



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

Appeal Number: IA/39745/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 16th July 2014**

**Determination
Promulgated
On 17th July 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

**MISS NAZIA HUSSAIN
(NO ANONYMITY DIRECTION MADE)**

Appellant

Respondent

Representation:

For the Appellant: Ms A Everett, Home Office Presenting Officer
For the Respondent: None

Interpretation:

Ms N Saher in the Urdu language

DETERMINATION AND REASONS

Introduction

1. This is an appeal by the Secretary of State but I will refer to the parties as they were before the First-tier Tribunal.

2. The appellant is a citizen of India born on 22nd February 1989. She arrived in the UK on 13th February 2013 as a visitor to see her father. Her father is Mr Mohammed Hussain who is a British citizen by birth, who suffered a heart attack in 2002 and who is now heavily disabled. On 5th July 2013 she applied to remain for a further period of time as his carer. This application was refused on 16th September 2013. Her appeal against the decision of the respondent was allowed by First-tier Tribunal Judge J Simpson in a determination promulgated on the 25th April 2014.
3. Permission to appeal was granted by Judge of the First-tier Tribunal Reid on 22nd May 2014 on the basis that it was arguable that the First-tier judge had erred in law in conducting his proportionality assessment in failing to take into account the fact that the appellant was trying to circumvent immigration control and that her father had travelled to India for emergency medical treatment between December 2013 and March 2014.
4. The matter came before me to determine whether the First-tier Tribunal had erred in law.

Submissions & Evidence

5. The appellant and Mr Hussain confirmed that they could understand the interpreter and that the language was Urdu. Mr Hussain in fact gave most of his evidence in English.
6. Ms Everett did not have the documentary evidence that was before the First-tier Tribunal so I clarified with Mr Hussain as to whether he had travelled to India for medical treatment between December 2013 and March 2014. He confirmed that he had done this. He had gone to India because he had been waiting for a long period of an appointment with Dr Shovlin at the respiratory service at Hammersmith Hospital. He was afraid that he would die and so wanted to travel to India to check the medical advice he was receiving in the UK. He travelled to India by plane with oxygen. He had been met by his wife and family in India and was cared for by them whilst he was there. He returned to the UK as the medical advice from the doctors in India was that he was receiving the correct medical treatment in terms of medication from his UK doctors and that he should wait for the appointment at the Hammersmith hospital. The fact of his trip is also set out in letter of Dr Lieske Kuitert, consultant respiratory physician at the London Chest Hospital dated 1st April 2014, which was before Judge Simpson. This letter confirms that he had a CT scan and blood tests at a large private hospital in India, and clearly had brought this evidence back to the UK. Dr Kuitert makes clear that Mr Hussain went to India against her advice due to his reliance on oxygen and her professional opinion that he might not survive the flight.
7. Ms Everett submitted that she relied upon the grounds of appeal. She also submitted that the fact that Mr Hussain had travelled to India

should have been placed in the balancing exercise by Judge Simpson. She also submitted that the evidence suggested that the appellant was only in the UK to care for her father because social services could not do the job properly and there was no proper evidence that this was the case.

8. Mr Hussain explained that he had called social services and they had told him on the telephone they would only supply help for between one and one and a half hours a day assistance. (This is also recorded at paragraph 7 of Judge Simpson's determination).

Conclusions

9. The grounds of appeal allege that Judge Simpson should have factored into his consideration and ultimately dismissed the appeal because the appellant entered the UK intending to remain as a carer rather than a visitor. But this is not the evidence that was before Judge Simpson: in the appellant's statement she clearly sets out that she came to the UK for a period of six months as a visitor hoping that she could take her father with her back to India but it had transpired that his condition was such she did not feel able to return home due to the care her father needed in the UK, and so applied to remain longer. This argument discloses no error of law on Judge Simpson's part. It is also clear that Judge Simpson factors into his consideration of the appeal the fact that the appellant cannot meet any provision of the Immigration Rules, see paragraph 9 of his determination.
10. Judge Simpson notes the respondent's contention that Mr Hussain should have his treatment in India and be supported by family there at paragraph 9 of his determination. However at paragraph 12 of his determination he clearly rejects this argument as he finds that Mr Hussain: "is a British citizen and as such is entitled to live in the UK and receive medical treatment here."
11. Mr Hussain attended the First-tier Tribunal and gave evidence (as he did before the Upper Tribunal) despite being constantly reliant on an oxygen cylinder - see paragraph 5 of the determination of Judge Simpson. It is unclear from the records before me if Mr Hussain was asked about his experience seeking medical treatment in India when he appeared before the First-tier Tribunal, however it is clear that evidence was before the First-tier Tribunal about the trip he made to India for further medical tests, and the fact that Mr Hussain had returned to the UK despite the very severe risks to his health associated with air travel. This is set out in the letter of Dr Kuitert which is at page 5 of the appellant's bundle.
12. I find that Judge Simpson has adequately considered the argument that Mr Hussain should return to India to receive medical treatment in his determination and was entitled to conclude that Mr Hussain's decision to receive medical treatment in the UK was reasonable in all the

circumstances. At paragraph 16 of his determination Judge Simpson notes that he has carefully considered all the evidence before him. Before Judge Simpson was the letter of Dr Kuitert, at page 5 of the appellant's bundle, from which it is also clear that Mr Hussain would not be assessed as medically fit to travel to India by his treating physician so could not reasonably be expected to travel there for treatment.

13. I find that Judge Simpson properly assessed that family life existed between the appellant and her father, Mr Hussain. He cited evidence which he found heartfelt at paragraph 8 of his determination, and concluded that there was a loving bond between them in which the appellant placed her father's interests above her own and wished to care for him in his final stages of life reciprocating the love and care he provided to her as a child, see paragraphs 12 and 13 of his determination.
14. I also find that full consideration had been given to the issue of what Social Services could provide in the way of care and support. At paragraphs 7 and 12 of the determination it was accepted that some lesser amount of care could be provided by Social Services but ultimately Judge Simpson found that due to the "loving bond" between the appellant and her father that Social Services assistance was no adequate substitute. There is no error of law in relation to this issue either.

Decision

15. The decision of the First-tier Tribunal did not involve the making of an error on a point of law.
16. The decision of the First-tier Tribunal allowing the appeal on human rights grounds is upheld.

Deputy Upper Tribunal Judge Lindsley
16th July 2014