Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/04967/2019 (P)

THE IMMIGRATION ACTS

Decided under Rule 34 without a hearing
On 6 August 2020

Decision & Reasons Promulgated

On 12 August 2020

Before:

UPPER TRIBUNAL JUDGE GILL

Between

Ms Jayshreeben Atulkumar Patel Appellant
(ANONYMITY ORDER NOT MADE)

And

The Secretary of State for the Home Department Respondent

This is a decision on the papers without a hearing. On behalf of the appellant, it was confirmed that she did not object. On behalf of the respondent, it was confirmed that she was content to leave the matter in the hands of the Upper Tribunal. The documents described at paras 4, 5 and 7 below were submitted. A face-to-face hearing or a remote hearing was not held for the reasons given at paras 9-17 below. The order made is set out at para 53 below. *(Administrative Instruction No. 2 from the Senior President of Tribunals).*

Representation (by written submissions):

For the appellant: Ms S Sharma of Portway Solicitors.
For the respondent: Mr M Diwnycz, Home Office Presenting Officer.

DECISION AND DIRECTIONS

1. The appellant is a national of India, born on 6 October 1965. She appeals against a decision of Judge of the First-tier Tribunal Davey (hereafter the "Judge") who, in a decision promulgated on 13 September 2019 following a hearing on 15 May 2019, dismissed her appeal (which was brought on human rights grounds) against a decision of the respondent of 7 March 2019 which refused her application of 3 May 2018 for leave to remain on the basis of her protected human rights.

2. By a Notice of Hearing dated 4 March 2020, the appeal was listed for hearing on 24 April 2020. However, the hearing was adjourned in view of the fact that a lockdown was imposed on 23 March 2020 due to the Covid-19 pandemic.

3. On 4 May 2020, the Upper Tribunal sent to the parties a "*Note and Directions*" issued by Upper Tribunal Judge Pitt dated 1 April 2020. Para 2 of the "*Note and Directions*" stated that, in light of the need to take precautions against the spread of Covid-19, Judge Pitt had reached the provisional view, having reviewed the file in this case, that it would be appropriate to determine questions (a) and (b) set out at para 2 of her "*Note & Directions*", reproduced at my para 8(i)(a) and (b) below, without a hearing. Judge Pitt gave the following directions:

   (i) Para 3 of the "*Note and Directions*" issued directions which provided for the party who had sought permission to make submissions in support of the assertion of an error of law and on the question whether the decision of the First-tier Tribunal ("FtT") should be set aside if error of law is found, within 14 days of the "*Note and Directions*" being sent to the parties; for any other party to file and serve submissions in response, within 21 days of the "*Note and Directions*" being sent; and, if such submissions in response were made, for the party who sought permission to file a reply no later than 28 days of the "*Note and Directions*" being sent.

   (ii) Para 4 of the "*Note and Directions*" stated that any party who considered that despite the foregoing directions a hearing was necessary to consider questions (a) and (b) may submit reasons for that view no later than 21 days of the "*Note and Directions*" being sent to the parties.

4. The respondent filed a response dated 17 June 2020 under cover of an email to the Upper Tribunal dated 17 June 2020 timed at 13:10 hours.

5. On 15 May 2020, the Upper Tribunal received the appellant's submissions dated 15 May 2020 under cover of an email dated 15 May 2020 timed at 11:28 hours from Portway Solicitors. This did not advance any submissions on the "error of law" decision being made without a hearing.

6. By a second *"Note and Directions"* dated 13 July 2020 (sent to the parties on 20 July 2020), Judge Pitt stated that there had been no response from

the appellant to the "*Note and Directions*" of 4 May 2020 and she therefore permitted the appellant a further period of 14 days within which to provide her response indicating her position on the "*error of law"* decision being made on the papers and any further submissions in support of her grounds of appeal.

