



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

Appeal Number: OA/06042/2013

THE IMMIGRATION ACTS

Heard at Field House

On 11 April 2013

**Determination
Promulgated
On 1 May 2014**

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

RAJWINDER KAUR MANDER

and

ENTRY CLEARANCE OFFICER - NEW DELHI

Appellant

Respondent

Representation:

For the Appellant: Mr G S Mander, Sponsor

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of India, born on 3 February 1984. She appeals with leave against the decision of First-tier Tribunal Judge Elek dismissing her appeal against the ECO's refusal to grant her entry clearance to the

United Kingdom as an adult dependent relative under Appendix FM of the Immigration Rules.

2. The appellant has throughout these proceedings been represented by Mr G S Mander, who is her sponsor and great-uncle. He is the brother of the appellant's grandfather.
3. When the appellant made her application on 16 November 2012, she was living with her grandfather. She had a sister who was married and lived with her in-laws in Punjab about twenty miles away from her. Her brother and his wife lived in Italy.
4. She had lived in India with her mother, father and grandfather until her mother died in July 2004. She obtained a two year working holidaymaker visa in 2007 to gain experience in the UK and during this time she had resided with her sponsor's daughter, who accepted financial responsibility for her and had sponsored her. The appellant returned to India as her father had become ill and she looked after him until he passed away in September 2010. Following her father's death, the appellant remained in the family home with her grandfather who had suffered drug addiction for many years and was unpredictable in nature. The appellant feared for her safety. Then she obtained a two year study visa and returned to the UK. Her sponsor and his wife accepted full financial responsibility for her.
5. While in the UK the college she attended, Greenwich Community College had its highly trusted status suspended. Because of this and the anxiety of returning to India the appellant become ill and discontinued her studies. Her sponsor urged her to go back to India at the time. He said in evidence that save for her grandfather the appellant has no family remaining in India to seek support from. She is both financially and emotionally dependent on him and his wife and this is a responsibility they are happy to accept without recourse to public funds.
6. The psychiatric report from Dr Katambari who had examined her in the UK on 20 September 2012 reported one incident of self-harm when the appellant took an overdose of analgesics on 20 May 2012, in her sponsor's home, where she was examined and reassured by paramedics. The appellant said she felt depressed and often had thoughts of ending her life. She was also upset about her studies in the UK. The judge accepted respondent's finding that the depression that Dr Katambari diagnosed is treatable in India. She based her conclusion on the India Country of Information Report dated 30 March 2012.
7. Mr Mander said in evidence that the appellant's grandfather is suffering from drug addiction and had made sexual advances to the appellant which, understandably, she found distressing. The judge found that there was no evidence adduced of a medical assessment of this man, or of appropriate action being taken to curb these advances. In any event, Mr Mander had arranged for a female person in the village to come and stay

at their house. Thus the appellant was not alone and the situation in which she found herself has been ameliorated. Mr Mander informed the court, as did the appellant in her statement of October 2013, that this young woman was about to get married. The judge found that there was no indication that, having found one person to live at the appellant's home, Mr Mander would not be able to find another person to do the same.

8. It transpired in the course of oral evidence that because of her grandfather's situation, her own brother had taken over her house in which they live. The judge did not believe that the appellant would be without a home because of this. She found that the appellant has a home in India. She has a sister living in the Punjab. She found that the appellant has not adduced evidence that she is living alone in the most exceptional compassionate circumstances. The judge did not find from the information given that the appellant is unable, even with the help of the sponsor to obtain the required level of care in the country in which she is living. The appellant is clearly able to undertake the tasks of daily living and has a home.
9. As far as the relationship requirements are concerned, the ECO stated that the sponsor, as her grandfather's brother, is not a recognised family member for settlement. The judge found that the appellant does not come into any of the dependent relative categories in the Immigration Rules.
10. In light of the financial information the judge accepted that the appellant's sponsor Mr Mander is able to maintain and support her were she to be allowed to settle in the UK.
11. The judge considered the appellant's Article 8 appeal in light of **Kugathas [2003] EWCA Civ 31** and came to the conclusion that she did not believe that more than normal emotional ties exist between the appellant and her great-uncle and great-aunt and second cousin in the UK. She found that this relationship does not engage the family life limb of Article 8. Even if it were engaged, any interference would be in accordance with the law because this appeal cannot succeed on immigration grounds. The interference would be proportionate to the need for immigration control.
12. At the hearing before me the sponsor sought to rely on a bundle of documents he had submitted to the Tribunal with a covering letter dated 28 March 2014. This bundle had been detached from the file but it was subsequently linked to it. I therefore had that bundle as well as the bundle that had been submitted for the hearing before the First-tier Tribunal. I have read the bundle and they add nothing further to the appellant's case.
13. The sponsor's main complaint was that, as the appellant's nominated representative, the judge had denied him the opportunity to act as a representative and was denied the right to ask questions of the Presenting

