



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/05038/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 16 January 2018

**Decision & Reasons
Promulgated
On 15 February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

**R K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Turner, Counsel, instructed by Sky Solicitors
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a 27 year old woman who entered the UK lawfully as a student. In time, her student leave was extended by the Respondent, and when that period of extension drew to an end she made an in time application for a further grant of leave to remain on the basis of her Article 8 rights. That application was refused on 2 April 2015, and her appeal against that refusal came before Judge Suffield-Thompson at Newport on 9 February 2017. The appeal was dismissed by way of decision promulgated on 16 February 2017. The Appellant sought permission to appeal from the First-tier Tribunal on grounds drafted by different Counsel to the one who had attended the hearing before the First-tier Tribunal, and that application was refused by Judge Gillespie on 1 September 2017. The

Appellant then renewed her application for permission to the Upper Tribunal on different grounds that had been drafted by her solicitors. That application was granted in part by decision of Upper Tribunal Judge Rintoul of 17 October 2017, which cautioned that although the Appellant may face little prospect of overall success the arguable error of law was such as to require the grant of permission. So the matter comes before me today.

2. The Appellant did not suggest before the First-tier Tribunal that she had an established “family life” in the UK for the purposes of Article 8 as at the date the hearing. She had been married, and her ex-husband was in the UK, but that marriage had been terminated by divorce in 2014 and she did not suggest she had any ongoing relationship with him. Nor did she suggest that she had formed a new settled relationship with any other person. The Article 8 appeal therefore fell to be considered only as a “private life” appeal. The human rights appeal may not have been well argued before the Judge, since there appears to have been a failure to engage with the relevant jurisprudence, however it is plain that there was an underlying disputed assertion that the Appellant had no family support in India as a result of a falling out with her family resulting from her divorce.
3. The Judge contrasted the Appellant’s oral evidence about the state of her relationship with her family in India with the content of the written evidence before her, which included references to information given by the Appellant to those providing her medical care. To those carers she had accepted that she had a very good relationship with her parents. Thus the Judge concluded that the Appellant had deliberately sought to mislead the Tribunal as to the true state of family relationships with her family in India, and, the level of support that she would enjoy from them in the event of her return to India.
4. The Appellant’s health needs appear to have been relied upon as a “trump card” before the First-tier Tribunal on the basis that her removal from the UK would result in a breach of her Article 3 rights, and/or a disproportionate breach of her Article 8 rights. The Judge rejected that first argument on the basis that although the Appellant was indeed unwell, and did face the possibility of serious and significant surgery by way of a possible hysterectomy, the level of ill-health that she was able to evidence was not such as to approach the tests set out in N [2005] UKHL 31. The grounds before the Upper Tribunal application for permission to appeal do not challenge that finding.
5. Where the Judge undoubtedly went wrong was in the self-direction that she gave for the proper approach to the Article 8 appeal in a health case. It appears that the Judge may have considered that this was an appeal under the Immigration Rules when it was not. She also offered to herself in relation to Article 8 a direction [45] which was undoubtedly wrong. The proper approach was to be found in GS (India) [2015] EWCA Civ 40 to which no reference was made. The starting point had to be to ask whether Article 8 was engaged at all, because it was not engaged simply by virtue of health care need. In my judgement the question for me is really

whether a different Tribunal properly directing itself as to the relevant Article 8, and health jurisprudence, could be expected to have a realistic prospect of allowing the Article 8 appeal. If it could not, then the Judge's errors were immaterial.

6. In my judgment there is no such prospect, even if I were to approach the appeal on the assumption that Article 8 is engaged, as a "private life" appeal. The Appellant faced a need for surgery on the Judge's findings, and had significant health issues which that surgery sought to address. However the Judge also found that the surgery could be provided in India, and that these health needs could be met in India, with the support and care available to the Appellant from her family in India. It was not only theoretically available in India, but also accessible in India. The grounds of the application for permission identify no arguable challenge to those findings.
7. In those circumstances, there is in my judgment no realistic prospect of a different Tribunal concluding that the Article 8 appeal should be allowed, even if the Appellant's private life circumstances were considered sufficient to engage Article 8 (a point that is far from clear given the absence of evidence of the nature of the Appellant's "private life"). The true situation is that she can get all of the medical care and support that she requires in India. Given the legitimate public interest in her removal it is not disproportionate to expect her to seek that support and medical care in India. Accordingly, notwithstanding the error of law in the Judge's self-direction I dismiss the appeal.

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 him or any member of their 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
Deputy Upper Tribunal Judge J M Holmes

Date 13 February 2018

To the Respondent
Fee award

I have dismissed the appeal and therefore there can be no fee award.

Signed
Deputy Upper Tribunal Judge J M Holmes

Date 13 February 2018