



**Upper Tribunal
(Immigration and Asylum Chamber)**
HU/50992/2020

Linked Appeal Numbers:
UI-2021-000438; IA/00137/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 14 July 2022**

**Decision & Reasons Promulgated
On 14 September 2022**

Before

**UPPER TRIBUNAL JUDGE BLUM
DEPUTY UPPER TRIBUNAL JUDGE MONSON**

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS PHOOLA TICKOO WARIKOO
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Secretary of State: Mr Chris Avery, Senior Home Office Presenting Officer

For the Respondent/Claimant: Mr Rajiv Sharma, Counsel instructed by VM Law Solicitors

DECISION AND REASONS

Introduction

1. This is an appeal by the Secretary of State from the decision of First-tier Tribunal Judge Apted, promulgated on 22 September 2021, by which he allowed the claimant's appeal on human rights grounds against the

Secretary of State's refusal on 9 October 2020 to grant her leave to remain in the UK on private or family life grounds.

Relevant Background

2. The claimant is a national of India, whose date of birth is 7 February 1948. She last entered the UK on 10 May 2015 on a visitor visa valid until 30 September 2015. On 25 September 2015 she applied for leave to remain. The case which is addressed by the Secretary of State in the refusal decision is not the case that was presented in 2015, but the case which was subsequently presented on the claimant's behalf with a view to persuading the Secretary of State to reconsider her initial refusal.
3. On the topic of Rule 276ADE(1)(vi), it was not accepted that there would be very significant obstacles to her integration into India if she were required to leave the UK, because she had lived in India for the majority of her life, having left there when she was 67 years old. It was understandable that she was close to her son and his family, as she had lived with them here in the UK for five years. She also claimed that she had established a private life in the UK and would find it difficult to return to India. However, she had entered the UK as a visitor, and this was not a route to settlement, and she was fully aware when developing any family and private life, or ties, that she had no expectation that she would be remaining here indefinitely. She failed to provide any evidence to show that she would be unable to maintain contact with her family and friends from overseas.
4. On the topic of exceptional circumstances, she stated that she would be unable to look after herself and carry out daily activities, and that she would have no one in India to provide her with long-term care and support. She said that she required care and assistance in day-to-day activities, and this was provided by her son and his family. However, she had not provided any independent evidence to establish the level of care and support that she required, nor any evidence that any care that was required would not be available in India.
5. It was therefore considered that it had not been demonstrated that she was dependent upon her son and his family to meet her care needs. Even if it were accepted that there was a level of dependency, it had not been demonstrated that alternative means of care would not be available for her in India.
6. While she said that she had no one in India to provide her with long-term care and support, she also stated that she had two brothers who were both retired and resided with their families in Jammu, which was 12 hours away, and a sister who was a housewife and who lived 8 hours away. Although her siblings might themselves be ill or reaching old age, they could still offer her company and support. It was also considered that unless they had families themselves, she might have extended family members who

could assist her in her daily activities. She had not shown that she could not internally relocate to be closer to her family in India.

7. She said that she had an expectation of being able to join her family in the UK when she reached the age of 65, but that she had been prevented from doing so by the change in the Immigration Rules in July 2012. As a result of those changes, adult dependant relatives could only qualify for settlement in the UK from overseas and would have to demonstrate, amongst other things, that, as a result of age, illness or disability, they require a level of personal care that could only be provided in the UK by the relative here, and without recourse to public funds. These requirements ended the routine expectation of settlement in the UK of persons who were financially dependent upon a relative here; and it was a route only available to an applicant outside the UK. A person could not switch into this route in the UK.
8. The category of Adult Dependent Relative had a mandatory entry clearance requirement. It is clear that she was aware of this requirement, but she had not specified why she had chosen not to apply for entry clearance under this route. It was, of course, open to her to return to India and submit an appropriate application should she wish to do so. She may have met the requirements regarding leave under the Immigration Rules prior to the changes in July 2012, but this was not an exceptional circumstance to warrant a grant of leave remain. Exercising discretion in her favour in this respect would be treating her in a more favourable manner when compared to other persons who were in a similar position and had been refused leave to remain, or who could meet the requirements for leave under the Adult Dependent Relative Rules.

