Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/23406/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22nd October 2018	**On 6th November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

SAFURA HAJI GAJIA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER – NEW DELHI

Respondent

Representation:
For the Appellant: Ms C Charlton, Counsel, instructed by Bhogal Partners Solicitors
For the Respondent: Ms K Pal, Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Respondent refused the Appellant's application for permission to return to the United Kingdom as a returning resident on 24th June 2016. Her appeal against this was dismissed by First-tier Tribunal Judge Frazer ("the judge") following a hearing at Newport on 20th February 2018.

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2. The history summarised by the judge is that the Appellant came to the United Kingdom in 1985 and was granted indefinite leave to remain here on 15th March 2001. She left the United Kingdom on 2nd June 2012 and has not returned since that date. Accordingly, her application for readmission was rejected under [18(2)] of the Immigration Rules.

The Grant of Permission

3. Judge McWilliam granted permission to appeal (18th September 2018) on the ground that;

> "Notwithstanding the lack of medical evidence relating to the relevant two year period of absence, it is arguable that the judge did not consider the evidence given by the Sponsor, that the Appellant (aged 82 at the date of hearing) was uncomfortable because of pain in her legs which arguably prevented her from flying during the period. This was arguably capable of explaining the excessive absence from the UK. It is arguable that the judge did not consider the strength of the Appellant's family ties here in the UK.
>
> It is expected that the Respondent attends the hearing in a position to advise the UT about any relevant policies/Home Office guidance."

Respondent's Position

4. No Rule 24 notice was filed. Ms Pal submitted that the judge properly considered the facts of the case and took into account her reason for remaining outside the United Kingdom. The judge did an appropriate proportionality balancing exercise which was summarised in [19] of the decision and looked at the circumstances the Appellant found herself in India. The grounds were merely a disagreement with findings of the judge. At [17] the judge referred to the Appellant's family life here in that it was stated "whilst the Sponsor has ties in the United Kingdom in the form of her son and acquaintances and friends she had during the time that she was here, she also has family in India." This was an adequate assessment of her family life here.

Appellant's Position

5. Ms Charlton submitted that new evidence had come to light from obtaining the file from those who previously represented the Appellant regarding when the relevant two-year period commenced. Ms Charlton accepted that this was not a material error of law because the judge determined the evidence on the basis of the evidence presented, but she indicated that if a material error of law was found elsewhere then this was a reason for remitting the whole of the case because it was a different factual scenario than the judge considered.

6. The evidence showed that the Sponsor was too unwell to visit India to bring her back to the United Kingdom and that the judgment made little reference to the pain the Appellant was in. The assessment of family life

in India was inadequate and there were no findings as to how her absence would impact on the family here.

Discussion

7. The judge cannot be criticised for considering the case on the basis of the evidence presented. The statement that was submitted by the Sponsor in relation to the appeal was that the Appellant went to India on 2nd June 2012. That was the commencement of the two-year window ending on 2nd June 2014. The evidence that was supplied as to the fall the Appellant had on 5th June 2014 as being a reason for her not coming to the United Kingdom earlier was entirely irrelevant. The medical note of 5th June 2014 refers to severe spondylitis. The fitness certificate of 6th June 2015 refers to sciatica. Neither says she had been unfit to travel in the period 2nd June 2012 to 2nd June 2014 due to those ailments.

8. The evidence to which I was pointed in relation to the Appellant's ill-health in the period June 2012 to 2014 is contained within her Sponsor's unsigned and undated statement at [12]. It refers to the injury from a fall and the fact that she has suffered from severe and chronic backache. Her conditions were severe and getting worse despite treatment. It said she did not intend not to return to the UK when she left the UK. She was forced by inadequate conditions to stay living in India longer than two years.

9. The written evidence the judge had in relation to her connections is found in [13/14] of the Sponsor's statement. She lived continually here from 1985 to 2012. She worked and remained deeply connected here. She has a substantial number of friends here and has established strong community connections. She has received and continues to receive important emotional support from his friends, colleagues and the people she remained connected to. She has developed a quality of family and private life here and is best known in the UK socially and culturally. She has integrated and developed her own networks and deep bonds of friendship with community members who she considers to be her family and friends. She has a strong family relationship with her Sponsor and his family.

10. The judge considered the evidence and makes findings and conclusions from [12 to 19]. To summarise that, in [12] the judge noted that the Appellant has two daughters who are married with children and live in India and a brother who is married and lives in India. The judge notes at [13] that she is now 82 and worked whilst here. She received financial support from her Sponsor. She returned to India in 2012 to visit friends. She only intended to be away for three months. She lives independently in a property near her daughter. The judge states "the Sponsor's evidence was that after the three month period the Appellant developed pain in her leg which put her off travelling as she was uncomfortable. She did not

seek treatment for this ailment however." The judge noted at [14] the ailments after 2nd June 2014 where she fell and injured herself. The judge identified [15] that there was no evidence to indicate she had been unfit to travel before she had the fall and within the two year period. The judge noted at [16] the discretionary element of the Immigration Rules at available to the Respondent. The judge noted the Home Office guidance and the factors to consider in relation to the Rules. At [17] the judge noted the ties she had here which included her sons, grandchildren and greatgrandchildren. The judge noted that she had worked here.

11. The medical evidence in relation to her Sponsor being unable to travel to India to accompany her on return is dated 10th June 2018. It refers to her various health conditions, and states that his wife passed away in May 2015 and due to his illness and bereavement he was not able to travel since 2014. He states that prior to 2014 he had been travelling to India to escort his mother to the UK.

12. The judge found having considered all of this that;

> "There is nothing compelling before me which gives a good reason as to why she did not travel back to the United Kingdom before the expiry of the two year period. The Sponsor stated under cross-examination that although the doctor declared that she may have been fit to travel in 2013 she did not feel comfortable to travel. There is nothing before me to say that she was unable to travel at that stage however. I heard evidence that she had pain in her legs but she was not seeking treatment for it."

13. That finding was available to the judge. There was no material error of law in relation to the judge's consideration of the reason why the Appellant had not returned within the relevant two-year window of 2nd June 2012 to 2nd June 2014. The judge considered the evidence provided by the Sponsor and rejected it.

14. The judge considered the discretion available within [19] of the Immigration Rules that the Respondent had if [18] of the Immigration Rules was not met and made a decision available to him/her in relation to the exercise of that discretion.

15. The grounds simply amount to a disagreement with findings the judge was entitled to make on the evidence.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

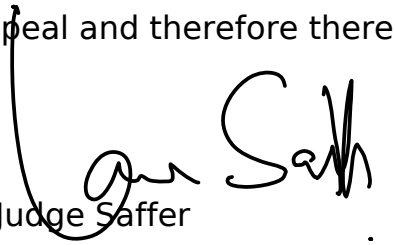
I do not set aside the decision.

No anonymity direction is made.

Date 26 October 2018
Deputy Upper Tribunal Judge Saffer

FEE AWARD

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



Date 26 October 2018
Deputy Upper Tribunal Judge Saffer