7. On 22 July 2020, the appellant's representatives, Portway Solicitors, informed the Upper Tribunal by email timed at 14:24 hours that they had already submitted their written submissions on 15 May 2020 in response to the "*Note and Directions*" dated 4 May 2020. In this email, they confirmed that there was no objection to the decision being made on the papers.

The issues

8. I have to decide the following issues (hereafter the "*Issues"*),

(i) whether it is appropriate to decide the following questions without a hearing:

(a) whether the decision of the Judge involved the making of an error on a point of law; and

(b) if yes, whether the Judge's decision should be set aside.

(ii) If yes, whether the decision on the appellant's appeal against the respondent's decision should be re-made in the Upper Tribunal or whether the appeal should be remitted to the FtT.

Issue (i) - whether it is appropriate to proceed without a hearing

9. In her written submissions of 15 May 2020 on behalf of the appellant, Ms Sharma did not make any submissions as to whether or not the appellant objects to the Upper Tribunal proceeding to decide the Issues without a hearing. However, in their email dated 22 July 2020, Portway Solicitors confirmed that there was no objection to the decision being made on the papers.

10. In his response of 17 June 2020 on behalf of the respondent, Mr Diwnycz stated that, given the appellant's response of 15 May, the respondent was content for the Upper Tribunal to decide the appropriate further action. I infer that the respondent was content to leave the matter in the hands of the Upper Tribunal, i.e. whether it is appropriate to proceed to decide the Issues without a hearing.

11. I am aware of the guidance in the case-law, including the Supreme Court's judgment in Osborn and others v Parole Board [2013] UKSC 61. I have taken into account the guidance at para 2 of the Supreme Court's judgment.

12. Given that my decision is limited to the Issues, there is no question of my making findings of fact or hearing oral evidence or considering any evidence at this stage.

13. I take into account the force of the points made in Sengupta v Holmes [2002] EWCA Civ 1104 at para 38 and Wasif v SSHD [2016] EWCA Civ 82 at para 17(3) concerning the power of oral argument as well as the decision in R v Sussex Justices, ex parte McCarthy [1924] 1 KB 256 to the effect that justice must be done *and* be seen to be done.

14. In addition, it is necessary for me to take into account the seriousness of the issues at stake for the individual concerned. For example, the principles explained in all of the cases I have mentioned are all the more critical when the case concerns a claim for international protection. Although the appeal in the instant case was not brought on asylum grounds, the appeal does concern the appellant's Article 8 claim which is an issue of some seriousness.

15. I have considered all the circumstances very carefully and taken everything into account, including the overriding objective.

16. Taking a preliminary view at this stage of deciding whether it is appropriate and just to decide the Issues without a hearing, I considered the Judge's decision, the grounds and the submissions before me. I was of the view, taken provisionally at this stage, that there was nothing complicated at all in the assessment of the Issues in the instant case, given that the grounds are simple and straightforward and the Judge's decision straightforward. I kept the matter under review throughout my deliberations. However, at the conclusion of my deliberations, I was affirmed in the view I had taken on a preliminary basis.

17. In all of the circumstances, and taking into account the overriding objective and having considered Osborn and others v Parole Board, I concluded that it is appropriate, fair and just for me to exercise my discretion and proceed to decide the Issues without a hearing.

Questions (a) and (b) - whether the judge erred in law and whether his decision should be set aside

Summary of the appellant's Article 8 claim

18. The appellant married in India in 1989. She suffered domestic violence at the hands of her husband in his family home. She left her husband and obtained a divorce in 2006. She had two children by her husband. She arrived in the United Kingdom on 30 June 2006 with entry clearance as a visitor. She overstayed.

19. The appellant's Article 8 claim was based on private life she has developed in the United Kingdom including with close friends and charitable works she has performed by helping people through her temple.

20. In addition, if returned to India, it is said that she would experience very significant obstacles to her reintegration. She is a single woman who has never worked in India. She is no longer in contact with her children. She has lost contact with relatives in India. She would therefore have no support in India.