The Decision of the First-tier Tribunal

9. The appellant's appeal came before Judge Apted sitting at Hatton Cross on 16 September 2021. Both parties were legally represented, with Mr Sharma of Counsel appearing on behalf of the claimant.
10. At paragraph [8] of his subsequent decision, the Judge set out the respective contentions of the parties on the issue of whether the claimant met the requirements of Rule 276ADE(1)(vi). On behalf of the claimant, it was asserted that she would face very significant obstacles to her integration into India because of her age, her medical conditions, her inability to care for herself and her lack of friends and support there. Conversely, the Secretary of State did not accept that she would face very significant obstacles to her reintegration in India, pointing towards her familiarity with the country gained from living there for more than 67 years, and the presence of other family members and neighbours in India who had previously provided her with support.
11. At paragraphs [10]-[12], the Judge gave a summary of the hearing, in which he recorded at paragraph [11] that Mr Sharma and Mr Williams, Home Office Presenting Officer, had agreed that the issues in dispute were

those that he had set out above in paragraphs [8] and [9]. He also recorded that it was agreed that the claimant would not be called to give evidence and that the Tribunal would proceed on the basis of her witness statement. However, the claimant's son, Dr Warikoo, and his wife gave evidence and were cross-examined.

12. It is convenient to note at this stage that in his extensive witness statement of 13 April 2021, Dr Warikoo provided what was in effect a detailed commentary on the independent medical evidence which had been assembled in support of his mother's appeal, including a report from a psychiatrist, with a view to rebutting the various points which had been taken against his mother in the RFRL, including on the issue of his mother's ability to reintegrate into life and society in India.
13. At paragraph 15, he said: *"Integrating in India does not only imply, merely, to be physically present in India, but needs to be seen in the wider perspective, which includes being able to operate on a day-to-day basis and living with self-respect and dignity. This is practically not possible with the current physical and mental conditions for her [his mother] to integrate in the society. Integration requires socialising and building up of a variety of human relationships to give substance to a private and family life and my mother is not in best of the mental and physical health to socialise."*
14. At paragraph 17, he said: *"It is pertinent to mention, my mother, due to her compelling physical and mental health issues, will have complete or near complete lack of contact with the society which will result in 'social isolation'."*
15. In her witness statement, the claimant said that her husband passed away in 1979, and that she had brought up her son (the sponsor) by herself and had not re-married. From 2004 until 2013 her nephew, Raman Tickoo, had lived with her as he was working in Delhi. He used to look after her and manage all the household chores through a House Help. Since he had left, in 2013, she had started having severe problems in the form of loneliness and depression. She had managed to live by herself, but she struggled mentally and physically. She felt constantly unsafe. She felt unable to trust anyone, which further increased her isolation, as she could not risk letting anyone into her flat without proper verification.
16. At paragraph [13], the Judge said that he had considered all the documentary evidence submitted and the oral evidence provided before coming to his decision, and that the findings he had made were only reached after consideration of all the evidence in the round. He added that, where he had not mentioned a specific piece of evidence, this did not mean that he had not considered it.
17. At paragraph [14], he recorded a concession by Mr Williams that there was no issue taken by the Secretary of State in respect of any of the medical evidence. It was therefore agreed and accepted that the claimant suffered

from the extensive medical conditions documented in the expert reports, which the Judge went on to summarise.

18. At paragraph [17], the Judge referred to the findings of Dr Shedeva-Mohan, a Consultant Psychiatrist. In his opinion, the claimant was suffering from symptoms suggestive of mixed anxiety, depressive disorder of moderate to severe intensity and mild cognitive symptoms requiring further investigation. He also, the Judge found, supported the evidence regarding the claimant's inability to care for herself on a daily basis.
19. At paragraph [18], the Judge made reference to a report from an independent Social Worker, whose professional opinion was that the claimant required a significant level of ongoing emotional and physical support from her family.
20. The Judge then turned to address the evidence within the claimant's bundle of the claimant's family circumstances. After rehearsing some of this evidence, including evidence given by Dr Warikoo as to the deterioration in his mother's situation in the period between March 2013 - when Raman Tickoo moved out and went to a different part of India as a result of his employment and need to care for his own mother - and when his mother last left India in May 2015, the Judge stated his conclusions at paragraphs [22]-[24].
21. At paragraph [22], the Judge made his findings on the extent of the appellant's disability and dependency:

In summary, therefore, I find that a 73-year-old widow who has significant physical and emerging cognitive difficulties would be required to return to India where none of her family are able to assist her. Her only son is in the United Kingdom, and her other relatives are unable to provide assistance for the reasons that they set out in their statements in the appellant's bundle at pages 102-120. The appellant's son has attempted to arrange care for her, but has been unable to do so.
22. At paragraph [23], the Judge addressed a credibility issue raised by the respondent:

During the course of cross-examination and during submissions, the respondent referred to paragraph 6 of the witness statement of Mrs Sneh Prabha Mehra, the appellant's neighbour (at page 115 of the appellant's bundle). Paragraph 6 of that statement refers to the appellant being an '*... outgoing and valued contributor to the welfare of our community ...*'. The respondent pointed out that this is in contrast to how the appellant was portrayed in the evidence. However, the description by Mrs Mehra describes how the appellant used to be. Mrs Mehra states that the appellant's health deteriorated due to difficulties with her back and knees.
23. At paragraph [24], the Judge said:

In my judgment, therefore, on the balance of probabilities and taking all of the evidence into account, I find that the appellant would face

very significant obstacles to her integration into India. I therefore find that the appellant does meet the requirements of paragraph 276ADE(1)(vi) of the Rules and accordingly she is entitled to leave to remain on the basis of her private life in the United Kingdom.

24. The Judge said at paragraph [25] that having concluded that she met the requirements of the Rules, he did not need to consider her appeal outside the Rules under Article 8.

The Grounds of Appeal to the Upper Tribunal

25. The Specialist Appeals Team applied for permission to appeal on behalf of the Secretary of State. It was acknowledged that although the FTJ had allowed the appeal under Rule 276ADE(1)(iv), it was clear that the intention was to allow the appeal under Rule 276ADE(1)(vi).
26. It was submitted that the FJT had not given adequate reasons as to why the claimant would face very significant obstacles to “*integration*” into the country she would be removed to, bearing in mind that she had resided there for 67 years and still (according to the evidence) had contact with neighbours and family members she could move nearer to, should she choose. The only reasons appeared to be that she had some ailments and required domestic assistance, which her sponsor had been unable to satisfactorily organise in India, so provided here instead. There was no complaint about the availability or efficacy of medical treatment or care available in India, and while family members might not be able to provide care in person, no consideration had been given to other options available, such as a placement in a private care home, either in the vicinity she had always resided, or if preferable to her, in an area closer to her relatives, thus enabling frequent contact.
27. It was submitted that the finding that the claimant would face very significant obstacles to her re-integration into the country where she had resided for 67 years had been inadequately reasoned, so as to amount to an error of law.

The Reasons for the Initial Refusal of Permission

28. Permission to appeal was initially refused by First-tier Tribunal Judge Chowdhury, who said that the grounds misrepresented the health conditions of the claimant. The Secretary of State accepted that the claimant suffered from the extensive medical conditions documented in expert reports. The claimant was documented to be depressed and required a level of emotional as well as physical support. The dependence of the claimant for day-to-day living was conceded by the Secretary of State. He continued: “*The grounds contend that no consideration was given to the option of placing the appellant in a private care home. It was unclear whether the respondent argued this before the Judge. However, it is clear that the appellant has submitted evidence with regard to the availability of private care homes in India in their bundle.*”

The Reasons for the Eventual Grant of Permission

29. Following a renewed application for permission to appeal to the Upper Tribunal, permission to appeal was granted by Upper Tribunal Judge Bruce on 8 January 2022, for the following reasons:

Although no issue was taken with the medical evidence in this matter, nor with the evidence that the family had tried, and failed, to secure adequate private care for the claimant, it is arguable that the decision of the First-tier Tribunal failed to significantly engage with the nature of the test at paragraph 276ADE(1)(vi). The very significant obstacles test is directed at whether the individual concerned is able to recreate an Article 8 private life in the country to which they are being sent. If that was the Tribunal's conclusion here, it is arguable that there were a lack of reasons underpinning it.

