



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/11094/2018  
HU/11095/2018

THE IMMIGRATION ACTS

Heard at Field House  
On 8<sup>th</sup> April 2019

Decision & Reason promulgated  
On 10<sup>th</sup> May 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

MRS POOJABEN [P]  
MR JATINKUMAR [P]  
(ANONYMITY DIRECTIONS NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms U Dirie, Counsel, instructed by G Singh Solicitors  
For the respondent: Mr I Jarvis, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. The 1<sup>st</sup> appellant is married to the 2<sup>nd</sup> appellant. They are nationals of India. The 2<sup>nd</sup> named appellant was born on 21 May 1984. He came to the United

Kingdom on 29 September 2011 with leave until 13 August 2014 as a student. The 1<sup>st</sup> appellant joined him as a dependent on 7 May 2013. She had leave in line with her husband's until 13 August 2014.

2. On 12 August 2014 the 2<sup>nd</sup> appellant applied for further leave to remain as a Tier 2 general migrant. This was refused on 3 November 2015. The respondent contended he had earlier been working as a manager of his uncle's shop in breach of his earlier leave.
3. In November 2016 the appellants were detained after reporting and were to be removed. Following judicial review proceedings being intimated they were released the following day. On 6 May 2017 the 1<sup>st</sup> appellant gave birth to their son, [P].
4. On 16 March 2017 the 1<sup>st</sup> appellant applied for leave to remain on the basis of her article 8 rights. Her husband was named as her dependent. The covering letter emphasised the 1<sup>st</sup> appellant's mental health and enclosed a psychiatric report from a Dr Singh dated 7 March 2017.
5. Her application was refused on 4 May 2018. By that stage their child had been born. The refusal letter referred to appendix FM and family life and pointed out that neither were British and they were living as part of a family unit and would be returned as such. In terms of private life and paragraph 276 ADE the appellant had not been here the necessary 20 years. The respondent did not see any significant obstacles to her reintegration. Similar reasons were given in relation to the 2<sup>nd</sup> appellant. No exceptional circumstances were identified.

#### The First tier Tribunal

6. The appeal was heard by First-tier Tribunal Judge O'Malley at Taylor House on 27 November 2018. Both parties were represented. The judge heard from the second appellant and his uncle. In a decision promulgated on 21 January 2019 the appeals were dismissed. At hearing, the 2<sup>nd</sup> appellant was cross-examined about medical services available in India. He accepted this was not an issue but said that the 1<sup>st</sup> appellant, because of her mental state, could not travel to India and referred to the potential impact upon her mental health by removal. The judge also heard from the 2<sup>nd</sup> appellant's uncle who said he could not take responsibility for accompanying the first appellant to India.
7. First-tier Tribunal judge O'Malley accepted the medical evidence demonstrated that the 1<sup>st</sup> appellant had struggled with mental health issues since her detention in November 2016 and there was reference to post-traumatic stress disorder from this. There was also a current diagnosis of postnatal depression. She was described by the consultant as suffering from severe depression,

which the judge accepted. There was reference to panic attacks and moderate post-traumatic stress.

8. The judge referred to the case law in relation to medical claims and the high threshold in order to succeed. The judge did not accept the view of the psychiatrist that if she did not have a settled status here then she would take her own life. The judge said there was a need for clarification of this conclusion, pointing out the appellant had been in a state of uncertainty about her right to remain since 2014 and to date had been no attempts at self-harm. The judge also felt this was at odds with views expressed in letters from her GP.
9. The judge accepted that flying to India would increase her emotional distress and would be likely to lead to a panic attack. However, the judge concluded appropriate steps could be taken to ensure her safety on the flight.
10. The judge also heard about the first appellant's family in India and accepted that whilst there was no suggestion of a breakdown in relations the appellant did not want to share her medical condition with them. The judge concluded the situation would not engage article 3. The judge accepted there was medical treatment available in India and she would be able to access this.
11. The judge found the decision did not engage family life and they would be returned as a family unit. Regarding their child the judge concluded his best interests were served by being with both parents and he had no strong ties to the United Kingdom given his age.
12. Regarding private life the judge did not find significant obstacles to return. Again, reference is made to the availability of treatment in India. Regard was had to the factors set out in section 117 B.
13. Permission to appeal to the Upper Tribunal was sought on the basis the judge should have raised with the appellant's representatives concerns about the content of the psychiatric report so that they could respond. For instance, the Judge said the conclusion in the report that the appellant would take her own life if you did not have a right to remain require clarification.
14. It was also contended that the judge erred in concluding the appellant would seek treatment in India because she had sought treatment in the United Kingdom. The psychiatrist was of the view that the appellant would not access treatment in India due to feelings of shame. It was also contended that there were no adequate measures that can be taken to protect her against self-harm if returned to India.

