



IAC-FH-AR-V1

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

Appeal Number: AA/02802/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 1 February 2016**

**Decision & Reasons Promulgated
On 11 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M LEWIS

Between

**P V
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs J Rothwell, Counsel, instructed by Birnberg Peirce & Partners

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

DECISION AND REASONS

The History of the Appeal

1. The Appellant, a citizen of India, appealed against the refusal of the Respondent of her claim for international protection. Her appeal was heard on 30 June 2015 by Judge Feeney sitting at Taylor House. Both parties were represented, the Appellant by Mrs Rothwell. In a decision of 13 July, promulgated on 24 July, 2015 the appeal was dismissed on

political asylum and human rights grounds and under the Immigration Rules.

2. Permission to appeal was refused by Judge Lambert on 17 August 2015 in the following terms:

- "1. The Appellant seeks permission to appeal, in time, against a decision of the First-tier Tribunal (Judge Feeney) who, in a decision promulgated on 24 July 2015 dismissed the Appellant's appeal against the Secretary of State's decision to refuse leave to remain on human rights grounds.
2. The Judge found that neither the Appellant nor her husband (a Sri Lankan with refugee status in the UK) would be at risk in the Appellant's home country of India and no significant obstacles to the Appellant's reintegration there within paragraphs EX2 or 276ADE. While the circumstances justified consideration of private life under Article 8 outside the Rules, the Appellant's husband could continue to receive medical treatment in India and return of the whole family to India was proportionate and consistent with the children's best interests.
3. The grounds argue failure to consider expert evidence and properly to apply the test in para EX2. The decision does not support this. Having at paragraph 9 emphasised the absence of reference in the decision to any particular piece of evidence does not mean failure to consider it, at paragraphs 54 and 55 the judge makes clear that she has considered the Appellant's husband's medical condition and makes a reasoned finding that there are 'no obstacles' to the Appellant returning (with her husband) to India. The husband's mental condition is further considered at paragraphs 72-73. The medical reports did not need to be referred to in terms. If there are no obstacles under EX1, the judge obviously does not need to go on to consider under EX2 what obstacles are to be regarded as 'insurmountable'.
4. The remaining grounds take issue with the findings made by the Immigration Judge on the evidence, but in effect amount to no more than disagreement with those findings and an attempt to reargue the Appellant's case.
5. No arguable error of law is disclosed by the application."

3. On second application, permission to appeal was granted by Judge Bruce on 5 October 2015 in the following concise terms:

"It is arguable that the First-tier Tribunal applied the wrong test and/or failed to take material matters into account when assessing EX.1 read with EX.2. Permission is granted on all grounds."

4. The error of law hearing before me took the form of submissions, which I have taken into account, together with the application for permission to appeal. I reserved my decision.

Determination

5. The judge wrote that the fact that she had not specifically referred to any particular piece of evidence did not mean that she had not considered it

(paragraph 9). She summarised the mental health difficulties of the Appellant's husband and her care for him (paragraphs 32, 33).

"I find that the Appellant's husband would not receive suitable medical care in India. The medication he takes is available in India and crucially he has the support of his wife.": paragraph 54.

6. In context this must be a typing error for, for example, "I do not find that the Appellant's husband would not receive suitable medical care in India". She accepted part of the evidence about a visit by the Appellant's husband to his parents in Sri Lanka but rejected other parts (paragraph 52).

"Taking the above into account I am not satisfied that there are any obstacles to the Appellant's returning India. I am not satisfied to the required standard that she will be at risk from her father or the authorities for perceived LTTE membership. I am not satisfied that her husband would be at risk on return to India.": paragraph 55.

7. There are areas of the evidence which the judge does not address. In determining the asylum appeal of her husband in October 2009, Judge Stokes and Mr Thursby addressed the medical evidence about him at paragraphs 29 to 35, concluding at the end of paragraph 35 that "We accept his further written opinion that deportation to Sri Lanka would have a massive deteriorating effect on the Appellant's mental state and that he was currently of significant suicidal risk."
8. There were in evidence two reports by Dr Saleh Dhumad, a consultant psychiatrist, upon the Appellant's husband. The first, of 14 May 2014, diagnosed recurrent depressive disorder, severe depression and PTSD, with a significant suicide risk if his wife were removed. The second, of 24 June 2015, diagnosed continuing severe depression and PTSD. The Appellant's husband's condition had deteriorated over the past twelve months. He was not receiving the appropriate treatment and required at least twelve months of therapy, in addition to the support of his wife, to provide the social and cultural support, which is extremely important for his recovery. If she were forcibly returned to India there would be a significant deterioration in his mental health coupled with significant increase in suicide risk, which would be extremely high.
9. As stated, the judge alluded to the mental health difficulties of the Appellant's husband at paragraphs 32 and 33. He wrote at paragraph 54 that crucially the husband had the support of his wife; this Mr Whitwell submitted, was an allusion, albeit unattributed, to the second report of Dr Dhumad at paragraph 4(a).
10. The judge was aware of the mental health difficulties of the Appellant's husband. But she accorded them very little weight, concluding that she was not satisfied that there were any obstacles to the Appellant returning to India or that the husband would be at risk on return there. She did not refer to, nor seemingly consider, the two medical reports. To write at paragraph 9 that to refer to a particular piece of evidence did not mean

that it had not been considered is an inadequate formula to establish proper consideration of material evidence.

11. The Appellant's husband has refugee status following his appeal being allowed in November 2009, and has leave to remain in the UK until 3 June 2018. Their two children have leave to remain until 25 January 2017 and a date in 2018 respectively. These facts, which are highly material, do not appear within the decision. This omission is particularly significant because of the judicial finding at paragraph 71 that this is a stable and cohesive family unit, inter-dependent and mutually supportive.
12. The judge commented at paragraph 73 that there is no evidence of medical or social services' concern about the welfare of the children. However there was no reason for this to be suggested, since the children were in the care of their mother.
13. The judge omitted to take into account or to pay sufficient regard to areas of evidence which were so material as to be capable of affecting her findings of fact and thus the outcome of the appeal. This was an error of law. The decision cannot stand, and is set aside.
14. The appeal is to be reheard in its entirety, because of the nature and volume of the evidence in the First-tier Tribunal, by any judge other than Judge Feeney.

Decision

15. The original decision contains an error of law and is set aside.
16. The appeal is to be reheard on all issues in the First-tier Tribunal by any judge other than Judge Feeney.

Signed

Dated: 9 February 2016

Deputy Upper Tribunal Judge J M Lewis