



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

Appeal Number: HU/04100/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 13 September 2019**

**Decision & Reasons
Promulgated
On 12 November 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**D. M. L.
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Khan of Counsel.

For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. This is an appeal against the decision of First-tier Tribunal Judge G. Wilson promulgated on 13 May 2019 in which the Appellant's appeal was dismissed on human rights grounds.
2. The Appellant is a citizen of India born on 27 May 1945. On 1 June 2018 she entered the UK pursuant to entry clearance as a visitor. On 23 November 2018, just prior to the expiry of her leave as a visitor, an application for leave to remain was made.

3. The application was supported by representations made in a covering letter dated 12 November 2018. Although the covering letter is lengthy and contains extensive recitation of provisions and case law, the meaningful details of the circumstances of the Appellant are set out relatively briefly. It was said that the application was made in respect of "*Private Life medical reasons*", because of "*deteriorating medical condition and strong family life with [the Appellant's] UK family*". In this latter regard it was stated that she is supported in the UK by her daughter, son-in-law, and granddaughter; assertions were made as to "*emotional and dependency ties*", and the existence of "*a very close-knit family*" with no further detail or evidence. It was claimed that the Appellant was unfit to travel, had no one to look after her in India, and had "*a long-term mobility condition and illness that affect her everyday life that cannot be cured*". It was also asserted that the Appellant "*suffers from long term mental health*"; in this latter regard the medical evidence submitted with the application offers a current diagnosis of depression, but there is nothing to indicate that this was a chronic or long-term condition; indeed the assertion in the covering letter is flatly contradicted by the medical report which states that the Appellant "*had no mental health problems in the past*". (See further below in respect of the medical evidence.) It was claimed that the Appellant's medical condition "*has deteriorated significantly and on return her integration into India is very significant obstacles [sic.] as a result of her medical issue*"; it was further submitted "*In order for [the Appellant] to reintegrate back into India would require her to be in good health, the right frame of mind and within good and reasonable physical and psychological health*". It was additionally pleaded that the Appellant had been a regular visitor to the UK over the past 10 years and had always complied with the requirements of immigration control by returning to India within her leave.
4. I pause to note that in the circumstances of an absence of less than 6 months there was nothing asserted to suggest that the Appellant had disengaged from life in India such that she would require to 'reintegrate'. Further, aspects of the covering letter suggest it may have been drafted from a pre-existing template - for example mention is made of Bangladesh (rather than India) at paragraph 21, and the wrong gender is given at paragraph 33 - "*...moves around his daily life with family support...*". This impression is reinforced by the overlong and unhelpful recitation of instrument and case law, and the relatively scant recitation of case specific facts.
5. The application was supported by a medical report dated 26 September 2018 (Respondent's bundle before the First-tier Tribunal at Annex C). The report is prepared and signed by a single practitioner, but declares itself to be based on the examinations and opinions of a team of practitioners: (see further below).

6. The medical report does not provide any opinion as to current care and/or support needs in respect of activities of daily living. Beyond the generalised assertion as to support offered by family members in the UK, and a supporting letter dated 20 October 2018 from one of the Appellant's daughters (Annex D) which refers to taking care of the Appellant every time she is in the UK and a willingness to support her, there is no meaningful evidence as to personal care needs, or otherwise any attempt to tailor the application to the requirements of the Immigration Rules in respect of adult dependent relatives. Similarly in this context there was no evidence provided with the application in respect of past medical attention/treatment in India, or the availability in India of medical treatment or other mechanisms of support for personal care needs. (Although the Rules in respect of adult dependent relatives are pre-entry rules, and the Rules do not provide for switching into this category, inevitably such Rules are relevant to a consideration of any application by an adult for leave to remain made in reliance upon Article 8 on the basis of personal care needs.)

7. The application for leave to remain - treated as a human rights claim - was refused by the Respondent on 19 February 2019 for reasons set out in a 'reasons for refusal' letter ('RFRL') of that date. The Respondent's decision was taken with particular reference to paragraph 276ADE(1) of the Immigration Rules, and also pursuant to a wider and more general consideration of Article 8 of the ECHR. It was not accepted that there would be very significant obstacles to the Appellant's integration into India - the Respondent concluded that it would not be difficult for her to adjust to life back in India because she had spent the majority of her life there and was familiar with the language, environment, and culture. Further, the Respondent did not consider that any ties with family in the UK went beyond normal emotional ties; that contact with family members could be continued from India, family members could visit the Appellant in India, and it was also opened for her to apply for appropriate entry clearance to visit the UK in the future; that the Appellant could enjoy private life in India; that any financial support from family in the UK could continue when the Appellant was in India; that the Appellant did not appear to be suffering from any life-threatening condition and that the healthcare system in India should be capable of assisting her; that there was a possibility of support being provided through the Assisted Voluntary Returns Scheme; and that safeguards could be put in place for the return journey to ensure safety during any flight.

8. The Appellant appealed to the IAC. The Grounds of Appeal in the Notice of Appeal focused on paragraph 276ADE(1)(vi), pleading "*that there are significant obstacles for reintegration*", with particular reference to the Appellant's age and "*medical issues*" and the deterioration in her "*medical*

and mental health", on the basis that there was no realistic support nor any family in India, all family members are outside the UK, and the daughter who provides support is in the UK.

9. At the appeal hearing the Appellant's case appears to have been pursued on essentially the same basis. The Appellant and her daughter, 'SSJ', both gave oral evidence. Whilst the Judge had regard to the supporting medical evidence, it was noted:

"The Appellant's capacity to participate within the Tribunal proceedings was not drawn to my attention prior to her giving evidence. The Appellant's representative called the Appellant to give evidence. However, the Respondent engaged in a focused and limited cross examination of the Appellant and no issues were raised by the Appellant's representative." (paragraph 22).

As such it would appear that the Appellant was able to engage fully with the proceedings; no contrary claim has been raised in the challenge to the Upper Tribunal.

10. The appeal was dismissed for reasons set out in the Decision of First-tier Tribunal Judge Wilson promulgated on 13 May 2019.
11. The Appellant applied for permission to appeal to the Upper Tribunal. Permission to appeal was initially refused by First-tier Tribunal Judge Saffer on 17 June 2019, but subsequently granted by Upper Tribunal Judge Grubb on 30 July 2019. In material part the grant of permission to appeal is in these terms:

"It is arguable that in assessing the appellant's claim under Art 8 the Judge should have considered the appellant's circumstances under the adult dependent relative (ADR) provisions of Appendix FM. Even [though] those do not apply to an in country applicant such as the appellant, they do arguably inform the Art 8 decision if only on a Chikwamba basis. Some of the Judge's findings might be applied across to the ADR rules and may affect the materiality of any error by him.

It is also arguable that the Judge may have failed fully to take into account the expert evidence. However, the grounds directed to the issue of "family life" make no sense as the Judge accepted that there was "family life" between the appellant and her adult children in the UK (see [35])."

Consideration of 'Error of Law' challenge

12. In my judgement the First-tier Tribunal Judge successfully essayed a comprehensive evaluation of the evidence in the appeal and the issues presented on behalf of the Appellant in support of her case. The Judge noted that there was essentially no challenge by the Respondent in respect of primary facts; the Judge also made findings favourable to the Appellant in respect of having established a private life in the UK with extended family members including grandchildren, and having established a family life with her daughter in the UK. The Judge found in the Appellant's favour in respect of the first two **Razgar** questions, and also identified that there was essentially no issue in respect of the third and fourth **Razgar** questions.
13. The appeal was dismissed ultimately with regard to the issue of 'proportionality'. The reasons for this were essentially twofold: the Judge concluded that the Appellant had not shown that she met the requirements of paragraph 276ADE(1)(vi); the Judge otherwise concluded that the interference with the Appellant's Article 8 rights inherent in the Respondent's decision were not disproportionate when balanced against the public interest in maintaining effective immigration control. In reaching these conclusions it is manifest that the Judge had regard to the best interests of the minor grandchildren present in the UK (paragraph 32), and also the public interest considerations pursuant to section 117B of the 2002 Act (paragraph 42). Moreover, it is plain on the face of the Decision that the Judge had very particular and careful regard to the medical/care issues that were at the core of the Appellant's application and appeal.
14. In respect of 'very significant obstacles to integration into India' it is clear that the Judge understood that the Appellant was relying upon her medical conditions and care requirements: this is expressed in terms at paragraph 34. The Judge gave careful consideration to the evidence in respect of medical conditions and care requirements across paragraphs 21-31 of the Decision. After careful consideration of the grounds of challenge and the submissions of Mr Khan, and mindful of Judge Grubb's observation in granting permission to appeal that it was arguable the First-tier Tribunal Judge may have failed to take into account the expert evidence (i.e. the medical evidence), I can identify no basis to impugn any of the Judge's analysis in this regard.
15. The Grounds of Appeal argue that the Respondent accepted the medical evidence, and the Judge fell into error at paragraph 23 in being critical of the medical report; in this latter context it was pleaded that the Judge had failed to consider "*all the medical assessment and transcripts, which were material, provided*".

