



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

Appeal Number: UI-2022-002211
IA/10591/2021; HU/54120/2021

THE IMMIGRATION ACTS

**Heard at Field House
On 16 September 2022**

**Decision & Reasons Promulgated
On 6 November 2022**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

BALWINDER KAUR

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Ahmed, instructed by Charles Simmons Immigration Solicitors

For the Respondent: Miss Nolan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Athwal promulgated on 28 March 2022, dismissing her appeal against the decision of the Secretary of State made on 19 July 2021 to refuse her human rights claim.
2. In summary, the appellant's claim is that removing her to India would be a breach of her right to respect for her private and family life. She has lived in the United Kingdom for a period of nineteen years and has a family life with her children resident in the United Kingdom, Mrs Kaur and Mr Sandhu,

and their children, the appellant's grandchildren. On this basis, and on the basis of her physical and mental ill-health and consequent infirmities that she is dependent on them and that she meets the requirements of paragraph 276ADE(1)(vi). It is also said that in addition, there are exceptional circumstances such that her removal to India would in any event be contrary to her rights under Article 8 of the Human Rights Convention.

3. The respondent did not accept her claims and refused the application.

The Appeal

4. The judge heard evidence from the appellant and Mrs Kaur. Witness statements, including from the appellant's son Mr Sandhu, were produced but he was not called to give evidence.

5. The judge directed herself as to the law at paragraphs [18] to [27] of the decision. She also directed herself as to the principles relevant where it is argued that family life exists between adults [28] and in respect of grandchildren [29]. The judge found that:-

- (i) the appellant had not shown she no longer has ties to India [33]; little weight was to be attached to the medical reports of Dr Burhan [42] or Dr Sachdeva-Mohan [43];
- (ii) little weight was to be attached to the social work report [46] given that it was largely formed by the findings of the doctors which had been impugned;
- (iii) there were grave concerns about the credibility of the witnesses as the mobility issues reported to the various experts was not consistent with the oral evidence and the witness's evidence was contradictory [48]; there were inconsistencies also as to whether the appellant was able to cook [50];
- (iv) the appellant had not shown she could not obtain medical care in India or support in obtaining it [53], nor had she established why she could not live in her brother's village until she formed a support network of her own [54]; and, it is unlikely there is a risk of suicide and self-harm [55];
- (v) there is a family life between the appellant and her partner [57] but not anything beyond the normal emotional ties with the children or grandchildren [58], [59]; that there were no exceptional circumstances that would prevent the appellant and her husband from continuing their family life in India [60] and that refusal for leave to remain would not result in unjustifiably harsh consequences for the appellant or her husband [61];
- (vi) applying Section 117B of the 2002 Act and adopting the balance sheet approach recommended in Hesham Ali (Iraq) v SSHD [2016]

UKSC 60, the public interest in maintaining effective immigration control outweighed the individual rights of the appellant.

6. The appellant sought permission to appeal on the grounds that the judge had erred;
 - (i) in her approach to paragraph 276ADE(vi) in that she had applied an elevated standard contrary to what was said in Parveen v SSHD [2018] EWCA Civ 932;
 - (ii) in assessing proportionality by wrongly stating that she must attach *significant* weight to the appellant's inability to speak English and in failing to take account of material matters, including the family life enjoyed between the appellant and her husband as well as the finding it would be hard for her to adapt to new circumstances in India and that in the context of proportionality assessment, she erred in not giving weight to the positive finding in family life notwithstanding the adverse conclusion under exceptional circumstances.
7. On 18 May 2022 the First-tier Tribunal granted permission to appeal on ground two only.
8. Mr Ahmed submitted that the error with respect to Section 117B(2) is material when combined with the other errors. In particular, the failure to give proper consideration and weight to the fact that the appellant's husband has a significant private life here as recognised by the Secretary of State's grant to remain on private life grounds. He submitted further that the reasoning with respect to Article 8 outside the Rules was inadequate for that basis in that the judge had not taken it into account nor had she reasoned properly why Article 8 outside the Rules was not met, the Hesham Ali balance sheet approach being undermined in a material way by the inappropriate reference to significant weight being attached to the lack of speaking English.
9. Miss Nolan submitted that the judge had, in a detailed and careful decision, given adequate and sustainable reasons for the conclusion. She submitted that any error with respect to Section 117B and the ability to speak English was not material.
10. In reply, Mr Ahmed submitted that the analysis was mistaken and that there is a realistic prospect were the decision to be taken again and the fact was taken properly into account with the appeal being allowed.
11. At the end of the hearing I announced that I was not satisfied the decision of the First-tier Tribunal involved the making of an error of law and I would dismiss it for the reasons which I now give.

Discussion

12. In a careful and detailed decision the judge set out in significant detail why she did not accept the evidence of the witnesses in a number of respects.

There is no challenge to those findings which include the findings noted above that the appellant had not lost ties to India and could re-establish herself there even though it might be difficult. In particular, the judge gave careful consideration to exceptional circumstances in respect of family life finding that that existed between the appellant and her partner [57] and considering specifically at [60] and [61] whether their family life would be prevented from continuing in India. She said:

“60. The only reason I have been provided with is that Mr Singh has been absent from the country for over 20 years and would not be able to integrate. Mr Singh gave no evidence about what he did when he lived in India. He works as a chef in the UK and there is no explanation why he could not find similar employment in India. They own a family home there that is still available to them. I accept that it may be in need of repair but there is no reason before me why that could not be done. Mr Singh gave evidence in Punjabi because that is the language he speaks more fluently. He has retained his culture, societal and religious ties.

61. I have considered the evidence as a whole and for the reasons set out above I do not find that a refusal of leave to remain will result in unjustifiably harsh consequences for the Appellant or Mr Singh.”

13. In that context, I do not consider that the judge’s analysis at paragraphs [46] to [51] involved the making of an error of law for the reasons set out below.
14. I accept that the judge did err in stating that she *must* attach significant weight to the appellant’s inability to speak English as the requirement is only that she attach weight to that. But that must be balanced against the fact that the appellants did not meet the requirements of the Immigration Rules and significantly the judge found that there were no exceptional circumstances as set out above. The judge’s analysis in terms of the balance sheet at paragraphs [49] to [51] must be seen in the context of the decision as a whole.
15. It is sufficiently clear that the judge bore in mind the findings she had made in respect of the husband and that there would not be unduly harsh circumstances requiring for them to live together in India and the judge was entitled to attach significant weight to the fact that the respondent needs to maintain effective immigration control when assessing the public interest in removal. In the context, where the judge has found, for sustainable reasons (and reasons which are not the subject of this appeal) that there would not be unjustifiably harsh consequences for the appellant on return to India where she has ties when she does not meet the requirements of the Immigration Rules but there has been any material failure to take into account relevant factors in assessing, when looking at the decision as a whole, the public interest.

16. Accordingly, for reasons set out above, I find that the decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Signed

Date 27 September 2022

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul