



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/06031/2020**

THE IMMIGRATION ACTS

**Heard at: Manchester Civil Justice Centre Decision & Reasons Promulgated
On: 19 November 2021 On the 25 October 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**AP
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Pipe, instructed by MA Consultant (Blackburn)

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India, born on 21 January 1986. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his human rights appeal.

2. The appellant entered the United Kingdom on 4 July 2009 on a working holiday visa valid until 4 June 2011. On 20 July 2011 he submitted an outside the rules application which was refused on 20 September 2011 and he was served with administrative removal papers as an overstayer on 24 February

2013. He did not depart from the UK, but made a further application for leave to remain, on 8 July 2013, on the basis of his family and private life. That application was refused on 3 August 2013 and was subsequently reconsidered and refused again on 11 December 2013. A challenge to the decision on an application for judicial review was dismissed on 8 April 2015, and a further application for leave outside the rules made on 11 April 2015 was refused on 4 March 2016.

3. The appellant appealed against the decision 4 March 2016. His appeal was dismissed by the First-tier Tribunal on 12 April 2017 and he became appeal rights exhausted on 29 December 2017 after an unsuccessful application for permission to appeal to the Upper Tribunal.

4. On 12 March 2018 the appellant made another application for leave to remain on the basis of his family and private life. That application was initially rejected under paragraph 353 of the immigration rules, but after a further challenge by way of a judicial review claim the respondent agreed to reconsider the matter and made a further decision on 3 June 2020, again refusing the application, but with a right of appeal. The appellant exercised his right of appeal and was again unsuccessful. The decision of the First-tier Tribunal dismissing the appeal on 21 April 2021 is the subject of these proceedings.

5. By way of a summary of the issues in this case I go back to the decision of First-tier Tribunal Judge Farrelly who heard the appellant's appeal on 22 March 2017 and dismissed it in a decision promulgated on 12 April 2017. In that decision the judge set out the appellant's claim based upon his family life with his brother and sister and their families in the UK. The appellant's claim was that he had severed ties with his parents in India in 2013 when he refused to enter into an arranged marriage as requested by his father. In March 2015 he had been diagnosed with diabetes and it was said that he suffered from stress in April 2015 and had been prevented from self-harming on 4 December 2015, after which his family maintained a continuous suicide watch over him. The evidence before Judge Farrelly was that the appellant was living with his sister and her husband and children. There was a psychiatric report before the judge giving a diagnosis for the appellant of a severe depressive episode without psychotic symptoms precipitated by the breakdown in his relationship with his parents, a failed relationship in the UK and being diagnosed with diabetes, and that he posed a significant suicide risk.

6. In his decision dismissing the appeal, Judge Farrelly noted that, in the judicial review proceedings, Vice President Ockelton, in a judgment of 20 April 2015, had questioned the truthfulness of the appellant's claim of having fallen out with his parents and of having no marketable skills. However he considered that even if the appellant had maintained such ties, there was no reason why he could not live independently of his parents in India and concluded that there were no very significant obstacles to his integration in India. The judge accepted that the appellant had a family life with his brother and sister in the UK, but having considered his mental health and assessed the medical evidence, he concluded that he could access medical treatment in India, that he would be returning to a country with which he was familiar and that he

would be supported financially in India by his siblings in the UK. The judge concluded that ultimately the respondent's decision was proportionate and was not in breach of Article 8.

7. The appellant's further representations of 12 March 2018 relied upon an additional medical report from the same consultant psychiatrist, Dr Haroon Moosa, dated 15 January 2018, diagnosing him with severe depressive episode with psychotic symptoms, a further letter from Dr Moosa dated 14 May 2019, some prescriptions and letters of support from his sister, brother and other family members and friends.

8. In the decision of 3 June 2020 treating those representations as a fresh human rights claim but rejecting that claim, the respondent concluded that the evidence did not show that there were any very significant obstacles to the appellant's integration in India or compelling circumstances outside the rules. The respondent took account of the appellant's mental health issues but considered that he would have access to treatment in India and that his removal to that country would not reach the high threshold to make out an Article 3 claim.

9. The appellant's appeal against that decision was heard by First-tier Tribunal Judge Lloyd-Smith on 30 March 2021. The appellant did not give evidence before the judge, but his brother did. His brother confirmed that his (the appellant's) circumstances had not changed since the previous appeal hearing. He confirmed that, whilst he would be able to send financial support to the appellant if he returned to India, there would be nobody there to look after him and no one to prevent him from self-harming. He referred to a previous incident when the appellant had been found on a bridge and had been brought home by the police. It was submitted on behalf of the appellant that he had a relationship beyond normal ties with his sister, that he had established a family life in the UK with his siblings and that it would be disproportionate to break up that family life, and that there would be additional significant obstacles to him returning to India because of his mental health condition.