21. The appellant gave evidence that threats against her continue to be made by her ex-husband. The threats were not made directly to her but were relayed to her through those who know him and who come to the United Kingdom and pass on messages of his intended abuse were she to return (para 5 of the judge's decision).

The Judge's decision

22. The Judge rejected the appellant's evidence that her ex-husband has continued to make threats against her. He gave his reasons at paras 6-10, para 14 and the first sentence of para 15 of his decision which read:

> "6. The consideration of that evidence [of continuing threats] needs to be set in the context of a statement made on 1 May 2019 by the Appellant, which she adopted without alteration, save a correction at paragraph 13 as to the life she had developed over some thirteen years in the UK.
>
> 7. I note that her statement makes reference to past threats, that is during the marriage, but there is no reference whatsoever to any ongoing threats or continuing threats in her statement. There is similarly no mention of her telling of any continuing threats to her family and friends in the UK.
>
> 8. The statement (AB7) of Jagdish Patel, a distant relative, contained within the letter of 25 April 2019 and in his oral evidence, did not refer to ongoing or continuing threats or his having any knowledge of ongoing or existing threats from her ex-husband.
>
> 9. The evidence (AB9) from Mr Mukund Patel again makes no reference to the matters being raised of domestic violence and threats continuing. Similarly the statement (AB10) of Kirtan Patel who also gave evidence makes no reference to such matters. Supporting letters (AB11 & AB12) of R N Patel and V J Choksi, as indeed the other witnesses' statements that I have taken into account, speak well of the Appellant, the role she plays in their society, the life she plays in their temple and the help she gives to amongst others the parents of Jagdish Patel. The Appellant provides company and assistance to his mother and father.
>
> 10. The letters, for example (AB8) from Sajeela Khamad dated 12 April 2019, and the others I referred to already all speak well of her in affectionate terms and of her honesty, kindness and help that she offers. There is no reference to any threats from the ex-husband.
>
> 14. I thought having heard the evidence that the Appellant is now exaggerating how her husband is continuing to make threats against her as a way to avoid removal. I found it significant that there was an absence of reference to threats made in the extensive representations by Portway Solicitors on behalf of the Appellant in their letter dated 3 May 2018. They make reference to the

> Appellant having been abused in India by her ex-husband but asserting that she has had no contact with family members in India, no ties or connections with any friends and since she left India she has had no connections or ties with India. There was no reference to continuing threats. If the Appellant had by 2018 been continuing to receive abuse and/or threats via her ex-husband's friends coming to the UK then there would at least be some reference in those representations.
>
> 15. Following the Reasons for Refusal Letter, the grounds of appeal do not set out or assert some omission by the Respondent in addressing the claim or iterating the issue of continuing abuse from her ex-husband…. "

23. The Judge accepted that the appellant has helped people through the temple and is well-regarded by those who know her. At para 11, he quoted the witness statement of Mr Bhatt dated 29 April 2019 which he said set the tone of all of the evidence that was written in support of the appellant's appeal. Para 11 of the judge's decision reads:

> "11. I have no doubt that the Appellant in the UK has been helping others through the temple, has been generally providing support and is well regarded by those who know her who think of her as an aunty. The statement (AB5) of Mr Bhatt dated 29 April 2019 perhaps sets the tone of all the evidence that is written in support when he states:
>
> > "I have still remembered when I first met Jayshree Patel (aunty) two years back. Very simple and kind woman. I found in her my mother.
> >
> > When I was working with charity she used to come regularly to help us. There I met her. Her friendly, generous and caring nature made our relations strong.
> >
> > She has been attending all our social function and gathering. Also she is cooking delicious food for me.
> >
> > I have unforgettable memories with aunty. Since aunty I met she has filled gap of mother in my life. I have great respect for her.
> >
> > It is with great pleasure that I write to you in recommendation of Mrs Jayshree Patel. We are very close to each other by hearts. We want to continue living as one, sharing happiness and sorrows together …"

