Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/06998/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7th November 2018	**On 30th November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

JOTSHNA [K]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr T Shah, Solicitor
For the Respondent: Ms A Everett, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge Moore promulgated on 18th June 2018 dismissing her appeal on the basis of her human rights. The decision of Judge Moore was appealed against and permission was granted by First-tier Tribunal Judge Page in the following terms:

> "The application for permission to appeal unhelpfully runs into six pages of disagreement instead of being limited, as it should have been, to a series of succinct Grounds of Appeal. It may be that much of this amounts to disagreement with what the judge decided on the evidence

> but one Ground of Appeal merits consideration by the Upper Tribunal. That is that the judge placed little weight on the psychiatric report dated 16th April 2018 which highlighted the potential risks associated to the Appellant's daughter if the Appellant departed from the UK. The report has stated that the Appellant's daughter will become socially isolated if the Appellant was removed. The complaint is made that the judge has given little weight to this report and has stated at paragraph 30 that the medical expert went beyond her remit. The Grounds of Appeal argue that a medical report has a duty to impose a medical opinion and not be influenced by a lay person. A complaint is made that the judge has speculated about this and the approach taken to the report is incorrect. Permission to appeal is granted on this ground alone".

2. I was not provided with a Rule 24 reply by the Secretary of State but was given the indication that the appeal was resisted.

Error of Law

3. At the close of the hearing I indicated that I would reserve my decision, which I shall now give. I do not find that there is a material error of law in the decision, such that it should be set aside. My reasons for so finding are as follows.

4. In respect of the sole Ground of Appeal, the criticism is broadly pleaded as summarised by Judge Page, against paragraph 30 of Judge Moore's decision. I thus turn to that paragraph to see the impugned findings in context, which read as follows:

> "Regarding the psychiatric report of 6th April 2018 it would appear that the report writer has perhaps gone beyond her remit. Whilst the report details the diagnosis of severe depression with psychotic symptoms, the report writer states in the report that she would like to support the Appellant in her court hearing for leave to remain in the UK. She later in the report adds that if the Appellant was to be removed the daughter would become socially isolated. Such comments in my view should not be in a psychiatric report, and it would seem that the medical expert opined that there would be social isolation on the part of the daughter, without stating how such a conclusion was reached, presumably as a result of what the report writer had been told by the daughter".

As can be seen from that paragraph the remark made by the First-tier Tribunal Judge that the report writer went beyond her remit was in fact premised upon the criticism that the report did not specify *how* the conclusion was reached that the daughter would suffer from social isolation. That is quite different from the remark being made in a vacuum without any basis being given for it. Thus, I do not find that there is any error that is material in this remark being made, particularly where the judge has justified it being given in, in that he was of the opinion that the medical report writer would have specified reasons why the daughter would suffer from social isolation and not made an unreasoned remark. Notwithstanding that finding, the judge has also stated that this finding

was made presumably as a result of what the report writer had been told by the daughter. That is a presumption that the judge was entitled to make, however if this was to be challenged as a material error of fact, it was open to the Appellant's representatives to contact the report writer and obtain a response to this remark made by Judge Moore, given that it would have only arisen for the first time in his decision. That was not done by the Appellant's representatives. Nor surprisingly were any of the other Grounds of Appeal renewed when permission to appeal had been refused on all other grounds by Judge Page. Had that been done, the appeal may have fared differently, but it was not, and so there only exists one ground of challenge before me.

5. This is an unhappy appeal in that I am given to understand that there is a volume of evidence which could support the Appellant's position, according to Mr Shah, but Mr Shah's unnamed 'colleague' whom is in charge of this matter has not, for reasons unexplained, sought to either obtain that evidence nor sought to place it before the First-tier Tribunal or even the Upper Tribunal on appeal.

