



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/02297/2020**

THE IMMIGRATION ACTS

**Heard at Field House via Microsoft Teams Decision & Reasons Promulgated
On 8 February 2022 On 18 March 2022**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**DEVAL HARSHADBHAI PATEL
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms A Ahmed, Senior Home Office Presenting Officer
For the Respondent: Mr F Khan, instructed by JML Solicitors

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of a Judge of the First-tier Tribunal who in a decision promulgated on 20 July 2021 allowed the appeal of Ms Patel against the Secretary of State's decision of 23 January 2020 refusing her human rights claim.
2. I will refer hereafter to the Secretary of State as the respondent, as she was before the judge, and to Ms Patel as the appellant, as she was before the judge.

3. The appellant sought leave to remain in the United Kingdom on the basis of family life with her husband, Shalin Suryakat Amin.
4. She had been in the United Kingdom since September 2013, and it appears that she has been without leave since 26 December 2015, having thereafter made several unsuccessful applications.
5. The respondent accepted that she met the suitability requirements under Appendix FM but that she did not meet the eligibility immigration status requirement in light of the fact that she had been without valid leave since 26 December 2015. It was accepted that she had a genuine and subsisting relationship with her husband, but it was not accepted that there were very significant obstacles she and her partner would face in continuing family life together outside the United Kingdom.
6. The judge noted the claim in respect of exceptional circumstances, on the basis that the appellant had recently undergone treatment for cancer in the United Kingdom and was suffering from lower back pain. She had completed six cycles of chemotherapy. It was concluded that though the healthcare systems in the United Kingdom and in India were unlikely to be equivalent it was concluded that this did not constitute exceptional circumstances.
7. The judge allowed the appeal on one basis only. He noted that the appellant had been diagnosed with and treated for Hodgkin's lymphoma for a considerable period and that she was still undergoing tests and monitoring and would continue to do so. He accepted from the medical evidence that her immune system was significantly compromised. He took into account a letter from the appellant's consultant haematologist, Dr Anastasia Chew. Dr Chew stated, and the judge accepted, that there had to be the possibility of a recurrence of the cancer from which the appellant hoped to be in remission. Dr Chew on 4 November 2020 advised the appellant against flying due to the compromised nature of her immune system, and the same advice was given by the appellant's GP, Dr Rashid, and also a by Dr Shah in India.
8. The judge accepted that the appellant remained significantly compromised as regards her immune system, and noted the advice to her not to fly. The judge said that although there was no up-to-date advice about this either way, he found it most unlikely that the situation would have significantly ameliorated and found as a fact that today she would be advised not to fly.
9. He went on to note that she was suffering from a cancer from which it was not clear that she had recovered and which might not be in remission. Her immune system was significantly compromised. The effects of COVID-19 were well-known in this country. It was a matter of opinion as to whether there was now a reasonable degree of control but as a minimum, coronavirus was now better understood and managed, but India was on that day a red list country.