24. The Judge then considered whether the appellant would experience very significant obstacles to her reintegration in India at paras 12-15 of his decision. This included consideration (at para 14) of the appellant's evidence that she has continued to receive threats from her ex-husband and (at paras 13 and 15) her health. The Judge found (at para 16) that there were no very significant obstacles to the appellant's reintegration in India. Paras 12-16 of the judge's decision read:

> "12. The Appellant basically says the very significant obstacles to return are:- the time she has spent in the UK, the continuing position of her ex-husband who would act against her if he found out where she was, her age, the fact that she is a single woman, she has never worked in India and has no evident working skills other than the charitable work she does to provide company and cooking. She has lost contact with any relatives in India although it appears she had a brother and sister-in-law who lived in her parents' home, along possibly with her parents, if they are still alive which was unclear from

the evidence. The Appellant otherwise says that she likes her life here, the freedoms that she has and the work that she does helping others.

13. Looking at the evidence I accept entirely that the Appellant, apart from the fact that she has been unlawfully here, has been contributing through her temple to the lives of others and that she has been, as might be expected, of good conduct. It seems to me that she has spent most of her life in India and therefore readily understands life and conditions that she might encounter. Her health is not an issue. Whilst she has certain medical problems, those do not require treatment, hospitalisation or medication that would otherwise not be available in India. Therefore looking at the evidence in the round it seemed to me within the understood sense of very significant obstacles to return the principal one is that she is a single woman who to some extent cannot return wholly free of the consequences of the breakdown of the marriage and her husband's conduct.

14. *[quoted above]*

15. *[first sentence quoted above]* Portway Solicitors, in their grounds of appeal dated 15 March 2019, solely refer to the unfortunate medical circumstances of the Appellant being injured in a road traffic accident and suffering pain and sequelae of that accident. Whilst it is asserted that physiotherapy sessions and regular medication is being taken, her own evidence does not particularly develop that point and nor do the medical enclosures in the Appellant's bundle (B13-30). The medical correspondence of particular application confirms that the Appellant suffered pain in her right shoulder and her condition improving in some measure and the matter being attended to and it seems possible *[sic]* some physiotherapy. There is nothing to suggest that the condition is any more serious than the fact that the effect of the accident may be to impede some of her mobility. There is no medical evidence to suggest that removal would lead to a deterioration in her condition or the absence of the necessary support in India.

16. In the circumstances taking into account the Appellant's circumstances it seemed to me that there were no very significant obstacles to her return to India… "

25. In the second sentence of para 16, the Judge said that he went on to consider the wider issues of Article 8 of the Immigration Rules through the prism of the Rules. He concluded that the respondent's decision was proportionate, giving his reasons in the third sentence of para 16 and in paras 17-24, which read:

"16. … I have set out above the favourable aspects of people's views of the Appellant which seem to me entirely consistent and reliable.

17. I take into account also that the Appellant by choice came as a visitor and overstayed and did not seek to regularise her position even if she is, as she would say, not well educated, through the support of the temple and others if there was a basis of fear of return from her ex-husband and the fear of further domestic violence even though the marriage was over.

18. I concluded that there was nothing in the evidence which showed that the circumstances meant that it was unduly harsh for the Appellant to return or would give rise to undue difficulties that could not be addressed.

19. In the circumstances therefore I did not find that the circumstances got close to showing that the effect of interference in her private life in the United Kingdom and such element of it that might be called 'family life' got close to

showing that the effect of interference in removal was significant. If I was wrong in that, applying the case law of Hesham Ali [2016] UKUT 60 and Agyarko [2017] UKSC 11, and the evidence showed that this was a case where Article 8 (1) ECHR rights are engaged. If I was wrong in that view and it was engaged, then I would take the view the Respondent's decision is lawful and properly serves Article 8(2) purposes.

20. I further therefore consider the proportionality of the Respondent's decision and do so taking into account Sections 117A and 117B of the NIAA 2002. I take into account the Applicant's precarious status in the UK and the fact that it has never been held out to her that she would be able to remain. I bear in mind her limited assimilation into the UK in the sense of language skills.

