



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

**Appeal Numbers:  
HU/13283/2016**

**U/13292/2016**

**H**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25<sup>th</sup> September 2018**

**Determination Promulgated  
On 1<sup>st</sup> October 2018**

**Before**

**UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**H K (1)**

**J S (2)**

**(ANONYMITY ORDER MADE)**

Respondents

**Representation:**

For the Appellant: Mr L Tarlow, Senior Home Office Presenting Officer

For the Respondents: Ms C Bexson, of Counsel, instructed by Khans Solicitors

*Introduction*

1. The claimants are citizens of India and are a husband and wife couple. They both arrived in the UK in 2014, the first claimant with leave to enter as a Tier 4 student migrant and the second claimant with leave as her dependent. This leave was extended until 18<sup>th</sup> February 2016, and on 17<sup>th</sup> February 2016 the claimants applied to remain on the basis of their human rights. The Secretary of State refused this application in a decision dated 10<sup>th</sup> May 2016. Their appeal against the decision was allowed on human rights grounds by First-tier Tribunal Judge R A Vernon in a determination promulgated on the 28<sup>th</sup> November 2017.

2. Permission to appeal was granted to the Secretary of State on 12<sup>th</sup> June 2018 on the basis that it was arguable that the First-tier judge had erred in law in making irrational findings relating to the first claimant's medical treatment.
3. I found that the First-tier Tribunal had erred in law for the reasons set out in my decision at Annex A, and set aside the decision of the First-tier Tribunal but preserving some of the findings. The matter now comes back to me to remake the appeal. The claimants provided written witness statements and gave oral evidence, and Dr Glover provided a report dated 11<sup>th</sup> September 2018 and gave oral evidence. At the end of the hearing, having heard submissions for both parties, I reserved my decision.

### *Evidence & Submissions – Remaking*

4. The evidence of the first claimant is, in summary, that she would have very significant obstacles to integration if returned to India because if she were to return she would suffer trauma and stress that would put her at high risk of a psychotic relapse which would mean that she was not able to care for herself and her children, and that the second claimant, who only has basic secondary education, would not be able to support her and their two children without the help of one of the families. It would also be culturally unacceptable to relocate away from the families. The first claimant explained that away from family and friends, and without the UK treatment package and if her husband were at work, she would have no one to help her when she becomes unresponsive to her children or had a panic attack because of her mental health problems. She would not be able to go to new neighbours as she would not trust them, and this would leave her very young children unprotected. In the UK they have a circle of friends and extended family who assist them. She could not return to live with her family in India as they would force her to see the faith healer who abused her. She cannot tell them about the rape because of the social stigma associated with being a rape victim. She could not live with her parents-in-law as they are hostile to her and this would make her mental health worse, and this could lead to her children being taken away from her. Further, if returned to India, she would lose the vital mental health treatment she receives in the UK as there is no equivalent psychotherapy service.
5. The evidence of the second claimant is, in summary, that he has not worked in India and has only basic education. That it would not be possible for him and the first claimant to live together in India due to his parents' attitude to the first claimant. He has played a key role in caring for the children, looking after the first claimant and caring for the home whilst they have lived in the UK. He does not believe that it would be possible for them to live apart from their parents for practical and cultural reasons. In the UK he worked in a shop for about two and a half years between 2012 and 2014 whilst he had work permission but this had then been withdrawn. He does not believe he would obtain work in

India as he lacks qualifications and experience, and it is hard to obtain work. He fears that return to India would not be safe for his family, and would cause the first claimant to have a major mental health breakdown. He also fears for his own mental health as currently he has the support of a father's group which enables him to care for himself so he can perform his role as a carer for the first claimant.

6. The evidence of Dr Naomi Glover, principal clinical psychologist with the Redbridge Early Intervention in Psychosis team is that she has been caring for the first claimant since July 2016. The first claimant has a working diagnosis of severe depressive episode with psychotic features. She also suffers post-traumatic stress disorder as a result of the sexual assault from the faith healer in India in 2016. She suffers from visual, auditory and tactile hallucinations as well as persecutory delusions, and flashbacks and nightmares. She is not currently actively psychotic but is struggling with depression and anxiety. In the UK the first claimant has a small but helpful network of friends and extended family who help care for her and the family. She also has two teams supporting her: a medical psychological intervention team and a social support team. At the present time the first claimant sees Dr Glover every two weeks and the care coordinator every two weeks. She sees Kevin Ball in the perinatal team every week, and her psychiatrist to review medication about once every three months. The second claimant has a monthly fathers' group and a weekly psychological service support. In the UK, with this support, the claimants and their children live as an independent family unit with the assistance of friends and some distant relatives who provide some childcare.
7. If returned to India the first claimant would be likely to suffer three sets of stressors, which in turn would be likely to cause a psychotic relapse. Firstly, she would be retraumatized by returning to the country where she was raped, and may be revictimized as she may return (for practical reasons) to her mother's home and would have reduced capacity to make safe and appropriate decisions not to see the faith healer. The first claimant has not told her family about the rape because of the social stigma and cultural shaming associated with being a rape victim. Secondly, she has an acrimonious relationship with her in-laws as she is of a lower caste than they are, and they are critical and hostile to her, and living with such attitudes would be likely to cause a re-emergence of the psychosis. This is a process called "expressed emotion" whereby negative attitudes of family members affect the ability of the unwell person to stay well. Thirdly, there is stigma associated with having been raped, and having mental health difficulties in India. This would make it hard to reach out to health services in India, and this stress could lead to a psychotic relapse.
8. The evidence of Kevin Ball, perinatal psychotherapist, set out in his letter of 12<sup>th</sup> September 2018, is that he has been treating the first claimant since 2016. He sees her to help with her relationship with her children due to her having post-partum depression. He also works with