16. Whilst it is be noted that the Judge records that *“The Respondent’s representative confirmed in closing submissions that he could not look behind the medical evidence”* (paragraph 23), I do not accept that this amounted to any specific concession in the appeal, and more particularly and in any event did not in any way restrict the Judge from undertaking his own independent evaluation of the medical evidence.
17. The medical evidence on appeal comprised the report that was submitted with the application together with certain test results (Appellant’s bundle pages 15-23), some prescription scripts (pages 32-35), and a discharge summary from the emergency department at Ealing Hospital in respect of an attendance on 4 June 2018 (page 36).
18. The latter document is dated 3 days after the Appellant’s arrival in the UK. It records that she presented complaining of collapse with a possible cause of diarrhoea/vomiting: a provisional diagnosis of suspected infectious gastroenteritis was made; the Appellant was described as *“well and asymptomatic”* in Accident and Emergency, observations were normal, and clinical examination was unremarkable; urine was normal; she was advised to ensure good fluid intake, to register with a GP and to send a stool sample if her condition had not settled within a week, and also to return to A&E if there was fever or she became unwell or severely unwell. There is no apparent follow-up. The plain implication is that this was a temporary bout of gastroenteritis that resolved itself, and was not indicative of any particular ongoing underlying medical condition.
19. In such circumstances it is not surprising that the Judge’s focus was on the medical report that had been commissioned by the Appellant and presented in support of the application, and was being re-presented in support of her appeal. The Judge correctly identified this report (paragraph 21) and accurately summarised its contents (paragraph 22). Then, having recorded the Presenting Officer’s observation that he could not look behind the medical evidence, the Judge made the following comments:

“However, the weight that is attached to such medical evidence is a matter for the Tribunal. The medical report is very limited. The opinion section is limited to less than one page. There is no rationale as to why the author draws the conclusion that the Appellant would be unable to travel. No rationale is provided as to why it will take one year for the Appellant to improve. There is no analysis as to whether the Appellant would be able to travel with the assistance of the Appellant’s daughter or whether other alternative travel arrangements have been considered. There is no analysis as to whether appropriate treatment could be obtained within India. In addition, the report cites the date of examination on 9 September 2018. The Appellant arrived in the UK on 1 June 2018. In oral

evidence the Appellant's daughter stated her mother's condition has worsened since she arrived. However, there is no analysis within the report as to why Appellant was able to travel to the UK in June 2018 and yet, within a relatively short period, was unable to return to India. For all these reasons, I place little weight upon the medical report's findings that the Appellant is not fit to travel and will take one year to recover."

20. The medical report is not typical of the reports commonly seen in this jurisdiction. As noted above although it has been prepared and signed by a single practitioner, it expresses itself to be based upon the examinations and opinions of a team – the Harley Street Medical Express Clinic. Without expressing a view as to the appropriateness or otherwise of such an approach in general, in the instant case this gives rise to some unsatisfactory elements. I note:

(i) Although the qualifications and experience of the report's author are set out in considerable detail, the full qualifications and experience of the other examining practitioners are not.

(ii) Under the heading 'Seen by:' the names of three practitioners are given on the covering sheet to the report – a GP, a consultant in care of the elderly, and a consultant cardiologist. However, in the body of the report it is stated that the Appellant "*was seen by a consultant physician – care of the elderly, a cardiologist and a psychiatrist*". No mention is made of a GP.

(iii) Moreover, the body of the report refers to a mental health assessment being carried out by a named consultant psychiatrist, whose name does not appear on the cover of the report as one of the practitioners who saw the Appellant.

(iv) It is not overtly apparent that the author of the report ever actually saw the Appellant, or examined or assessed her in person. The author is not included in the list of practitioners on the cover sheet by whom the Appellant was seen, and in such context the 'first person plural' – "we" – references to seeing and understanding the Appellant are ambiguous and might relate to the practice or team and not inevitably include the author.