21. I take into account the positive contribution she has been making through the temple and connections in the UK and that she has not, although I give it limited weight, broken the law other than in the immigration sense of overstaying.

22. In the circumstances I am mindful of the fact that the Appellant is *[sic]* on the case returning as a single woman and conscious that single women in India may constitute a particular social group but no claim has been made on that basis and nor has it been argued that she cannot return for that reason.

23. I accept that there are difficulties and I find I do not have complete confidence in her assertions that she has had no contact whatsoever with her children in India but if that is by choice on her part or unwillingness on theirs to make any contact with her then it seems to me that that is a sad but unfortunate fact of life that she faces come what may. I can see no reason why she could not make fiends *[sic]* through a temple in India, I was given no evidence about the availability of state support/ benefits or finding paid employment for a lady of over 40 years of age.

24. Accordingly looking at the evidence in the round and taking account of the positive as well as any negative aspects of the outcome I found the Respondent's decision is proportionate."

The grounds

26. In summary, the grounds contend that the Judge materially erred in law as follows:

(i) (ground 1) by failing to give sufficient weight to the appellant's absence from India since 2006;

(ii) (ground 2) by failing to take into account that the appellant has never worked and has no support network on return to India as a single woman;

(iii) (ground 3) by failing to give sufficient weight to the appellant's ties in the United Kingdom; and

(iv) (ground 4) by failing to have regard to the appellant's English language certificates.

27. An Upper Tribunal Judge (the "UTJ") granted permission stating that ground 2 was arguable, in that, although it was recorded at para 12 of the

Judge's decision that the appellant claimed to face very significant obstacles on return to India due, inter alia, to the fact that she is a single woman without any family or other contacts in India, the Judge appeared (at para 22) to discount this as a factor because the appellant had not claimed asylum on the basis that she fears persecution on return as a single woman, something which the Judge had noted (at para 22) may constitute a particular social group. The UTJ said that there was no consideration at all by the Judge as to whether this would still constitute an obstacle to reintegration, particularly in light of the Respondent's *'County Policy and Information Note, India: Women fearing gender-based violence'*, dated July 2018 (hereafter the "*2018 CPIN*"), which refers to possible difficulties for single women in accessing government services and housing. However, the UTJ observed that there was nothing to suggest either party referred to or relied upon this document before the Judge. The UTJ further said that there was a lack of any express consideration of the appellant not having lived independently in India previously, having no employment history there and no formal employment in the United Kingdom either.

28. Although the UTJ did not limit the grant of permission, she said that the remaining grounds had "f*ar less merit*" as they concern the weight to be attached the various certain matters which was primarily a matter for the Judge.

Assessment

29. I deal first with ground 2; in particular, whether (as suggested in the grant of permission) the Judge had discounted as a factor that fell for his consideration the fact that the appellant would be returning to India as a single woman with no family or contacts in India because she had not claimed asylum on the ground that she fears persecution on return as a single woman.

30. At para 17 of her written submissions dated 15 May 2020, Ms Sharma states that the Judge's attention was drawn to "*the country guidance 2018*". She specifically mentions para 4.8.2 on the ability of single women to access accommodation and para 5.2 on the prevalence of domestic abuse. Ms Sharma, who I note appeared for the appellant before the Judge, does not say in her written submissions whether she or the respondent's representative drew the Judge's attention to this material.

31. However, any suggestion in the appellant's written submissions that the Judge's attention was drawn by one or other party to the material mentioned above would be contrary to para 3 of Ms Sharma's grounds of appeal to the FtT and the Upper Tribunal which were also prepared by Ms Sharma. At para 3 of both sets of grounds, she states:

> "3. The [FtT] Judge acknowledges that the appellant may suffer on return as a single woman. He disregards the country guidance 2018 which states that single women would have difficulty in accessing housing are 4.82 and also refers to the prevalence of domestic abuse at 5.2 **The [FtT] Judge states that the single woman issue was not raised in representations or at the**

> **hearing. He is clearly not prohibited from raising relevant concerns himself and appears to have considered the same although briefly."**

(my emphasis)

32. Para 3 of Ms Sharma's grounds (to the FtT and to the Upper Tribunal) plainly indicate that neither party drew the Judge's attention to the material in question. Instead, the grounds contended that the Judge, having indicated at para 22 that he was aware that single women in India may constitute a particular social group, erred by failing to consider the material mentioned in the grounds.

