First tier Tribunal Judge were preserved:
 - (i) At [19] that the Appellant is a vulnerable witness and that there was no factual dispute over her present circumstances in the United Kingdom;
 - (ii) At [24] that all her children were now abroad and no longer living in India;
 - (iii) At [25] that the Appellant suffered depression and self-neglect following the death of her husband (in 2018); she is 75 years and struggling to live alone and is emotionally and financially supported by her daughter and son in law and she has no emotional and physical support in India;
 - (iv) At [27] the Appellant's extended family ie cousins live beside her house;
 - (v) At [28] the Appellant's house is now closed down although it is still owned by her;
 - (vi) At [30] that the appellant told Dr Hussain that she had come to the UK following the death of her husband because she had found it difficult to survive without any support. Her health had initially improved but had then deteriorated at the prospect of being returned to India. She saw herself as physically, emotionally and psychologically dependent on her family in the UK. There was no-one to care for her in India. Dr Hussain found that the Appellant's symptoms fulfilled the criteria of Mixed Anxiety and a Depressive Disorder;
 - (vii) At [38] it was accepted that the Appellant presented as depressed and is anxious about separation from her family and fears returning to India;
 - (viii) At [44] that family life exists between the Appellant and her daughter which will be disrupted by the Respondent's decision and private life was established.
5. At [39] the judge noted that there was no diagnosis of dementia, although on balance it was accepted that the evidence of the Appellant's daughter that her mother is becoming forgetful as she gets older. However, in light

of Dr Junaid's psychiatric report of 7 March 2023, which postdates the hearing before the First tier Tribunal, I find that the Appellant has been diagnosed with severe cognitive impairment and met the ICD-10 criteria for dementia. Consequently, I proceed to determine the appeal on the basis that the Appellant has severe cognitive impairment, likely as a consequence of dementia.

6. The judge further found that, in essence, the public interest considerations were not in the Appellant's favour and that there was no evidence the prescription medicine she receives is not available in India [55]; there was no evidence care would not be available in India [56] and there was no evidence that she could not be cared for by carers in India either in her own home or in a care home [59]. These are the matters in issue that require determination.

Hearing

7. At the hearing before the Upper Tribunal, Mrs Sukhvir Sahota gave evidence and confirmed that her witness statement dated 29.6.22 was true and that, with the assistance of her husband she had written the care diary. She stated that they did not have any relatives in India anymore. She said she had tried to make enquiries of care homes but there are few care homes in Punjab and they did not give any information to her.
8. In cross-examination, the witness agreed that her mother had been issued with a 10 year visit visa and had made many trips between 2007 and 2020: see passport stamps at RB 21-47. The witness agreed that her mother's medical conditions dated back to 2010 and that, after her father passed away, the family arranged for domestic help and her brother to help pay the bills: see SB 11. The witness said she had looked into care homes and whilst there were some in India there were none in Bilga, Punjab, the family's home village. She agreed there were a few care homes in Punjab but she confirmed that although she visited India last year they went to her husband's village Sirhind and did not visit any care homes to make enquiries. The witness said her mother's health did not allow her to stay in a care home.
9. The witness agreed that there was a care home listed at SB 11-12 in Jalandhar, which is the same district as Bilga, but she said that this was for people who don't have family. She said they had not received a reply to their email and stated that Bilga is 2 hours from Jalandhar. She said her mother needed someone in India; there were no safety rights there.
10. The witness was asked if there were extended family members living beside the family home and what had prompted her to obtain the statement from Gurnam Singh Jakhu to this effect? The witness reiterated that her mother was living alone in the village. She said that her neighbour in India told her that her mother was not taking her medicine or changing her clothes and was walking around. She said that Mr Jakhu knew her mother had no relatives in Bilga because he lives in the village and he knows.
11. The witness accepted that she attended a family wedding in India last year with her husband's extended family and that the First tier Tribunal Judge

found there were extended family members in India, to which she responded that it was her husband's side not her side of the family. The witness denied that her mother had family in India anymore, nor cousins living next to her house in the village.