(v) Although the date of examination is given as 9 September 2018, it would appear from the various test results that the Appellant must also have been seen on 10 September and 16 September: see Appellant's bundle at pages 17, 18, 20, 21, 22, and 23).

21. The above matters were not alighted upon by the representatives or Judge in the First-tier Tribunal – although they were the subject of brief

discussion in the Upper Tribunal. In such circumstances I have not taken the above observations into account in considering whether or not the First-tier Tribunal Judge erred in law. These matters are set out by way of general observations and as matters that the medical and legal advisers might wish to consider in the context of other future cases. Of course, in the event of this particular case going any further, such matters might yet be the subject of further consideration.

22. Be that as it may, it seems to me that the Judge's analysis of the report is faultless. It is an extremely limited report: the opinion section is indeed less than one page; reasons for the conclusions are not discernible on the face of the report. Indeed Mr Khan acknowledged as much in the course of submissions; he accepted that a 'rationale' could not be found within the opinion and conclusions - albeit it was his case that a rationale was apparent on a reading of the test data (see further below). The Appellant is described as having been crying at the clinic, and her daughter was concerned about the withdrawal and crying; on this basis it was considered "*obvious that she has severe mental health issues*", and accordingly a mental health assessment was carried out. No further detail of that mental health assessment is given save the diagnosis of severe retarded depression; nothing is offered by way of history, symptoms, or analysis. Examination and test results are stated to reveal hypothyroidism [sic.], hypertension, arthritis, and vitamin D deficiency. Nothing further specific is attributed in the body of the report to either the cardiologist or the consultant in care of the elderly. It is indicated that further investigation will be carried out into the possibility that the Appellant has tuberculosis: by the date of the hearing, approximately 7 months later, there was no evidence that the Appellant was suffering from tuberculosis; Mr Khan confirmed that there had indeed to date been no further concern that the Appellant might have TB. No reasons are given for the conclusion that the Appellant is considered not fit to travel. The Judge is correct to identify that there is no exploration as to whether any possible difficulties could be ameliorated by travelling with a companion. The Judge's conclusion that little weight should be attached to the opinion that it would take the Appellant one year to recover is entirely sustainable given the absence of any explanation or reason's for the expression of such an opinion.

23. The Grounds of Appeal and Mr Khan's submissions seek to criticise the Judge's approach to the report on the basis that there was a failure to take into account the test data included in the Appellant's bundle (pages 15-23). Implicit in this submission - as Mr Khan acknowledged - is the suggestion that the justification for the conclusions in the report may be gleaned from such data. The difficulty with this submission is that without the necessary medical expertise it is not readily possible to make sense of the data. For example, the data includes such matters as biochemical analysis of blood and urine. Whilst it may be understood that the

diagnoses of hypothyroidism and perhaps vitamin D deficiency were probably reached in consequence of analysis of such data, there is nothing in the data that a non-expert could identify as informing the conclusion that the Appellant was not fit to travel. In any event it is not suggested that there was any physiological reason for any mental health symptoms. It is of course the purpose of the expert witness in preparing the report to explain any pertinent test results. Mr Khan himself was not able to identify anything in any of the data that specifically assisted in understanding the conclusions expressed in the report. As such Mr Khan could not point to any piece of material evidence that the Judge had failed to take into account.

24. In the circumstances I reject Mr Khan's submission to the effect that the additional materials in the Appellant's appeal bundle provided a basis for understanding the conclusions of the medical report, and that the Judge erred in either overlooking the data or otherwise in failing to read it in conjunction with the medical report. The Judge had adequate regard to the expert evidence and reached conclusions that were entirely sustainable.
25. The expert evidence was silent on the Appellant's personal care needs. No supporting evidence was filed in respect of the availability of medical treatment in India, or the availability of personal care in India.
26. The Judge gave consideration to the Appellant's care needs by reference to the testimony of the Appellant and her daughter.
27. It is to be noted that beyond referring to the diagnosis of depression, and assertions to the effect that the Appellant "*cannot get by [for] myself*" (witness statement at paragraph 9), and that things had deteriorated since coming to the UK, no particulars of the Appellant's care needs were offered in the witness statements of the Appellant and her daughter. Similarly, although assertions were made as to social care being unreliable in India, there was no detail and no supporting evidence.
28. It does not appear that there was any greater or more specific identification of the Appellant's particular personal care needs at the hearing. Be that as it may, it was related that the Appellant's care needs had previously been met through the employment of a maid/servant paid for by the Appellant's daughter (paragraph 24). However, it was said that this relationship had broken down. The Judge noted - accurately and sustainably - that such a circumstance had not been raised hitherto whether in the course of the application, the grounds of appeal, or the witness statements - notwithstanding that the witness statements talked in general terms as to the unreliability of social care: the Judge considered