33. I have noted that the material mentioned at para 3 of the appellant's grounds to the FtT and to the UT was not included in the appellant's bundle of 163 pages. The appellant's 163-page bundle was supplemented only by:

    (a) a letter dated 8 May 2019 from Woodrange Medical Practice confirming that the appellant suffers with diabetes, C-spine stenosis, spondylosis, dyspepsia, vitamin D deficiency and chest pain and that she is reviewed at the practice as needed; and

    (b) a letter dated 19 April 2018 from an NHS Patient Referral Centre concerning an appointment on 29 April 2018 for an MRI of the appellant's right shoulder.

34. I have also consulted the Judge's manuscript record of the proceedings ("RoP"). There is no mention at all of any reliance upon any "*country guidance 2018*" or the 2018 CPIN.

35. Finally, there is no witness statement from Ms Sharma to confirm that the Judge's attention was drawn to the material mentioned at para 3 of the appellant's grounds.

36. In all of these circumstances, I am satisfied that the Judge's attention was not drawn to the material mentioned at para 3 of the appellant's grounds.

37. Indeed, I am satisfied that, in stating at para 22 that he was "… *mindful of the fact that the appellant is [sic] on the case returning as a single woman and conscious that single women in India may constitute a particular social group but no claim has been made on that basis",* the Judge was merely indicating that he was aware of the possibility of such a claim and making it clear that the appellant's case as advanced before him did not include such a claim. I therefore do not agree with my fellow UTJ's observation in the grant of permission that, in making this observation, the Judge *discounted* the fact that the appellant would be returning to India as a single woman without any family or other contacts in India because the appellant had not claimed asylum on the basis that she feared persecution on return as a single woman.

38. Nevertheless, the question remains whether the Judge should have considered the issue of his own volition.

39. The question whether or not an individual returning to India as a single female is a member of a particular social group is a complicated issue, the answer to which is case-specific and in respect of which a Judge is entitled to have the benefit of the submissions of the parties. There were no such submissions before the Judge and, as I have said, his attention was not drawn to any background material or any relevant country guidance cases on the issue. The 2018 CPIN is not "*country guidance*" as this term is normally understood to refer to country guidance cases promulgated by the Upper Tribunal.

40. The Judge would therefore have been embarking upon a frolic of his own if he had considered whether the appellant was a member of a particular social group. He would have been conducting research of his own volition if he had considered material to which his attention had not been drawn in order to consider a case that was not advanced, i.e. that she was a member of a particular social group and would experience very significant obstacles in her reintegration for that reason.

41. The case that was advanced to the Judge was a simple one, that the appellant would experience very significant obstacles as she would be returning as a single female with no support and who had not lived independently in India. I describe it as a simple case because of its lack of reliance upon membership of a particular social group and the complexities that consideration of that concept often entails.

42. The Judge did consider the appellant's case as advanced to him. When his decision is read as a whole, it is plain that he considered her case that she would be returning as a single woman. At para 12, he also specifically referred to the fact that the appellant had lost contact with any relatives in India. At para 23, he specifically stated that he accepted that there would be difficulties, saying at the same time that he did not have complete confidence in her assertion that she has had no contact whatsoever with her children in India.