the second claimant, helping improve his parenting skills and with marital cohesion, as well as dealing with his own mental health issues. He has looked at information from the World Health Organisation and believes that there is no perinatal service like the one he offers in India, particularly one which engages fathers. He also believes that return to India would be a major trigger factor for the first claimant's post-traumatic stress disorder, and he fears that this would impact on the children as this would threaten their sense of safety which is vital for the proper development of the children. He also believes that return to India would separate the family for practical reasons due to the problems the first claimant has with her in-laws, and that this would negatively impact on the children as she may go to live with her family without the second claimant.

9. Mr Tarlow relied upon the reasons for refusal letter and some oral submissions. In summary it is argued that there would not be very significant obstacles for the claimants in India as they lived there for the first 22/24 years of their lives, and have family there. There is medical treatment in India which might not be of an equivalent standard to that of the UK, but is sufficient as there is no exceptional case on medical grounds. The claimants' families could assist with the care of their children. It would also be possible for the second claimant to obtain work, as he had done in the past in the UK, and for the claimants to live apart from their families as they are a cohesive family unit in the UK. Mr Tarlow also relied upon the COI request for information about psychiatry in India dated 10<sup>th</sup> October 2016. The information provided is extremely brief and is as follows: that there is a psychiatrist available in Delhi; that there are social workers employed in the mental health sector in India, and that mental health services are managed by the state governments in India. There is also a list of psychiatric medications available in India attached.
10. Ms Bexson submitted that the appeal should be allowed due to the probable impact on the first claimant's health if she were removed which would mean that she was not be able to care for herself or her children. It would not be possible for the family to relocate away from their parents for practical and cultural reasons, and returning to live with them would increase the likelihood of a psychotic relapse for the first claimant. The second claimant would not be able to get employment if they were to relocate away from their parents as he has no qualifications, contacts or Indian work experience. He would not be able to support two children and a wife with mental health needs. It is clear on the background evidence that the support the claimants receive in the UK from the two multidisciplinary teams would not be available in India, and in particular Mr Ball has identified that there are no service to fathers or the family support that he provides. The best interests of the two children would be harmed on return, with the possibility of their being taken into care. Attention is drawn to two background articles on mental health services in India in the claimants' country of origin bundle: India's millions of mentally ill hidden behind

taboo from the Dawn newspaper and Mental Illness: shedding the stigma around India's big secret from the Philosophy for Life organisation. The former indicates that many mental patients are at the mercy of faith healers, some of whom subject them to physical abuse, and a severe lack of trained mental health professionals. The latter sets out inter alia that a diagnosis of mental illness can affect your ability to open a bank account, obtain a driving licence and maintain custody of your children.

### *Conclusions – Remaking*

11. The question to be determined is whether return of the claimants and their children to India would be a breach of Article 8 ECHR. The first reference for considering this issue is the Immigration Rules at paragraph 276ADE(1)(vi) which states that the claimants qualify to remain on Article 8 ECHR private life grounds if there would be very significant obstacles to their integration on return to India. The best interests of the two children of the claimants must be a primary consideration in the consideration of this appeal. They are aged 2 years and six months' so their best interests are intrinsically and solely linked to the well-being of their parents, and thus, I find, in turn with the ability of the claimants to re-integrate in India without very significant obstacles.
12. I preserved the findings of the First-tier Tribunal at paragraphs 28 to 44 of the decision. In summary these are as follows. The claimants are citizens of India who are a married couple with a child, the first claimant then being pregnant with the couple's second child. (This child has now been born.) The first claimant is a well-educated microbiologist with a post-graduate diploma in business management. The claimants have developed a private life in the UK which includes good friendships. The first claimant has mental health problems which have developed since 2014 and which include post-traumatic stress disorder, severe depressive disorder, emerging psychosis and fibromyalgia. She takes psychotropic medication. Her trauma has been escalated by a visit to India in 2015 during which she visited her family and they took her to see a faith healer who sexually abused her. She found it initially difficult to share this with the second claimant, and has not been able to tell her family in India. In September 2017 her symptoms were in remission, but it was the opinion of medical experts that return to India would be a trigger factor for her psychosis getting worse as this is exacerbated by stress, and she may also be a risk of her hallucinations and delusional thinking being increased and thus return could affect her ability to function. The first claimant's parents are both physically unwell. They understand that the first claimant has mental health problems and believe that a faith healer is the answer to these and not medication. The second claimant's parents are not supportive of their marriage and do not like the first claimant. There is treatment for those with mental illness in India, but it is limited in availability and quality.

