Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number HU/16437/2019 (V)

THE IMMIGRATION ACTS

Heard by *Skype for Business*	**Decision & Reasons Promulgated**
On 14 April 2021	**On 22 April 2021**

Before

UT JUDGE MACLEMAN

Between

BALDEV KAUR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr M Shoaib, of Shoaib Associates
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of India, born on 10 June 1963.

2. On 19 September 2019, the SSHD declined to grant the appellant leave to remain in the UK on grounds of her family and private life.

3. FtT Judge P A Grant-Hutchison dismissed the appellant's appeal by a decision promulgated on 3 February 2020.

4. The appellant sought permission to appeal to the UT on grounds set out in detail under 5 headings:

(1) irrational finding on keeping in touch by means of modern communications;

(2) assessment under article 8 outside the rules "not well reasoned";

(3) no consideration of "the nature of the rights that risk being relinquished if the appellant's husband has to leave … to retain family life in India";

(4) no findings on "very significant obstacles" in terms of paragraph "276AD(iv)" [?] of the immigration rules; and

(5) no findings on "unjustifiably harsh consequences" for the appellant and family members.

5. The FtT refused permission. However, on 10 August 2020 Ut Judge Coker granted permission, on the view that although the evidence might be "insufficient to found a successful appeal", it was arguable that the decision was inadequately reasoned.

6. Mr Shoaib submitted:

(i) It was disproportionate to expect the appellant to leave the family life she has enjoyed with her husband in the UK since 2006.

(ii) As well as her husband, the appellant has children and grandchildren here.

(iii) Both the appellant's parents now live in the UK. Their statements were before the FtT.

(iv) The judge said the appellant could go back, but he overlooked that previously she had her parents in India.

(v) She is an aging woman with many medical ailments. There was much documentary evidence about her health, and her husband's health, before the FtT, such as their appointments at various clinics.

(vi) The judge did not explain how adequate medical care could be provided in India.

(vii) The respondent's "rule 24 reply" said that the appellant could apply to return from India, but that was no answer, because she could not meet the terms of the rules. In particular, her husband did not have the status required.

(viii) The judge referred to part 5A of the 2002 Act, but did not explain why it was in the best interests of the state to remove the appellant.

(ix) The judge made no finding on the exception in the rules, "unjustifiably harsh consequences", for those who did not [otherwise] qualify.

(x) The decision erred in law, and should be reversed.

7. Ms Everett submitted:

(i) If the grounds raised an issue, it was adequacy of reasoning.

(ii) The decision was short, but it showed that the judge was aware of all that was relevant, including the medical evidence.

(iii) The judge was entitled to conclude as he did.

(iv) It was not for the judge to demonstrate availability of medical care in India. It was for the appellant to establish any deficiency of care which might contribute to her case on health grounds. The appellant did not specify anything in the large volume of medical records which the judge should have considered further.

(v) The judge found no difficulties preventing the appellant and her husband from returning to India and carrying on family life there. No error was shown in that crucial finding.

(vi) If the appellant could not hope to succeed in an application from abroad, that did not make her case in the UK any better.

(vii) The findings and reasons were brief, but no material error was shown, and the decision should stand.

8. Mr Shoaib in reply said that it was wrong to hold that the appellant's husband could return to India. He failed in his asylum claims, but was granted leave after 20 years. In 5 further years, he had not returned, although free to travel, because he still feared the Punjabi police who had beaten him for being a Sikh. This was another serious consideration in favour of the appellant.

9. I reserved my decision.

10. The family situation is clearly noted in the decision: see under "submissions" at [10], and under "decision" at [13, 18, 19, & 20].

11. It was, as Ms Everett submitted, for the appellant to establish any medical aspect pf her case. The judge noted the health conditions of her and of her husband at [19 & 23]. He found her health conditions, although short of article 3, "worthy of some consideration". She has not shown that the medical aspect might rationally have taken her any further than that.

12. The judge took account of the allegation that the appellant's husband could not return to India – see [8 & 19]. If anything, the judge gave his

explanation more credit than might have been expected, given the failure and antiquity of his claims.

13. Mr Shoaib has advanced every matter which might be called upon on the appellant's side, both in the FtT and in the UT; but the case to the UT is insistence and disagreement, rather than the identification of any error in the FtT's decision.

14. The grounds and submissions do not show that decision of the FtT involved the making of any error on a point of law, such that it should be set aside. That decision shall stand.

15. No anonymity direction has been requested or made.

Hugh Macleman

15 April 2021
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.