43. I do not agree with my fellow UTJ's observation, in granting permission, that there was a lack of any express consideration of the appellant not having any employment history in India and no formal employment in the United Kingdom. This is because the Judge expressly said, at para 12 of his decision, that the appellant "*has never worked in India and has no evident working skills other than the charitable work she does to provide company and cooking*". He was therefore plainly aware that the appellant had not had any employment history in India and that she had had no formal employment in the United Kingdom. He was aware that she had not lived independently in India. At para 23, he said that he was provided with *"no evidence about the availability of state support/benefits or finding paid employment for a lady of over 40 years of age".*

44. For all of the reasons given above, I reject ground 2.

45. I turn to ground 4.

46. Para 5 of the grounds contends that the Judge failed to take into account the language certificates at pages 137-139 of the appellant's bundle. However, whilst this evidence shows that the appellant has attended a course entitled: "*ESOL - Skills for Life (Speaking and Listening)"* and obtained a grade E1 pass entry level 1, the fact is that judges are not obliged to refer in terms to every document relied upon before them. The mere fact that the Judge did not refer to the documents at pages 137-139 of the appellant's bundle does not mean that he did not take the evidence into account. There is no reason to think that he did not consider all the evidence before him in considering s.117B(2) of the Nationality, Immigration and Asylum Act 2002 which refers to an individual's ability to speak English and the relevance of this to the individual's integration into society in the United Kingdom.

47. On the evidence before the Judge, the appellant was someone who was deeply involved, socially and through the temple she attended, with members of her own ethnic community. There was little or no evidence before him of the appellant's integration into the wider community in the United Kingdom. He had before him someone who had obtained a grade E1 pass at entry level 1 in the speaking and listening component of "*ESOL - Skills for Life (Speaking and Listening)"* but who still required an interpreter in order to give oral evidence before him. On the whole of the evidence, the Judge was entitled to conclude that the appellant's assimilation into the United Kingdom was *"limited … in the sense of language skills".*

48. I therefore also reject ground 4.

49. Grounds 1 and 3 plainly concern the weight to be given to various factors. That was essentially a matter for the Judge. Grounds 1 and 3 together with the appellant's written submissions on grounds 1 and 3 amount to no more than a disagreement with the Judge's reasoning and an attempt to re-argue the appellant's case.

50. I turn now to deal with the remainder of the appellant's written submissions as follows:

    (i) Para 5 of the written submissions refers, inter alia, to the appellant having to return to the same area in India where she had lived and where it is said she would be unable to live a free life due to concerns about her ex-husband and other family members. Indeed, para 8 contends that she fears maltreatment in returning to the same area. Para 7 states that the appellant fears returning to India as a single woman due to prevailing widespread and common discrimination, abuse and violence against women, that she has been made aware of threats from her ex-husband and that she feels that the police would not be willing to assist her as they previously failed to do so. Para 8 also contends that the appellant would not be able to access accommodation without using the name of her father or ex-husband.

However, these submissions were not in the grounds and therefore the appellant does not have permission to advance them. In any event, they ignore the fact that the Judge roundly rejected the appellant's evidence of receiving continuing threats from her ex-husband and there was no evidence of any threats or other problems from the appellant's father.

(ii) Referring to the fact that the Judge had said that neither the appellant nor her supporting witnesses had referred to there being any ongoing threats from the appellant's ex-husband, para 14 of the written submissions contends: (a) that there was no evidence that any of these witnesses were friends of the appellant's ex-husband and therefore that they had direct knowledge of threats; (b) all the witnesses were aware of appellant's reason for leaving India but had indicated that they did not pry and she did not like to talk about her former husband; and (c) the fact that divorce was not acceptable in 2006 and that the appellant has been safe in the United Kingdom since then meant that she did not mention the threats until she was asked directly about the reasons she could not return to India in court.

However, these submissions were not in the grounds and therefore the appellant does not have permission to advance them. In any event, they amount to no more than a disagreement with the Judge's reasoning and an attempt to re-argue the appellant's case.

(iii) Para 6 contends that the Judge failed to acknowledge that the appellant's lack of contact with her children was a direct result of her husband's intervention; para 7 that the appellant has no property, family, or social ties with her home country; and para 9 that the appellant was unable to give details about her parents or brother as she has had no contact with them and does not even know if they remain in the same locality. Para 11 contends that the witnesses before the Judge had stated that they would not be willing to support the appellant financially if she returned to appellant. In other words, that she would be without financial support in India.