that this undermined the Appellant's credibility. However, in any event, the Judge went on to observe that even if it was accepted that there had been problems with the previous maid/servant there was no evidence to suggest that alternative care could not be obtained. In my judgement the following passage is not to be impugned:

"There is no evidence before me to suggest that care could not be obtained. In their witness statements the Appellant and the Appellant's daughter state that care is unreliable and it is impossible to conduct security checks upon carers. Whilst I accept there may not be the same administrative rigour within India as in the UK it does not necessarily follow that the Appellant would be unable to obtain appropriate care provision. Whilst I accept that the Appellant's daughter has young children within the United Kingdom which make it difficult for her to relocate to care for her mother, that is not to say that she could not take a short visit to investigate alternative care providers. In the absence of evidence that such investigations have taken place together with evidence to demonstrate why such alternative care provision would be unsuitable, I find that the Appellant has not [to] the appropriate standard demonstrated that she would be unable to obtain care within India" (paragraph 27).

29. Further to this, the Judge identified that the cost of care had previously been met by the Appellant's daughter, and that there was no reason evident why this could not happen again, and/or that the Appellant's son in Ireland could not also contribute to the cost of care, or the process of obtaining suitable care (paragraph 28). The Judge also considered the subjective position of the Appellant (paragraph 29). Yet further the Judge whilst indicating that the medical evidence did not support the notion that the Appellant had deteriorated since coming to the UK, nonetheless concluded even if that were the case there was no evidence to suggest that medical care would be unavailable in India (paragraph 30). The Judge also observed that there was no evidence to suggest that the Appellant would be unable to access such medical treatment, noting that her daughter had been paying for her care in India and there was evidence in the Appellant's bundle that the Appellant had attended medical appointments in India.
30. Given such findings there was no prospect of the Appellant satisfying the requirements of the Immigration Rules in respect of adult dependent relatives: see Appendix FM, section EC-DR *et seq.* and Appendix FM-SE in particular at paragraphs 34 and 35.
31. The Judge correctly identified that the Immigration Rules in respect of adult dependent relatives "*apply only to those who make an application from outside the UK*" (paragraph 36). It is clear that the Judge made this

observation in the context of considering the applicability of the Immigration Rules to the Appellant's case. There can be no criticism in this regard.

32. However, the Grounds of Appeal argue that the Judge should have had regard to the ADR rules in considering Article 8 notwithstanding that the application was made from within the UK – and it is to this that Judge Grubb refers in granting permission to appeal.
33. In the premises, I do not disagree with the underlying principle. I have acknowledged as much at paragraph 6 above: *“Although the Rules in respect of adult dependent relatives are pre-entry rules, and the Rules do not provide for switching into this category, inevitably such Rules are relevant to a consideration of any application by an adult for leave to remain made in reliance upon Article 8 on the basis of personal care needs”*. However, in my judgement, this cannot avail the Appellant in the instant case.
34. It is adequately clear that the Appellant made no attempt in the application to ‘plead in aid’, or otherwise to place reliance on, the substance of the ADR rules. Nor is it apparent that any such submission was articulated before the First-tier Tribunal. Even if it were otherwise, the simple reality is that no relevant evidence was advanced – either in support of the application or on appeal – that identified with any precision the Appellant's long-term personal care needs, and/or why such needs could not be met in India. Had a submission in respect of the ADR rules been formulated and articulated before the First-tier Tribunal it would have been bound to be rejected on the findings of the Judge – *“I find that the Appellant has not [to] the appropriate standard demonstrated that she would be unable to obtain care within India”* (paragraph 27).
35. Accordingly I also reject the aspect of the challenge based on an analogous consideration of the ADR Immigration Rules.

Notice of Decision

36. The decision of the First-tier Tribunal contained no error of law and accordingly stands.
37. The Appellant's appeal remains dismissed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

Date: **7 November 2019**

Deputy Upper Tribunal Judge I A Lewis