



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/50691/2014**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

**Decision and
Promulgated**

Reasons

On 15 July 2016

On 19 July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**MANISHABEN LAXMANRAO NAGNE
(Anonymity Direction Not Made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Talacchi (counsel,) instructed by New Era
Immigration Services Ltd

For the Respondent: Mr K Norton, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Khawar promulgated on 20 August 2015, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 29 May 1974 and is a national of India.

4. On 1st October 2014 the Appellant applied for leave to remain in the UK on article 8 ECHR grounds. On 2 December 2014 the Secretary of State refused the Appellant's application.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Khawar ("the Judge") dismissed the appeal against the Respondent's decision.

6. Grounds of appeal were lodged and on 20 June 2016 Upper Tribunal Judge Bruce gave permission to appeal stating

It is arguable that the Tribunal erred in declining to make findings (bar the *obiter* remarks at 28) on the protection grounds raised on appeal. The fact that the Appellant had not made an asylum claim did not obviate the Tribunal's duty to deal with grounds of appeal which were clearly raised before it. It is further arguable that in making its findings on paragraph 276ADE(1)(vi) the Tribunal has failed to have regard to the Appellant's evidence about her circumstances in India.

The Hearing

7. (a) Mr Talacchi, counsel for the appellant, moved the grounds of appeal. He acknowledged that, notwithstanding the terms of the grant of permission to appeal, the appellant has not and still does not claim asylum. He conceded that the original grounds of appeal proceeded on article 8 ECHR grounds only. He told me that the appellant's history of maltreatment by male relatives creates very significant obstacles to return to India, so that the appellant meets the requirements of paragraph 276ADE(1)(vi) of the rules.

(b) Mr Talacchi told me that this case turns entirely on private life within the meaning of article 8, and argued that the proportionality exercise carried out between [23] & [25] of the decision is flawed. He told me that there is an entire absence of credibility findings in the decision, and insufficient findings of fact relating to the component parts of private life. He told me that those gaps in the decision indicates that the proportionality exercise is inadequate. He said that the decision is tainted by an absence of findings of fact leading to inadequate reasoning.

(c) Mr Talacchi directed me to [19] and [20] of the decision and told me that there is a paucity of fact-finding because the Judge did not deal evidence of treatment the appellant received at the hands of her own family in India. He told me that that evidence goes to the very core of the appellant's claim and, as the Judge neither records the evidence nor discusses it, there is a failure to give weight to a material matter & a failure to give adequate reasons. He told me that those are material errors of law and urged me to set the Judge's decision aside.

8. For the respondent, Mr Norton told me that the decision does not contain any errors of law, material or otherwise. He asked me to dismiss this appeal and allow the Judge's decision to stand.

Analysis

9. I am grateful to Mr Talacchi for emphasising that the focus in this appeal is on paragraph 276 ADE(1)(vi) of the rules. The appellant's argument is that there are very significant obstacles to re-integration into India.

10. The Judge commences his findings of fact at [15] of the decision. At [19] the Judge focuses on paragraph 276ADE(1)(vi) of the rules, and finds that there are no significant obstacles to the appellant return and reintegration into Indian society. The reason for that findings set out at [19] the decision. The Judge's findings are brief but there is sufficient set out there to support the Judge's finding that the appellant cannot fulfil the requirements of paragraph 276 ADE of the rules.

11. The argument that is advanced is that the appellant is a single woman, entirely without family support in India. It is argued that the treatment that she will receive on return to India as a lone woman amounts to a very significant obstacle to reintegration. That is only discussed by the Judge at [28} of his decision. The basis of the appellant's claim can be found in her witness statement dated 30 September 2014. There the appellant recounts a harsh life with her father and brother and the decision to live alone in a one-bedroom flat, only to find society frowned on an independent single woman.

12. In R (on the application of Patel) v Secretary of State for the Home Department [2010] EWHC 1087 (Admin) the Claimant and her husband were citizens of India. Whilst living in India, the Claimant underwent fertility treatment as she had been unable to conceive a child. She suffered taunts from her husband's family about her infertility and also experienced some exclusion from her community. This culminated in an incident when the Claimant's mother-in-law doused her in petrol and attempted to set fire to her. The incident was reported but the police took no further action. Frances Patterson QC, sitting as a Deputy High Court Judge said that the Claimant had to show that a particular social group of childless women existed in India independently of the alleged persecution,

and that their ill-treatment met the high threshold to amount to persecution. In this case, the evidence did not meet the high threshold to demonstrate a lack of state protection (paras 23 – 24 and 27).

13. In RS (India), Petition for Judicial Review of decisions by the Secretary of State for the Home Department [2011] CSOH 6 Lord Malcolm upheld certification of a case of domestic violence in which the husband alleged there would be insufficient protection in India.

14. Even taking the appellant's claim at its highest, she might have had an unhappy time in India prior to coming to the UK but her claimed difficulties in establishing life as a single woman safely in India is not supported by the background materials nor by the case-law. On the evidence that was placed before the Judge, there was no support for the appellant's claim that the circumstances she lived in India form the basis of very significant obstacles to re-integration on return from the UK.

15. It would have been helpful if the Judge had engaged with that passage of the appellant's evidence and explained why that evidence made no difference to his decision. The absence of that discussion in the Judge's decision might be an error of law, but it is not a material error of law because it makes no difference to the decision that the Judge ultimately reached.

16. None of the other grounds of appeal were argued before me by counsel for the appellant, however the grounds of appeal challenged the Judge's overall proportionality assessment and are critical of the Judge's treatment of section 117B of the 2002 act, essentially arguing that the appellant has not been given credit for her ability to speak English and her financial independence.

17. In AM (S 117B) Malawi [2015] UKUT 260 (IAC) the Tribunal held that an appellant can obtain no positive right to a grant of leave to remain from either s117B (2) or (3), whatever the degree of his fluency in English, or the strength of his financial resources. In Forman (ss 117A-C considerations) [2015] UKUT 00412 (IAC) it was held that the public interest in firm immigration control is not diluted by the consideration that a person pursuing a claim under Article 8 ECHR has at no time been a financial burden on the state or is self-sufficient or is likely to remain so indefinitely. The significance of these factors is that where they are not present the public interest is fortified.

18. The decision does not contain material errors of law. The grounds of appeal amount to an expression of dissatisfaction with the conclusion that the Judge reached, but on the evidence placed before the Judge, his decision is one which falls well within the range of conclusions reasonably open to the Judge.

19. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

20. In reality the appellant's appeal amounts to little more than a disagreement with the way the Judge has applied the facts as he found them to be. The appellant does not like the conclusion that the Judge has come to, but that conclusion is the result of the correctly applied legal equation. The Judge's fact finding exercise is adequate. The correct test in law has been applied. The decision does not contain a material error of law.

21. The Judge's decision, when read as a whole, sets out findings that are sustainable and sufficiently detailed and based on cogent reasoning.

CONCLUSION

22. No errors of law have been established. The Judge's decision stands.

DECISION

23. The appeal is dismissed. The decision of the First-tier Tribunal stands.

Signed

Date 18 July 2016

Deputy Upper Tribunal Judge Doyle