The Hearing in the Upper Tribunal

30. At the hearing before us to determine whether an error of law was made out, Mr Avery submitted that the Judge had failed to analyse the Rule which he had purported to apply in paragraph [24]. He had not asked himself whether the claimant would be an outsider, as opposed to an insider, and he had not undertaken the broad evaluative assessment that was required, following **Kamara**.
31. Ms Sharma relied on the case opposing the appeal that he had put forward in his extensive Rule 24 response. He submitted that it was self-evident that the claimant's disability would affect her ability to integrate. He submitted that the Judge was entitled to find that there would be very significant obstacles to integration, having regard to the cognitive, mobility and capacity issues identified in the medical evidence, the lack of a support system in India, and the likelihood that there would be a further deterioration in her mental health.

Discussion and Conclusions

32. We consider that the complicating factor in this appeal is that the evidence adduced by the claimant before the First-tier Tribunal was primarily directed at establishing that the claimant qualified for leave to enter as an adult dependent relative under Appendix FM; and that it would be unjustifiably harsh, and hence, disproportionate to require her to return to India to make an entry clearance application in that capacity, given that she had over the preceding five years become increasingly dependent on her son and his family, and also her mental and physical condition had further deteriorated since she had last entered the UK in May 2015.
33. As a consequence, the dispute over whether the claimant met the requirements of Rule 276ADE(1)(vi) was framed by both parties as being a dispute over whether the claimant was likely to have access to a familial or social support network on return to India.

34. The Special Appeals Team has not challenged by way of appeal the Judge's summary at paragraph [8] of the position taken by the Secretary of State at the hearing on the application of Rule 276 ADE (1)(vi), and so we are persuaded that there was a common understanding between the parties that, absent practical support and companionship from family members or neighbours, the claimant would face very significant obstacles to integration, on account of her physical inability to leave the flat where she would be living alone, and also on account of her mental health problems. Although it was part of the respondent's case that the appellant would be familiar with life in India - and hence not an outsider and a stranger to the way of life - having lived there continuously for 67 years, this was not a standalone point, but was allied to the proposition that she was likely to be able to reconnect with the people from whom she had drawn support and emotional sustenance in the past, or that she would be likely to be able to forge new friendships.
35. We consider that it is tolerably clear from the Judge's findings that he rejected the Secretary of State's case that the claimant would be able to access support from extended family members in India, or that she would be able to access support from neighbours. The Judge also refuted, albeit obliquely, the argument that the appellant would be an insider on her return, at paragraph [23] of his decision. It is apparent that the Secretary of State sought to rely on a passage in the witness statement of a neighbour in which she referred to the claimant as being outgoing in order to challenge the credibility of the central thrust of the claimant's evidence on appeal which was that she had become lonely, isolated and depressed following the departure of Raman Tickoo in 2013, and that her social isolation was going to be worse on her putative return to India, as there had been a further deterioration in her mental and physical state. By rejecting the Secretary of State's case that the neighbour's evidence threw up a troubling inconsistency, the Judge signalled his acceptance of the claimant's evidence that on return she would be inward-looking, withdrawn and socially isolated. Thus, it was implicit that the claimant would not be able to recreate on return to India an adequate private life within a reasonable period of time or at all.
36. Accordingly, while we accept that the Judge's reasoning was very thin, on the particular facts of this case, and taking into account the way in which the dispute between the parties on the issue under Rule 276ADE(1)(vi) was framed, we are not ultimately persuaded that the Judge's line of reasoning was so inadequate as to constitute a material error of law.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. The Secretary of State's appeal to the Upper Tribunal is dismissed.

Signed Andrew Monson

Date 2 August 2022

Deputy Upper Tribunal Judge Monson