However, contrary to these submissions, the Judge specifically considered at para 23 the appellant's evidence that she has had no contact with her children in India and at para 12 the evidence before him concerning her brother and parents. He considered her case that she would be returning to India as a lone female with no support. He said, at para 23, that there was no evidence before him about the availability of state support or benefits or of *"finding paid employment for a lady of over 40 years of age".* It is therefore plain, once again, that these submissions amount to no more than an attempt to re-argue the appellant's case.

(iv) Para 10 contends that there was no consideration of the effect on the appellant's mental health in returning to the place where she had suffered mental and physical abuse at the hands of her husband and in-laws.

However, this was not part of the appellant's grounds and therefore the appellant does not have permission to argue this issue. Further, and in any event, there was simply no medical evidence before the Judge concerning the impact on the appellant's mental health of returning to her home area in India. The medical evidence that was before the Judge is at AB/13-30, supplemented by the two letters mentioned at para 33 above. The Judge considered the medical evidence at paras 13 and 15 of his decision which sufficiently describe the evidence that was before him.

Accordingly, given that there was no medical evidence before the Judge concerning the impact on the appellant's mental health of returning to India, there was no basis at all for the suggestion in the appellant's written submissions that the Judge erred by failing to consider this issue. In advancing this submission, para 10 of the appellant's written submissions attempts to advance a case that was not evidenced before the Judge.

(v) Para 13 states that the appellant had given detailed evidence about her relationship with the parents of Jagdish Patel and that she has provided care and companionship over several years in return for board and lodging. It is contended that the Judge failed to consider that separation would have an adverse effect on both the couple and the appellant.

However, the fact is that there was simply no evidence before the Judge of the impact on the appellant and/or the parents of Mr Jagdish Patel of the appellant's removal from the United Kingdom. The appellant's witness statement (AB/1-4) was silent on the issue, as was the letter from Mr Jagdish Patel (AB/7). According to the Judge's RoP, the appellant's oral evidence did not include any evidence concerning the impact upon her and/or the parents of Mr Jagdish Patel of her removal from the United Kingdom. In his examination-in-chief, Mr Jagdish Patel said that, if the appellant left the United Kingdom, "*Things wd be difficult for parents. Support w'dn't be as good as she provides*" and in cross-examination he said that he had not gone to the NHS or social services to enquire about help for his parents but "*if she went I w'd try*". He did not give any oral evidence concerning how the appellant's departure would affect his parents other than that any support they might receive from other sources would not be "*as good as she provides*".

Once again, in contending that the Judge had failed to consider the adverse effect on the appellant of her removal, para 13 of the appellant's written submissions attempts to advance a case that was not evidenced before the Judge. True it is that Mr Jagdish Patel gave evidence of the possibility of his parents not receiving support that was as good as the support the appellant provides. However, the evidence lacked detail and was wholly incapable of affecting the outcome on any legitimate view.

In any event, the Judge was aware of the appellant's case of her relationship with the parents of Mr Jagdish Patel and that she provided care and companionship in return for board and lodging. He specifically referred to the help she gives to them in the final sentence of para 9 of his decision. Plainly, he considered her case on this point on such evidence as was before him.

51. Overall, it is clear that the Judge considered the case that was presented to him adequately. His (understandable) effort in making clear at para 22 of his decision what the appellant's case was *not* has unfortunately resulted in the appellant attempting to advance through this appeal a case that was not presented below.

52. For all of the reasons give above, I am satisfied that the Judge did not err in law. The appellant's appeal is therefore dismissed.

Notice of Decision

53. The decision of the First-tier Tribunal did not involve the making of any error on a point of law. The appellant's appeal to the Upper Tribunal is therefore dismissed.

Upper Tribunal Judge Gill Date: 6 August 2020

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**