



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

Case No: UI-2023-004658
UI-2023-004657

First-tier Tribunal No: HU/51735/2023
HU/51731/2023

THE IMMIGRATION ACTS

Decisions and Reasons issued

19th February 2024

Before

Deputy Upper Tribunal Judge MANUELL

Between

**(1) Mr SARAN SINGH
(2) MRS JASWANT KAUR
(NO ANONYMITY DIRECTION MADE)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms J Fisher, Counsel
(instructed by Makka Solicitors Ltd)

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Heard at FIELD HOUSE on 9 February 2024

DECISION AND REASONS

Introduction

©CROWN COPYRIGHT 2024

1. The Appellants, husband and wife, appealed with permission granted by Upper Tribunal Judge O'Callaghan on 16 October 2023, against the decision of First-tier Tribunal Judge Oxlade who had dismissed the linked appeals of the Appellants against the refusal of their Article 8 ECHR human rights claims. The decision and reasons was promulgated on or about 6 September 2023.
2. The Appellants are Indian nationals, originally from Afghanistan, respectively born on 1 January 1949 and on 1 January 1956. They entered the United Kingdom as visitors, with leave until 10 May 2021. They became overstayers. On 7 December 2021 the Appellants applied for leave to remain on Article 8 ECHR family life grounds, which the Respondent refused on 26 January 2023.
3. They contended that their existing health problems had become worse to the extent that they were now dependent on their family in the United Kingdom and would not manage on return to India. They needed support with daily living, which was provided by their son and his wife, with whom they were living. The Appellants' case was that individually and together they met paragraph 276ADE(1)(vi) of the Immigration Rules, because their health conditions and lack of available support in India amounted to very significant obstacles to their reintegration.
4. Alternatively, because of the level of support they needed and have in the United Kingdom within a family setting, there were more than normal emotional ties with their son. He provided for them, making them financially independent. They would satisfy the Adult Dependant Relative Immigration Rules if they had applied from abroad, which (like financial independence) was relevant to proportionality. It was conceded that Article 3 ECHR was not met.
5. Judge Oxlade found that there would not be very significant obstacles to the Appellants' reintegration into India, and that the interference with family life resulting from removal would not be disproportionate under Article

- 8 ECHR. The Appellants had entered the United Kingdom as visitors, intending to leave in May 2021, yet the Appellants had filed no evidence to show what of their conditions had been diagnosed in India and how they had been treated, and how they had deteriorated during the six months of their (permitted) visit. They had thus failed to demonstrate the underlying reason for not returning.
6. Further, despite stating that they were now totally dependent on their son for basic care and had no one to whom they could turn if they returned to India, the Appellants had produced no reliable evidence as to how they had managed in India prior to their visit to the United Kingdom and had produced no evidence of enquiries that had been made as to what might be available to care for their needs as they are now. Contradictory accounts had been given about previous arrangements, e.g., whether they had help from family members or neighbours, and whether there had been a live in helper.
 7. While the judge accepted that the Appellants derived enormous emotional benefits from being cared for by family, that is what had happened for them in the past in India. The judge considered that she had not been given reliable evidence that suitable arrangements could not be put in place in India. The Appellants' return was not disproportionate, given that they had only come to the United Kingdom for a visit of a maximum of 6 months. They could return to their own home and community, where they could source help and care. By necessary implication, there was no evidence of any exceptional circumstances or other compelling factors. Hence their appeals were dismissed.
 8. Permission to appeal was refused in the First-tier Tribunal, but Upper Tribunal Judge O'Callaghan considered that it was arguable that Judge Oxlade had not expressly considered the Appellants' family life outside the Immigration Rules, nor the emotional care provided by their family in the United Kingdom from which they benefitted and by which dependency was asserted. Materiality would need to be established.

Submissions

9. Ms Fisher for the Appellants relied on the grounds of onwards appeal, the grant of permission to appeal and her skeleton argument. Counsel submitted that Judge Oxlade had not considered family life in line with Kugathas [2003] EWCA Civ 31 and should have found that dependency went beyond normal emotional ties. There was no adequate Article 8 ECHR assessment. Both the Appellants had a range of health problems and personal care needs, which counsel described. The judge's reasoning was insufficient. The Appellants could not help one another. The decision should be set aside and remade in the Appellants' favour.
10. Mr Avery for the Respondent submitted that none of the Appellants' grounds of appeal had been made out and no error of law had been shown. The judge had accepted that there was family life but had found that the Appellants' removal was not disproportionate. The background in India prior to their visit to the United Kingdom was relevant. The Immigration Rules were not met and the judge's decision was correct.
11. Ms Fisher wished to add nothing more by way of reply.

No material error of law finding

12. At the conclusion of submissions the tribunal indicated that reserved its decision, which now follows. The tribunal rejects the submissions as to material error of law made on behalf of the Appellants. In the tribunal's view, the errors asserted to exist in the decision are based on a failure to read Judge Oxlade's decision properly and to set the relevant facts into their context. The submissions made on the Appellants' behalf at times resembled an attempt to reargue the appeals before the First-tier Tribunal.
13. The context of the Article 8 ECHR applications was clear. The Appellants had been living together in India in their

own home without any apparent difficulties because of the support they were receiving. They were then able to undertake the obviously lengthy journey to the United Kingdom. They retained their home in India, but asserted that they had become too infirm to resume life there.

14. The allegedly dramatic change in circumstances required careful consideration, which the judge gave. Contrary to the claim made in the grounds of appeal and the Upper Tribunal's grant of permission to appeal, the judge accepted that there were "enormous emotional benefits from being cared for by family" (see [15]). However, the judge found that the evidence produced of the care arrangements in India prior to the visit was unreliable. The judge also found that there was no evidence that suitable care arrangements could not be made on the Appellant's return to their home in India. The judge gave sound and sufficient reasons for reaching those findings, open to her on the unimpressive and incomplete evidence produced.
15. Ms Fisher submitted that the judge had omitted to apply Kugathas (above). The judge's decision was in the new, streamlined version which First-tier Tribunal judges have been asked to give, as the judge explained in the prologue. Kugathas, being in effect basic law and a standard authority, did not need to be specifically cited. Its principles were applied. The judge accepted that there was family life with the son and his family in the United Kingdom, but was not satisfied that there was no other family in India, i.e., found that it was more likely than not that there was other relevant family life in India: see [13] of the decision. By necessary implication, if there had been no family (and other ties) in India, the Appellants could have sought entry clearance as adult dependant relatives, rather than as temporary visitors.
16. As part of the proportionality assessment, taking into account the state's margin of appreciation, the judge considered whether or not the Appellants could meet the Immigration Rules dealing with Adult Dependent Relatives, the requirement for entry clearance apart: see [14] of the decision. The judge found that satisfactory arrangements

for the Appellants' care had been made in the past and could be made again. That underpinned the judge's finding that removal was not a disproportionate interference with the Appellants' and the Appellant's son's family life in the United Kingdom, particularly given the short duration of such family life.

17. Any other decision might well be thought to have been a surprising one on the evidence which had been advanced. Plainly the judge examined that evidence sympathetically but that evidence was inadequate to support the claims advanced. Accordingly, the tribunal finds that there were no material errors of law in the decision challenged. The onwards appeals are dismissed.

Notice of decision

The appeals are dismissed_

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged.

Signed R J Manuell **Dated** 15 February 2024
Deputy Upper Tribunal Judge Manuell