



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/09728/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 2 July 2021**

**Decision & Reasons Promulgated
On 22 July 2021**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**SARITHA RAMANCHA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Y Din, Counsel, instructed by Charles Simmons
Immigration Solicitors

For the respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of a panel of the First-tier Tribunal comprising Judges Beach and Simpson (“the panel”), promulgated on 27 November 2019. By that decision, the panel dismissed the appellant’s appeal against the respondent’s decision, dated 21 August 2017, refusing her human rights claim made in the context of deportation action.

2. The appellant, a citizen of India, had come to the United Kingdom in 2007 as a student and had remained here with leave thereafter. In February 2011, she applied for further leave to remain as a Tier one (General) Migrant. This application was granted. It later transpired that the appellant had in fact practised deception when making that 2011 application.
3. The appellant returned to India in 2011 and, in 2013, married a British citizen, Mr Bejjenki. She re-entered the United Kingdom in 2014 with leave as his spouse. Later that year, the appellant was arrested in relation to the 2011 application. She was convicted on 20 May 2016 and sentenced in June of that year to 12 months' imprisonment. The sentence triggered the application of section 32 of the UK Borders Act 2007. A decision to deport was issued on 19 July 2016, followed by the signing of a deportation order on 9 September of that year.
4. On appeal from the respondent's refusal of her human rights claim, the appellant was initially successful. However, the decision was challenged by the respondent and ultimately set aside by the Upper Tribunal. The appeal was remitted to the First-tier Tribunal for a complete re-hearing. In this way, the appellant's case came before the panel.
5. The appellant essentially put her Article 8 case to the panel as follows. Although she and husband did not have children, they were engaged in fertility treatment in this country. It was asserted that it would be unduly harsh on the husband for him to relocate to India. He was employed in this country and it would have been very difficult to find appropriate work in India. It would have been unduly harsh to separate the couple: it would interrupt the fertility treatment and the husband would be unable to see the appellant for lengthy periods. Finally, it was said that there were very compelling circumstances in the appellant's case.

The panel's decision

6. For reasons set out at [58]-[64], the panel concluded that it would not be unduly harsh for the appellant's husband to relocate to India with her. It found that the husband would be able to find suitable employment, the couple would have familial support, and the husband could retain his British citizenship and obtain Overseas Citizenship of India. In considering an additional argument put forward on the appellant's behalf, the panel concluded that the husband's inability to vote in Indian elections would not render relocation unduly harsh.
7. The panel concluded at [65] that separation would not be unduly harsh. Essentially, it found that the husband could travel to India for the purposes of any ongoing fertility treatment and that the couple could maintain effective communication through the Internet and holidays.

8. The panel then goes on to address the very compelling circumstances issue in detail between [66] and [75]. It found that the appellant would not be without familial support, accommodation, and employment in India, even if her husband remained in United Kingdom. The panel considered the appellant's single offence and took the view that its nature went to the "very heart of the maintenance of an effective immigration system." The sentencing remarks of the relevant Judge were taken into account, as were a number of surrounding circumstances. The panel noted the assessment of a low risk of reoffending and a low risk of serious harm, but did not regard this as a "significant" factor in its overall balancing exercise.
9. Ultimately, the panel concluded that the respondent's decision was proportionate and the appeal was accordingly dismissed.

The grounds of appeal and grant of permission

10. Two grounds were put forward. First, it was said that the panel erred in concluding that it would not be unduly harsh for the husband to relocate to India because it had failed to take account of the fact that he would not be entitled to vote in that country. Second, it was said that the panel failed to give sufficient weight to the low risk of reoffending evidence and had also failed to take mitigating circumstances into account when evaluating the appellant's offence.
11. Permission to appeal was granted by the First-tier Tribunal. The Judge saw little merit in the first ground, but the second ground appeared stronger.
12. Following the grant of permission, the respondent provided a rule 24 response, dated 14 January 2020.

The hearing

13. Mr Din relied on the grounds of appeal and his skeleton argument (which followed those grounds in all material respects). During submissions, I observed that ground 1 only challenged the panel's conclusion on the relocation scenario: nothing was said in respect of the separation scenario. Mr Din acknowledged this, but did not withdraw reliance on the first ground. He made no application to amend his grounds.
14. In respect of ground 2, I pointed out that it relied on the dissenting judgment of the late Lord Kerr in Hesham Ali [2016] UKSC 60; [2016] 1 WLR 4799. The grounds had not made the status of the passages relied on clear and this in turn gave rise to the potential risk of misleading the reader. Mr Din apologised and I accept that he did not in any way intend such a result.