13. I am satisfied that all of the witness before me gave credible and honesty testimony. Dr Glover was very careful to keep her evidence to matters within her expertise, and not to express an opinion on available mental health services in India for instance. All witnesses answered the questions put to them fully and carefully, and their testimony was consistent with their written statements, with each other and with the documentary evidence provided. The first claimant presented as a very unwell woman who made little eye contact, shook physically with fear and was clearly very stressed when appearing before the Tribunal despite her intellectual ability to answer the questions put to her. There was no submission for the respondent that I should not find them credible, although Mr Tarlow did challenge the conclusion of the second claimant that he would not be able to find work. Whilst I accept that the second claimant has genuine fears that this would be the case he has not shown that he would not be able to obtain unskilled work in India, particularly as he was able to do this in the UK, and I make my decision on the basis that on the balance of probabilities he would be able to obtain unskilled low paid work in India. I also give weight to the letter from Mr Kevin Ball, which was not challenged in any way by Mr Tarlow, and given that Dr Glover provided evidence about the treatment provided by Mr Ball to the claimants.
14. My conclusion, based on all of the evidence before me, that the claimants would have very significant obstacles to integration if returned to India. This is for the following reasons. I find for the three reasons articulated by Dr Glover return to India would, on the balance of probabilities cause a major deterioration in the first claimant's mental health including a psychotic relapse and a worsening of her post-traumatic stress disorder. I find that in these circumstances it would not be possible for the second claimant both to care for his two very young children and the second claimant and work in a low paid unskilled job to support the family as separate unit in a location away from his or her parents, even with the help of some basic mental health services as provided in India as the stress of return to the place where the first claimant was sexually abused and where mental health problems carry significant social stigma would induce a probable psychotic relapse and increased post-traumatic stress disorder symptoms. This is particularly the case as on the evidence of Mr Ball I accept that it has been shown to the required standard of proof that these services would not include any help or support for the second claimant which he has required to perform his supportive family role in the UK. It is notable that the second claimant has not worked in the UK for the time whilst the period since 2014, when the preserved findings record her severe mental health problems as having onset.
15. I accept the evidence of the claimants, as set out above and in the preserved findings, that there are reasons why it would cause a severe worsening in the first claimant's mental health to live with either set of parents; and that in addition it would be likely to cause the first and second claimants not to be able to live together if they had to rely upon

this support, which would also endanger the children as they would be highly likely to be with the first claimant, who would be severely unwell and living with her aged and unwell parents. I find that the best interests of the claimants' children are to remain in the UK as on return to India they will, on the balance of probabilities, be left for significant periods of time in the precarious sole care of the first claimant (whether she were to relocate away from family with the second claimant or return to live with her parents) who would be likely to be in a non-responsive state due to a mental health relapse and therefore unable to meet their basic needs. It is also probable that they would not have the care of both parents which is in their best interests, particularly given the first claimant's severe ill-health. I find that it can properly be concluded therefore that the family, who would also suffer from the social stigma of the first claimant's history of mental health problems which are indicated by her physical presentation as well as behaviour when unwell, and who potentially would also suffer stigma due to the first claimant's history of sexual abuse, would have very significant obstacles to integration on return to India.

16. In these circumstances, as I find that the claimants meet the requirements of the Immigration Rules at paragraph 276ADE(1)(vi), I find therefore that there is no public interest in their removal as they can meet the requirements of the system of immigration control. I am satisfied that they both speak English to a good standard, which is a neutral matter; that they cannot financially support themselves financially at the current time which weighs against; and that they have extensive private life ties with friends and extended family in the UK and through the network of therapists and medical practitioners supporting them in this country to which some, albeit little, weight can be given due to these ties having been formed whilst they have been precariously present. However as there is no public interest in their removal due to their meeting the Immigration Rules I find that the interference with the claimants' private life ties, and the consequent interference with their children's right to respect for family life with their parents as indicated in the best interests discussion, which removal would represent would be disproportionate under Article 8 ECHR.

#### Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal and the findings at paragraphs 45 to 63, but preserved those at paragraphs 28 to 44.
3. I remake the appeal by allowing it on Article 8 ECHR grounds.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original claimant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the first claimant given her serious mental health problems.

Signed: Fiona Lindsley  
2018  
Upper Tribunal Judge Lindsley

Date: 26<sup>th</sup> September



## **Annex A: Error of Law Decision**

### **DECISION AND REASONS**

#### *Introduction*

1. The claimants are citizens of India and are a husband and wife couple. They both arrived in the UK in 2014, the first claimant with leave to enter as a Tier 4 student migrant and the second claimant with leave as her dependent. This leave was extended until 18<sup>th</sup> February 2016, and on 17<sup>th</sup> February 2016 the claimants applied to remain on the basis of their human rights. The Secretary of State refused this application in a decision dated 10<sup>th</sup> May 2016. Their appeal against the decision was allowed on human rights grounds by First-tier Tribunal Judge R A Vernon in a determination promulgated on the 28<sup>th</sup> November 2017.
2. Permission to appeal was granted to the Secretary of State on 12<sup>th</sup> June 2018 on the basis that it was arguable that the First-tier judge had erred in law in making irrational findings relating to the first claimant's medical treatment.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

#### *Submissions – Error of Law*

4. The Secretary of State's grounds of appeal are as follows. The appeal was allowed by the First-tier Tribunal on the basis that it was found that the first claimant would face a risk of being sent to a faith healer by her parents and abused due to her mental health problems if returned to India. However, the claimants are adults and could make their own arrangements for the first claimant's treatment for her mental health problems in a place away from the first claimant's family. Further s.117B of the Nationality, Immigration and Asylum Act 2002 is not dealt with in sufficient detail, and it was perverse to allow the appeal in the context of the claimants being well educated students who had only ever had precarious status in the UK.
5. Ms Bexson argued that in fact there were three matters which led to the appeal being allowed on the basis that there would be very significant obstacles to integration on return for the first claimant: firstly there was the finding that return alone would trigger a deterioration in the first claimant's mental health so she would suffer hallucinations and delusional thinking; secondly she would once again be at risk of being taken to the faith healer who had abused her by her parents; and

thirdly the mental health services of India would not provide her with such good treatment as she received in the UK. Ms Bexson argued that therefore the decision was sound as it was not just based on the fact that the first claimant's parents would subject her to abuse via the faith healer, and so any error in not considering whether the claimants could avoid this risk by locating away from the first claimant's parents was not material.

6. I informed the parties that I found that the First-tier Tribunal had erred in law for the reasons I now set out below. I set aside the decision and the findings at paragraphs 45 to 63, but preserved those at paragraphs 28 to 44 of the decision of the First-tier Tribunal. Both parties argued that the remaking hearing should be adjourned as there was a need for up-to-date medical evidence on the first and second claimants (the second claimant having recently become depressed). I accepted that this was needed in the interests of justice, and suggested also that the Upper Tribunal would be greatly assisted by updating witness statements particularly dealing in detail with the situation on return to India for both claimants and their two children in the context of their work skills and likely mental health problems and available treatment in the proposed place of return.

### *Conclusions – Error of Law*

7. The First-tier Tribunal errs in law by failing to consider whether the claimants could relocate away from the first claimant's parents, and away from the faith healer who abused her in 2015. These parents are said to be in poor health and are not contended to have any real influence. It is found that the second claimant's parents would not be supportive but it is not explained why the claimants would need family support at all on return to India. Whilst the first claimant is clearly unwell and will have two small children, it is not explained why she cannot use the regular treatment that is found to exist for those with mental health problems in India at paragraph 44 of the decision, and why the second claimant could not support his family with perhaps some paid child care support for the first claimant as at the time of the hearing before the First-tier Tribunal it was not contended the second claimant was unwell in any way. Failure to take into account these obviously material matters in to consideration in relation to one of the three key issues which leads the First-tier Tribunal to find in favour of the claimants makes the decision that there would be very significant obstacles to integration on return to India for the claimants, and thus that they can meet the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules, unsound. The decision is also unlawful deficient as there is insufficient reasoning in the decision explaining why there would be very significant obstacles to the first claimant's integration in India because the regular treatment for mental health conditions in India is not of the same standard as is found in the UK.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal and the findings at paragraphs 45 to 63, but preserve those at paragraphs 28 to 44.
3. I adjourned the remaking hearing to the 25<sup>th</sup> September 2018.

Directions:

1. Any further evidence relied upon by either party is to be served on the other party and filed with the Upper Tribunal 10 days prior to the hearing date on 25<sup>th</sup> September 2018.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original claimant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the first claimant given her serious mental health problems.

Signed: Fiona Lindsley  
Upper Tribunal Judge Lindsley

Date: 14<sup>th</sup> August 2018