10. Judge Lloyd-Smith noted that the psychiatric reports confirmed that the appellant's mental health state was largely the same as in 2017. She also noted that the reports had been based upon an acceptance of the appellant's account of his difficulties with his parents, yet that had previously been rejected by the Tribunal and the judge did not have evidence leading her to depart from that finding. She found there to be credibility concerns in the appellant's case, noting the inconsistent evidence about the arranged marriage and the contradictory portrayal of the appellant between the letters of support produced for the appeal and the doctor's report. The judge found there to be no very significant obstacles to the appellant's integration in India for the purposes of paragraph 276ADE(1) of the immigration rules. She went on to assess Article 8 outside the immigration rules on the basis that Article 8 was engaged and found that the appellant would be able to access medical treatment and care in India, that he had friends and family in India and that there were no exceptional circumstances outweighing the public interest in

immigration control. The judge concluded that the respondent's decision was proportionate and she dismissed the appeal

11. The appellant sought permission to appeal the decision on the basis that the judge had failed to make any clear findings on whether he enjoyed family life in the UK with his adult siblings and that, on the basis that he had, the decision to remove him to India was disproportionate.

12. Permission was granted in the First-tier Tribunal. The respondent opposed the appeal for reasons given in a Rule 24 response and the matter then came before me for a hearing.

13. Mr Pipe submitted that the judge had clearly focussed on Article 8 being engaged on private life grounds. He submitted that she had made no findings on the level of dependency between the appellant and his siblings and thus whether family life was established, which was a material error affecting the proportionality balancing exercise. Mr Tan submitted that the judge's findings indicated that she had considered Article 8 on private as well as family life grounds. In response Mr Pipe reiterated his submission that the judge had not made clear findings in that regard and that that materially affected the balance when assessing proportionality.

Discussion and conclusions

14. Although the appellant's grounds challenge the judge's assessment under paragraph 276ADE(1)(vi) of the immigration rules, the main focus of the grounds is on the judge's asserted failure to make findings on whether the appellant enjoyed family life with his UK adult siblings. It is the appellant's case that the decision of Judge Lloyd-Smith is fatally flawed owing to her failure to make a finding on whether Article 8 was engaged on family life grounds, and that she undertook her proportionality assessment solely on the basis of private life matters.

15. It seems to me that, whilst it is the case that the judge did not specifically state that family life was established between the appellant and his UK siblings, there are clear indications in her decision that she proceeded to consider proportionality on the basis of Article 8 being engaged on such grounds, at least to the extent that Judge Farrelly found that to be the case. I say "to the extent that Judge Farrelly found that to be the case" because, as Mr Pipe submitted, Judge Farrelly did not specifically engage in a detailed assessment of the level of dependency between the appellant and his siblings but accepted at [25] of his decision that the appellant's close relationship with his siblings, the fact that he had been maintained by them and had lived with them for several years, and that he had been supported by them throughout his years of depression and mental health problems, was sufficient to amount to family life for the purposes of Article 8. That was therefore the basis upon which Judge Lloyd Smith proceeded with her own assessment in accordance with her obligations under the Devaseelan principles, as she made clear at [12] when stating that she was taking Judge Farrelly's findings as her starting point and at

[19(c)] where she referred to Judge Farrelly's finding at [26] prior to embarking upon his proportionality assessment.

16. There can be doubt, in any event, from Judge Lloyd-Smith's detailed and comprehensive assessment of the appellant's circumstances as a whole that his family ties were fully taken into account in her proportionality assessment. At [32] she made it clear that the appellant's relationship with his family members was one of the bases upon which Article 8 was engaged and at [33], before undertaking her own proportionality assessment, she confirmed that the first four questions in Razgar, R (on the Application of) v. Secretary of State for the Home Department [2004] UKHL 27 were answered in the affirmative. At [38] she clearly placed the appellant's relationship with his UK family members as the focus of the balancing exercise, together with the consideration of his mental health problems. What is clear from the judge's adverse findings at [27], however, is that she considered that the appellant's brother and sister were exaggerating the appellant's level of dependence arising from his mental health problems, and she also found that the witnesses had not presented a credible account of the availability of support in India, both from family in the UK and in India. It was on that basis that the judge assessed proportionality and found that the appellant would be able to return to India and re-establish himself there with the support of family and friends. Such a conclusion was reached by the judge upon a full and detailed assessment of the medical evidence, a consideration of past and more current reports of the appellant's health, and with full regard to all relevant aspects of the appellant's circumstances.

17. It seems to me, therefore, that there is no merit in the assertion in the grounds that the judge's proportionality assessment failed to give proper weight to the appellant's family life ties in the UK. On the contrary, the decision included a full and detailed consideration of all relevant matters, with careful regard to the appellant's circumstances and ties in the UK and his circumstances on return to India. The judge provided cogent reasons for concluding that there would be no very significant obstacles to the appellant's integration in India for the purposes of paragraph 276ADE(1)(vi) of the immigration rules and no exceptional or compelling circumstances justifying a grant of leave outside the rules on wider Article 8 grounds. The judge was fully entitled to reach the decision that she did and she made no errors of law.

DECISION

18. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

19. Mr Pipe asked me to make an anonymity order due to the appellant's mental health issues and Mr Tan did not object. The following order is therefore made:

Anonymity Order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 23 November 2021