Officer or to cross-examine witnesses. He referred to the previously adjourned hearing on 11 October 2013 where the judge and the HOPO had no objection to him sitting in the representative's chair. He said that he had duly completed the representative's form, which would have been the Section 85 form, at reception on arrival in court and that had been placed on the bench as soon as they entered the courtroom. He complained that he was made to sit in the witness chair and was treated as a sponsor only. Whilst I appreciate that the sponsor felt aggrieved by having to sit in the witness chair, I find that no procedural error was committed by the judge. Regardless of where the sponsor was made to sit, as stated by First-tier Tribunal Judge Parkes who granted permission, a representative, whether legal or not, would not be expected to ask questions of the Presenting Officer.

15. I agree with Judge Parkes that the representative should be able to ask questions of the witnesses and make submissions. However, in a case like this, where the witnesses were the sponsor's own relatives i.e. his wife and their daughter, unless Mr Mander treated them as hostile witnesses, I could not see on what basis he would have wanted to cross-examine these witnesses. His wife had relied on her statement as did his daughter and they had both given evidence in support of the appellant. Mr Mander could have sought clarification of their evidence if he felt the need to but there was no evidence that he did. Indeed he has not complained about the evidence they gave in court which was accepted by the judge. In my opinion, therefore, there was no procedural error in what occurred in court.
16. Mr Mander also complained that the judge got it wrong when she said at paragraph 12 that the appellant was interviewed over the telephone. Mr Whitwell accepted that the appellant was interviewed in person in New Delhi. He produced a copy of the Interview Template which, as it happens, was in the appellant's bundle. Indeed the judge had relied on it in making her findings at paragraph 12.
17. Mr Mander conceded that he was not within the category of persons the appellant could apply to join as a dependant relative. However, he complained, firstly, that he had specifically asked for advice at the British High Commission and was initially told to fill a form which happened to be the wrong form, for which he paid a fee and was subsequently given the correct form, for which he again had to pay a fee. I sympathise with his complaint, but it should really be made to the British High Commission who gave him confusing advice as to which form the appellant needed to complete.
18. Mr Mander also asked why the appellant was given a right of appeal if, in view of their relationship, he was not recognised as a family member for settlement. I informed Mr Mander that the appellant had a right of appeal under the Nationality, Immigration and Asylum Act 2002 Immigration Act

and she chose to exercise it. The respondent's decision was an Immigration decision under section 82(2)(b) of the 2002 Act which attracted a right of appeal.

19. I agree with Mr Whitwell that the only remaining ground was in respect of the Article 8 appeal. Mr. Mander took issue with the judge's finding that the interference was necessary in a democratic society and proportionate to the need for immigration control. He drew attention to his statement dated 30 September 2013, paragraph 13, regarding his complaint about immigration control. He said he felt very strongly that hundreds and thousands of people who came to the UK illegally or overstayed, have been given indefinite leave to remain in the UK and benefitted from their breach of immigration control, thus circumventing the need for entry clearance.
20. I find that these comments have no bearing on the appellant's appeal or the judge's findings. Each case is judged on its own merits. The appellant presented the judge with a set of circumstances which she fully considered and the findings the judge made in respect of the appellant's human rights appeal were sustainable and open to her. The comments made by Mr Mander do not arguably disclose an error of law on the part of the judge.
21. I find that the judge's decision does not disclose an error of law. The judge's decision dismissing the appellant's appeal shall stand.

Signed

Date

Upper Tribunal Judge Eshun