12. With regard to the accuracy of the care diary given Harpinder lives in Birmingham and the witness is in Ipswich, she said that her mother holidays with her sister in Southend and with her and her family in Ipswich and that she enjoys the little ones now. The witness said that last year her son had gone to University and her mother missed the company of children so went to Harpinder's house. She agreed that the care diary could be different now.
13. In response to questions from the Upper Tribunal and the assertion that the Appellant cannot cook for herself the witness said that her mother cannot remember what she is doing also she has physical ailments and will forget and leave things eg the hob on.
14. In his submissions, Mr Basra sought to rely on the refusal decision and the Respondent's review. He submitted that as a fact there are two care homes in Jalandhar which is the same district as Bilga and that the family could be criticised for a lack of fact finding, particularly given the witness was in India and had the opportunity to visit when the care homes had not been responding to her made no sense at all. He submitted that the witness was unable to answer how she got information that the care homes need a family member nearby for emergencies.
15. Mr Basra sought to rely on the decision in Mobeen [2021] EWCA Civ 886 considering the question that the courts must at a general level take the SSHD's policy into account, albeit this appeal itself was brought under article 8 although the Adult Dependent Rules there. With regard to the very significant obstacles test pursuant to paragraph 276ADE (vi) of the Rules, as then in force, he submitted that the submission would be that the Appellant was in the United Kingdom during covid and the blanket amnesty in place at that time. He reminded the Upper Tribunal that the Appellant had arrived on a visit visa, that Rhuppiah [2018] UKSC 38 still applies and should be given weight as her leave had always been precarious and that she had circumvented the Rules
16. Mr Basra submitted that the family have property in India, they receive rental income and they visit India: see [31] of decision of the FtT] and that Mrs Sahota has visited India last year. He submitted that whilst the Appellant's children have chosen to leave India and are perfectly entitled to do this, however, in making that choice they chose to leave their mother there. With regard to the report of Surinder Kaur he submitted that no independent interpreter had been utilised and the evidence was subjective and therefore no objective point of view and therefore it was of limited value
17. With regard to the issue of very significant obstacles, Mr Basra referred to the judgment in Kamara [2016] EWCA Civ 813, which he submitted was not a subjective test as it was not just the Appellant's perception of obstacles to integration but one must look at the objective evidence. He also sought to rely upon La [2019] EWCA Civ 1925 at [36]-[37] regarding

the cumulative effect of obstacles. Mr Basra submitted that it was a practical test where the availability of support and other mitigation must be weighted.

18. Taking into account the Appellant's mental health, he submitted that care is available and the Appellant would be more anxious and depressed at the thought of returning rather than the reality and treatment would be available regarding anxiety and depression and there was no evidence the Appellant would lose contact with family in the UK. There was care arranged and a housekeeper, which seemed to have stopped only because of covid and help arranged by her son. He submitted there was no evidence that family cannot visit the Appellant in India and that she was enough of an insider to overcome any significant obstacles. As to her claimed hearing loss he submitted that nothing was recorded on her GP records.
19. I asked Mr Basra for any submission he might have as to the impact of dementia on the Appellant's ability to integrate and he submitted that the Appellant goes to the gurdwara in the UK and interacts and there was nothing today to say that she does not; she listens to the prayers and talks and interacts with the grandchildren, so she can interact within her culture and language and if you looked at her behaviour in the UK and going back to something that is familiar, he would argue this does not amount to very significant obstacles.
20. Mr Basra further submitted that the judgment in *Mobeen* at [45]-[47], [48]-[50] and [63] made clear that whether or not the Appellant would have qualified under EC-DR is not the determinative question and the clear policy reflected in the Adult Dependent Relatives Rules EC-DR are powerful factors in any article 8 assessment *cf. Agyarko* [2017] UKSC 11 at [47] and *Hesham Ali* [2016] UKSC 60 and the fact that the Immigration Rules are compatible with article 8. Mr Basra accepted that the UK based family members have natural love and affection for their mother but that this was not sufficient and something more was required.
21. In her submissions, Ms Sood drew attention to the report of Dr Junaid where he sets out the diagnoses of severe cognitive impairment, depression, dementia and frailty. She sought, in particular, to rely on the following:

"58. Mrs Kaur has dementia, depression and frailty. If she is denied the right support from her daughter, the evidence points very strongly to a greater likelihood of experiencing higher morbidity and disability. The evidence is clear enough to state that she would also have a greater risk of dying earlier than what would be expected for a woman of her age.

59. In my professional opinion, the combination of dementia, depression and frailty would make it extremely difficult for Mrs Kaur to adjust to a new routine or environment...

64. As a result of her progressive cognitive impairment caused by the dementia, Mrs Kaur is not able to identify her own health needs, seek appropriate healthcare or independently follow advice from her doctors.

For all these tasks she would be dependent on her family or care giver to access health care and follow directions.”

22. Ms Sood submitted that the Appellant has a combination of care needs for the rest of her life. She further sought to rely on the report of Surrinder Kaur, who spoke to the Appellant in Punjabi which she understands. Ms Sood clarified that it is not the Appellant's case that there is no appropriate medical care in India for mental illness or physical needs and the question is whether – even with the neighbours – the Appellant would be able to access the care she needs. She further clarified that the point about organisations saying they wanted a family member nearby arose as a consequence of covid because the Appellant had co-morbidities, she was unable to travel and had not received her covid vaccination. Ms Sood acknowledged there are 43 km between Bilga and Jalandhar and that it takes about an hour due to the fact that the roads are very poor quality.
23. As for the very significant obstacles argument, she submitted that in some instances there are only the subjective fears of the Appellant, but objective information about the information from medics or the assessment of her mental state is independent information about care being provided to her on an institutional basis given her various needs eg as Dr Junaid has clearly described them: the need to seek information, to turn cooker off, to use a stick, she is hard of hearing and other issues including forgetting medication, which cannot be served by having private or institutional care as the carer would have to be familiar with her needs. Ms Sood submitted that the very significant obstacles test was highly manifest in this case. Dr Junaid held at [26] that a memory board would help embed memories for the grandchildren and this is part of s55 assessment as well as important evidence of the quality of life she has with family here which will be mutually relevant and also creates a legacy for the children, because she engages with the children that does not mean she does not have dementia.
24. As to the question of emotional dependency, Ms Sood submitted that all of the cases *cf. Kamara* etc raise that if the Appellant is happier around the grandchildren especially the younger ones who are willing to spend time with her this reflects a level of emotional attachment. It is important that she dies peacefully surrounded by her family. Dr Junaid said she will age more quickly and the elderly need a purpose in life and this helps her remain stable. If the Appellant had been in India she could have applied under the Appendix FM EC-DR but as is clear from the House of Lords joint committee report on family reunion only one visa was granted. Ms Sood submitted that the Appellant would not be able to re-establish herself in the country without a family member being there for support and that an elderly person cannot easily be communicated with, especially when they have dementia.