6. There is some further evidence submitted under a Rule 15(2A) application. This is evidence that was not before the First-tier Tribunal which the Appellant seeks to rely upon in this appeal. Before I can consider that evidence, as Rule 15(2A)(a)(ii) states, 'if a party wishes the Upper Tribunal to consider such evidence that was not before the First-tier Tribunal they must not only send or deliver notice to the Upper Tribunal and the Respondent' but must also indicate 'the nature of the evidence' and most important of all 'explain why it was not submitted to the First-tier Tribunal'. These are factors that the Upper Tribunal must have regard to as to whether there was any unreasonable delay in producing the evidence. Notwithstanding the element of delay in this matter, Mr Shah was unable to give me *any* explanation as to why the evidence that is now before the Upper Tribunal in the form of the letter from King's Health Partners (South London and Maudsley NHS Trust) of 1st November 2018 from a specialist perinatal mental health nurse had not been sought and obtained and placed before the First-tier Tribunal by his colleague. Indeed, this is evidence that one would have expected any conscientious and careful legal representative to obtain given that the previous evidence from the mental health nursing team (at Guy's and St Thomas' NHS Trust) was dated 10th March 2016 (seen at page 45 of the Appellant's bundle and as referred to by Mr Shah). Thus, the evidence before the First-tier Tribunal was out-of-date and this is evidence which should have been produced earlier for which no explanation has been given.

7. Notwithstanding that no explanation has been given, I have decided to admit that evidence and to consider it as part of the consideration of whether there is a material error of law or not in the decision of the First-tier Tribunal. In respect of this evidence I am inclined to accept Ms Everett's submissions that in paragraphs 29 to 31 of the decision, the judge has in fact, as she puts it, "put a lot of effort" into filling in the blanks and gaps in the Appellant's evidence, and which filling in even goes

in the Appellant's favour. An example of this is the judge stating at paragraph 29 that the Appellant is still in receipt of a care plan which will continue – even though there was no evidence of its continuation before him. Thus, given that the new letter from the South London and Maudsley Trust refers to the Appellant providing care on a daily basis for her daughter's children (i.e. her grandchildren) and that she will require continued support from her mother and mental health services, there is nothing sufficiently new and detailed in this letter that the judge has not already presumed and given the benefit of doubt in favour of the Appellant (notwithstanding that there was no evidence before him on this issue). Thus, in my view, the new evidence produced under Rule 15(2A) does not reveal a material error of fact in the judge's decision nor a material error of law in any other respect. I note that the judge has accepted that the Appellant is fully supporting her daughter, however, as harsh as the findings may seem, there is no perversity in them as when taking paragraphs 29 to 31 of the judge's judgment and the remainder of the decision as a whole, the judge has fully and fairly weighed up the evidence before him, and gone to extra lengths to find in favour of the Appellant on other matters not before him, but still ultimately found against the Appellant in terms of the proportionality of the Secretary of State's decision, which was entirely open to him to do.

8. Finally, before concluding this decision I note that, as I have said above, this is an extremely unfortunate and unhappy appeal, in that it is said that the grandchildren of the Appellant will be taken into care if the Appellant is removed, however there is still no evidence that has been placed either before the First-tier Tribunal or the Upper Tribunal which expressly points to this conclusion. I note that Mr Shah said that the Appellant's daughter being a British citizen is entitled to social support but that being so he was unable to explain why that social support had not been sought and why the Appellant's supporting presence would still be necessary, notwithstanding the availability of that support. However, if further evidence does come into the Appellant's hands of such a nature which would show that the children would be placed into care, notwithstanding the social support apparently available, the Appellant is of course at liberty to make a fresh claim and present that evidence before the Secretary of State. Although that claim would also need to deal with the finding made by the First-tier Tribunal Judge at paragraph 31 that the Appellant's daughter could apparently obtain domestic support or cook or clean herself and therefore provide the necessary care for her children in the Appellant's (her mother's) absence.

9. Therefore, in light of the above findings, the appeal against the findings of the First-tier Tribunal does not reveal a material error of law such that the decision should be set aside.

Notice of Decision

10. The appeal to the Upper Tribunal is dismissed.

11. The decision of the First-tier Tribunal is hereby affirmed.

12. No anonymity direction is made.

Signed Date 25 November 2018

Deputy Upper Tribunal Judge Saini