## The Upper Tribunal

15. Permission to appeal was granted on the basis it was arguable the judge erred at paragraph 61 in stating it was not clear how the consultant psychiatrist reached the conclusion that the risk of self-harm was high given the absence of any such history or comment by the GP.
16. Permission was also granted in relation to what was said at paragraph 62 that the judge may have erred in rejecting the claim that if the first appellant continued to be under threat of removal it would drive her to take her own life.
17. The appellant's representative relied upon the grounds for which permission had been granted. Reference was made to the Judge's comments at paragraph 64 and it was said the first appellant's anxiousness about her family's attitude came within the scope of Y & Anor (Sri Lanka) v Secretary of State for the Home Department [2009] EWCA Civ 362. I was referred paragraph 36 of that judgement:

“... a series of cases, of which *J* is the best known, have acknowledged that returning someone to a situation which is likely to drive them to suicide is a breach of art. 3, the mode of reasoning in the present case (which is far from unique) is such that no art. 3 "foreign" claim based on a risk of suicide is likely ever to succeed. Indeed Hughes LJ in AJ (Liberia) v Home Secretary [2006] EWCA Civ 1736 remarked on the fact that, so far as the reported cases went, none ever had. The reasoning is that, since *Y* had made no attempt at suicide despite more than one refusal of his asylum claim, and since *Z*'s attempt at suicide had not been seriously life-threatening...there is no real risk that return will impel either appellant to commit suicide. The effect is that, apart from an asylum-seeker who actually commits suicide, only one who comes close enough to succeeding to manifest a serious intent is going to be regarded as presenting a serious risk of suicide on return. Yet the medical logic is exactly the reverse: it is that individuals who are at serious risk of suicide if returned can be stabilised, using therapy and medication, and kept from self-harm so long as they feel safe here. For such individuals the recent past may be no guide at all to the immediate future.”

18. In response, Mr Jarvis pointed out that the judge had accepted much of the history given as set out at paragraph 53 onwards. He contended that in the absence of an express concession the judge was entitled to make their own assessment of the risk presented. There were medical facilities available in India and the judge was entitled to find that she would access treatment on return. Regarding the practicalities of her return to India it was pointed out you were travelling with her husband who could tend to her needs.

### Consideration

19. First-tier Tribunal Judge O'Malley set out the sequencing at paragraph 53. The judge set out the medical evidence at paragraph 60 and directed themselves of the dangers, both before, during, and after removal. This followed on the acceptance at paragraph 59 that the appellant had struggled with mental health problems since detention in November 2016 and subsequently develop postnatal depression. The judge recited the case law and in relation to health cases from paragraph 15 onwards and reference the high threshold involved.
20. The judge evaluated the reports from the consultant psychiatrist. The judge at paragraph 61 did however question the psychiatrist's opinion that forced removal would drive her to kill herself. It was open to the judge to make this point. The judge is not bound to automatically accept every aspect of the report. The judge asked themselves the right questions and when the judge refers to the psychiatrist conclusions needing clarification this is by way of a figure of speech. I take the judge to mean the conclusion reached on certain aspects by the psychiatrist does not follow.
21. The judge had similarly queried the doctor's view that if her immigration status remained uncertain this would drive her to take her own life. The judge made the point that she had been here and her immigration status was uncertain and had not harmed herself. I appreciate that simply because at person has not historically harmed themselves is not mean in a different environment they would not do so. In Y & Anor (Sri Lanka) v Secretary of State for the Home Department [2009] EWCA Civ 362 there were additional stressors, namely past events in Sri Lanka and a fear of harm from others plus the devastation caused by the tsunami. In the present instance the appellant was being returned to a country where she has family and which has not experienced in recent times widespread violence.
22. The judge in reaching a decision noted there was medical treatment available in India. There was also no disharmony amongst her family who could be expected to support her. The judge was entitled to assess the medical evidence and reached a conclusion that was open for the reasons stated. In summary, I find no material error of law established.

### Decision.

No material error of law has been established. Consequently, the decision of first-tier Tribunal judge O'Malley dismissing the appellant's appeal shall stand

Deputy Upper Tribunal Judge Farrelly.