10. The judge went on to conclude that the appellant would be at risk on return to India. That risk would arise at the airport at each end, during any flight that was being permitted to occur and also in India. As at the date of the hearing the judge concluded that the appellant would face very significant obstacles to integration once more into India on the basis of the risks to her physical integrity. He said that on that basis alone he considered that she met the requirements of paragraph 276ADE(1)(vi) and in the circumstances there could be no public interest in her removal (following the guidance in TZ (Pakistan) [2018] EWCA Civ 1109) and as a consequence, this was determinative of the appeal, which was in her favour.
11. The judge went on to say that but for the appellant's health he would not have allowed the appeal. He referred to the fact that she had remained in the United Kingdom since Boxing Day 2015 without leave. Though she had not presented any English language test he was satisfied that she had excellent English and that through her husband she had a good measure of financial independence. He was satisfied that her husband's income significantly exceeded the minimum income required of £18,600 per annum. Nevertheless, he would have seen no reason why she should not return and make an application from India like any other person seeking leave on the basis of marriage. Other than the important issue of her health it would not be unduly harsh for her to return and make an entry clearance application but he allowed the appeal for the reasons given.
12. The Secretary of State sought and was granted permission to appeal, first on the basis that the judge's decision was inadequately reasoned in that there was no evidence or findings on the transmission rate of coronavirus in India such that the appellant would be at greater risk there than in the United Kingdom, nor was there any consideration as to whether she had been vaccinated against COVID-19, which would considerably reduce the risk to her health. It was said also that there was no up-to-date evidence suggesting that the appellant was currently unable to fly due to ill health. Reference was also made to the judge placing weight on the fact that the appellant was said to speak excellent English though this was no more than a neutral consideration as established in Rhuppiah [2018] UKSC 58. The decision was argued to be inadequately reasoned.
13. In her submissions Ms Ahmed adopted and developed the points made in the grounds of appeal. She relied mainly on the first ground though she did not resile from the ground concerning the reliance on the appellant's ability to speak good English. At paragraph 27 the judge had implicitly accepted that the coronavirus threat was not in the UK alone and referred to the fact of India being a red list country. He had not considered what being on the red list entailed. Nor had he explained factors such as the impact of the country being on the red list. The United Kingdom had been quite significantly affected and there were no findings about transmission rates in India or why there were risks at airports, on flights or in India. It was unclear why he felt that there were greater risks in those or anywhere else. There were material omissions in the consideration. Nor had he

considered whether the appellant was vaccinated, as it appeared she had been on 6 February 2021, 25 April 2021 and in July 2021. It was clear from what had been said by the appellant's husband, as noted at paragraph 14 of the judge's decision, that there was available treatment for the appellant's health conditions in India. The judge had failed to consider those matters properly.

14. Nor was there any analysis of the medical letters. The judge had not considered why the treatment could not be continued in India. There was the advice from three doctors about travel. The hearing had been in July 2021 and the judge had not said why the appellant could not fly despite the lack of updated evidence from the previous November. It was clear that otherwise the appeal would not have been allowed.
15. In his submissions Mr Khan relied on and developed the points made in his Rule 24 response. The central issue was that of the appellant's significantly compromised immune system. The medical evidence entitled the judge to find as he did. The appellant had been basically isolating and had been advised not to travel since November 2020. She had only had limited vaccination at the time of the hearing. The advice not to travel was in regard to an ongoing situation. In effect, she was being asked to take a risk because of her situation and otherwise the decision would have been different. It was a matter of extraordinary times then and now and hence the appeal being allowed. The judge was not required to await updated evidence. The appellant was still receiving medical treatment and had ongoing health problems and the decision was reasonable.
16. Ms Ahmed had no points to make by way of reply. I reserved my decision.
17. It is clear from the medical evidence that in November 2020 three separate doctors advised the appellant not to travel, on account of her compromised immune system. Such can be seen for example from Dr Chew's letter of 4 November 2020. It was not a question of the judge taking this evidence as justifying success in the appeal because of the appellant's underlying health problems per se, but on account of the fact that her immune system was significantly compromised, as he noted in particular at paragraphs 27 and 28 of his decision. He had to decide the matter at the time of the hearing, and at that date India was a red list country. I do not consider that he was required to go into the detail of what was meant by a red list country, nor do I consider that he erred in finding it most unlikely that the situation described in November 2020 with regard to flying would not have significantly ameliorated. The appellant continued to have the underlying health problems and to have the ongoing treatment, and it is clear from the evidence that she was shielding and the situation was ongoing. Matters might well be different now, but the judge had to decide the case on the basis of the evidence as it was before him, and I consider that on the basis of the medical evidence and the situation of India being a red list country that it was open to him to decide that she was at risk at the airport at either end and during any flight that was being permitted to occur and also in India.

18. It is clear that he would not have allowed the appeal otherwise. The reference to the appellant's English language skills has to be seen in that context. The key point here is that of the findings in respect of paragraph 276ADE(1)(vi), and on that basis the decision to allow the appeal was justified.
19. The Secretary of State's appeal is accordingly therefore dismissed and the decision of the judge allowing the appeal on the basis set out by him stands.

Notice of Decision

The appeal of the Secretary of State is dismissed.

No anonymity direction is made.



Signed

Date 11 February 2022

Upper Tribunal Judge Allen