- 15.** Mr Din submitted that the panel should have regarded the appellant's low risk of reoffending and low risk of serious harm as a significant factor in the assessment of whether very compelling circumstances existed. The panel was wrong not to have given it that level of weight. He also submitted that the panel had failed to conduct a balancing exercise, weighing up the mitigating factors against the aggravating factors in respect of the appellant's offence. In terms of the right to vote issue, Mr Din accepted that he could not point to any case-law supporting his argument.
- 16.** Mr Tufan submitted that there was no error in relation to the right to vote issue. The panel had been entitled to regard the low risk of reoffending and low risk of serious harm is not constituting a significant factor in the appellant's favour. The public interest included the element of deterrence as well.
- 17.** In reply, Mr Din accepted that the reoffending issue was not enough of itself to meet the very compelling circumstances threshold, but it was a relevant factor. He submitted that the panel should have regarded the fact of the appellant's voluntary departure from the United Kingdom in 2011 and her return under Appendix FM to the Immigration Rules as being an important factor in her favour.
- 18.** At the end of the hearing I reserved my decision.

Conclusions on error of law

- 19.** I conclude that there are no errors of law in the panel's decision such that I should set it aside under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.
- 20.** Ground 1 faces an insuperable obstacle. In considering whether she could satisfy the exception in section 117C(5) of the Nationality, Immigration and Asylum Act 2002, the appellant had to show that it would be unduly harsh for her husband to relocate to India *and* for them to be separated (see, for example, Patel (British citizen child - deportation) [2020] UKUT 00045 (IAC), at paragraph 31). The panel had concluded that neither limb of the exception had been satisfied. Ground 1 seeks only to challenge the conclusion on the first limb; i.e. whether it would have been unduly harsh for the husband to have relocated to India. Therefore, whatever the merits of the argument put forward, it could make no difference to the outcome, as the conclusion on the second limb (the separation scenario) has gone unchallenged.
- 21.** In any event, I have no hesitation in concluding that ground 1 fails. This aspect of the challenge has been framed so as to assert that the absence of a right to vote in the country to which an individual would be relocating must be unduly harsh. Quite apart from this contention being unsupported

by any case-law, as a matter of principle it cannot be right. The unduly harsh threshold is high one. To hold that the inability of an individual to vote in the elections of the country to which they would be going to live with their partner would, in and of itself, render such a move unduly harsh would be to wholly undermine the high threshold and the overall strength of the public interest in deportation cases, as recognised in the legislative framework.

- 22.** Whilst I accept that Article 21 of the Universal Declaration of Human Rights 1948 refers to the right of everyone to “take part in the government of his country, directly or through freely chosen representatives”, this of itself cannot constitute a sound basis for elevating the importance of suffrage to that of a factor sufficiently strong to render relocation unduly harsh in cases where an individual would not be eligible to vote.
- 23.** Further, on the facts of the present case, the appellant’s husband would retain the right to vote in United Kingdom elections even if living in India, and thus it cannot be said that he would be entirely disenfranchised.
- 24.** The panel concluded that the partner’s inability to vote in Indian elections would not be unduly harsh because the appellant could not vote in the United Kingdom elections if she remained in this country with discretionary leave. It may be that, as a citizen of a Commonwealth country with leave to remain, the appellant could in fact have voted in elections in this country. However, for the reasons set out in paragraphs 20-23, above, any error on the panel’s part is immaterial to the outcome.
- 25.** For the avoidance of any doubt, the panel’s consideration of all other matters relevant to the unduly harsh issue was entirely sustainable and has not been the subject of challenge.
- 26.** I turn to ground 2. It is clear from the panel’s decision that it was fully aware of the nature of the appellant’s offence, the fact that she left United Kingdom voluntarily in 2011, that she re-entered lawfully, and that her assessment of future risk and reoffending was low. The fact that the appellant had received a 12 month sentence was, first and foremost, relevant to the triggering of the framework under section 117C of the 2002 Act. There is nothing on the face of the panel’s decision to suggest that it regarded the appellant’s offence as more serious than any other. Having said that, the panel was entitled to regard the offence (obtaining or seeking to obtain leave by deception) as going to the heart of the legitimate need to maintain effective immigration controls. Further, the panel was entitled to raise concerns about the appellant’s reasons for leaving the United Kingdom in 2011 and what she did not say when making the application for re-entry (she answered “no” the question of whether she had ever engaged in activities that might point against her being admitted to this country, notwithstanding the use of deception in the 2011 application).