Decision and reasons

25. Ms Sood sought to argue that there would be very significant obstacles to the Appellant's integration in India. The test is set out in Kamara [2016] EWCA Civ 813 per Lord Justice Sales at [14] that:

“14. ...The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.”

In Parveen v SSHD [2018] EWCA Civ 932, Underhill LJ held at [9]:

“The task of the Secretary of State, or the Tribunal, in any given case is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as "very significant".”

26. I have read the affidavit of Gurnam Singh, municipal counsellor and neighbour of the Appellant in Bilga, at pages 45-46 of the supplementary bundle, who states that the Appellant does not have any cousins or relatives in Bilga; she was living alone since the death of her husband and that she used to have a servant but that ceased during the covid pandemic and that there were no care homes for the elderly in Bilga and it was against their culture to put a parent in one of these homes, even if one was available.
27. The “socio-care report” of Surrinder Kaur, dated 12.2.23, a senior manager in the health and social care regulation sector with nursing and social care experience, was prepared following interviews with the family members, including the Appellant, to whom she spoke in Punjabi and noted she gave general answers and lacked recall of recent events. Ms Kaur notes that her family give the Appellant her medication because she forgets to take it; she is hard of hearing and has limited vision on account of diabetes, but refuses to wear her glasses and requires support in walking; she needs prompting to drink water and must be reminded to eat and does not cook; she often forgets to turn off taps and gets anxious and confused in new environments.
28. Ms Kaur sets out in some detail and pages 11-12 the efforts made by the family to explore the care that would be available in care homes in the Punjab and concern that: *“they had have no confidence that health, safety and wellbeing of their mother would be protected if placed in health care facilities in Punjab. They found that the organisations could not answer their questions, they had no employment/volunteer screening, fire drills, Personal Emergency Evacuation Plan, regulations, staff had no professional qualification and training of staff. The organisations said they also want a family member in Punjab to be contactable in case of emergency and only really catered for the destitute and homeless.”* Ms Kaur concludes that: *“In my professional opinion, if Kuldip Kaur was to return to India, she would regress and become isolated and withdrawn. She would find daily living impossible. This would create further stress and anxiety, and result in deterioration in her mental and physical health and put her welfare at significant risk.”*
29. In his psychiatric report of 7.3.23, Dr Junaid states as follows:

“62. I completely agree with the conclusions Surrinder Kaur came to in her report.

“The support Mrs Kaur receives presently from within her own family environment is beneficial, appropriate and sensitive to her cultural needs and wishes. This helps promote, and has an impact on, Mrs Kaur’s mental and psychological well-being and gives a stable environment which is of great value during her low moods.

In my professional opinion if she were to return to India, she would find daily living impossible. Mrs Kaur has been cared for by her daughter and family. She would suffer unnecessary stress and anxiety regarding her emotional care with low moods and leading to the increased feeling regarding the futility of life and enhance the deterioration of her mental, physical and psychological health if she was to lose that support.”

63. Mrs Kaur’s declining emotional and mental health wellbeing, confidence and physical health, and the quality of family life, will also have a substantial impact on her ability to cope as she becomes increasingly frail.

64. As a result of her progressive cognitive impairment caused by the dementia, Mrs Kaur is not able to identify her own health needs, seek appropriate healthcare or independently follow advice from her doctors. For all these tasks she would be dependent on her family or care giver to access health care and follow directions.”

30. Whilst I fully accept that the Appellant is an “insider” in terms of understanding how Indian society works, I find that her severe cognitive impairment and dementia diagnosis does operate to adversely impact on her capacity to participate in her life as it was previously and to operate on a day to day basis, not least as she is no longer able to care for herself. I do find that this constitutes a very significant obstacle to her integration in India at this point in time. I find that, even with a carer in her own home or being placed in a care home, the position would remain the same and would, in fact, deteriorate given that dementia is a progressive disease, as she would be unable to engage with her former neighbours and friends so as to enjoy private life of any substance and would be unable to form new connections and relationships. Consequently, I find that the requirements of paragraph 276ADE(vi) of the Immigration Rules are met.
31. Since I have found that the requirements of paragraph 276ADE(vi) of the Rules (now Appendix Private Life) are met, that is positively determinative of the appeal *cf. TZ (Pakistan)* [2018] EWCA Civ 1109 at [34].

Notice of Decision

32. The appeal is allowed on human rights grounds.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

12 February 2024