27. A particular focus of Mr Din’s challenge has been what the panel said at [74], namely that the low risk of reoffending and low risk of serious harm was not a “significant” factor to be taken into account when assessing whether very compelling circumstances existed. The relevant sentence reads as follows:

“However, the likelihood of reoffending in the future is not a significant factor to be taken into account as it is simply to be expected that an individual will not commit offences.”

28. I address this issue in two ways. First, Mr Din has put his argument on the basis that the panel should have (in other words, were bound to have) afforded “significant weight” to the low risk assessment. As is well-established, weight is, subject to the elevated threshold of a rationality challenge, a matter for the Tribunal. Here, the panel was stating that “significant” weight was not being placed on this factor. It was *not* stating that *no* weight was being attributed. In light of the panel’s analysis as a whole, this was a rational conclusion to have drawn and the appellant’s challenge fails.

29. The second approach to this aspect of the challenge is to read the sentence within [74] as a reference to the observation of Hamblen LJ in Binbuga [2019] EWCA Civ 551, at paragraph 84, in which he said the following:

“...rehabilitation involves no more than returning an individual to the place society expects him to be.”

30. In HA (Iraq) [2020] EWCA Civ 1176; [2021] 1 WLR 1327 (a judgment handed down after the panel’s decision had been promulgated), Underhill LJ commented on the view expressed in Binbuga and stated, at paragraphs 141 and 142:

“141. What those authorities seem to me to establish is that the fact that a potential deportee has shown positive evidence of rehabilitation, and thus of a reduced risk of re-offending, cannot be excluded from the overall proportionality exercise. The authorities say so, and it must be right in principle in view of the holistic nature of that exercise. Where a tribunal is able to make an assessment that the foreign criminal is unlikely to re-offend, that is a factor which can carry some weight in the balance when considering very compelling circumstances. The weight which it will bear will vary from case to case, but it will rarely be of great weight bearing in mind that, as Moore-Bick LJ says in Danso, the public interest in the deportation of criminals is not based only on the need to protect the public from further offending by the foreign criminal in question but also on wider policy considerations of deterrence and public concern. I would add that tribunals will properly be cautious about their ability to make findings on the risk of re-offending, and will usually be unable to do so with any confidence based on no more than the undertaking of prison courses or mere assertions of reform by the offender or the absence of subsequent offending for what will typically be a relatively short period.

142. That summary may come to much the same thing in practice as the UT's proposition that "no material weight ... ordinarily falls to be given to rehabilitation in the proportionality balance"; but I think, with respect, that it is more accurately expressed, and I cannot in any event adopt its reasoning that "rehabilitation will ... normally do no more than show that the individual has returned to the place where society expects him ... to be", notwithstanding its endorsement (not, I think, as a matter of ratio) in Binbuga. I do not think that it properly reflects the reason why rehabilitation is in principle relevant in this context, which is that it goes to reduce (one element in) the weight of the public interest in deportation which forms one side of the proportionality balance. It is not generally to do with being given credit for being a law-abiding citizen: as the UT says, that is expected of everybody, but the fact that that is so is not a good reason for denying to an appellant such weight as his rehabilitation would otherwise carry."

- 31.** Applying Underhill LJ's comments to the present case, it may be said that the panel wrongly linked the non-attribution of "significant" weight to the idea that individuals are expected not to reoffend. However, even if this interpretation were to be adopted, there is no error on the panel's part such as to require its decision to be set aside. As Underhill LJ noted, the relevance of the reoffending issue is fact-specific and will only rarely be afforded "great weight". The panel did adopt a fact-specific approach. The appellant has been unable to establish any other errors such as irrelevant matters being taken into account or relevant matters being overlooked. In all the circumstances, and reading the panel's decision sensibly and holistically, it is in my judgment inconceivable that it might have placed "significant" weight (as opposed to some weight, which it implicitly did) on the reoffending factor, sufficient to have tipped the balance in the appellant's favour (given the very stringent nature of the very compelling circumstances threshold). Therefore, any error was not material to the outcome.
- 32.** The appellant's challenge to the panel decision fails and her appeal to the Upper Tribunal must therefore be dismissed.

Anonymity

- 33.** The panel made no anonymity direction and there is no reason for me to do so at this stage.

Notice of Decision

- 34. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.**
- 35. The appeal to the Upper Tribunal is dismissed.**

36. The decision of the First-tier Tribunal shall stand.

Signed: H Norton-Taylor

Date: 5 July 2021

Upper Tribunal Judge Norton-Taylor