



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000289
First-tier Tribunal No:
HU/52842/2021 IA/07538/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 May 2023

Before

UPPER TRIBUNAL JUDGE LESLEY SMITH

Between

BHAVNA ASHWIN MEHTA
(NO ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Solomon, Counsel instructed by Aschfords Law

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

Heard at Field House on Friday 28 April 2023

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Higgins dated 24 November 2022 (“the Decision”) dismissing the Appellant’s appeal against the Respondent’s decision dated 9 June 2021, refusing her human rights claim.
2. The Appellant is a national of India. She seeks to remain in the UK with her adult children who are married with their own children and are now all British citizens. At the time of the hearing before Judge Higgins (September 2022), the Appellant was aged 65 years. She relies on Article 8 ECHR and in particular her medical conditions which she claims

present very significant obstacles to her return to India. She relies in that regard on paragraph 276ADE(1)(vi) of the Immigration Rules (“Paragraph 276ADE(1)(vi)”). Although the Appellant is unable to meet the Immigration Rules which govern entry as an adult dependent relative (“ADR Rules”), not least because she is already within the UK, she relies on those as also generally applicable to her case.

3. The Appellant has visited her adult children in the UK on a regular basis since 2002. Most recently, she arrived here on 7 November 2019 and was due to return to India on 30 April 2020 but was unable to do so due to the Covid-19 pandemic. Her leave was due to expire on 6 May 2020. However, that was extended as a result of the pandemic to 31 July 2020. The Appellant made the application to remain which led to the decision under appeal on 23 July 2020.
4. The Respondent did not accept that the Appellant enjoys family life with her adult children and their families and considered the case on the basis of the Appellant’s private life. She rejected the claim under Paragraph 276ADE(1)(vi). The Respondent pointed out that the Appellant had been treated for her medical conditions in India before coming to the UK and asserted that treatment would remain available on the Appellant’s return. The Respondent concluded that removal would not disproportionately interfere with the Appellant’s right to respect of her private life.
5. The Judge considered the Appellant’s case under Paragraph 276ADE(1)(vi) of the Rules but also made findings in relation to the applicability of the ADR Rules (in particular paragraphs E-ECDR.2.4 and 2.5 of Appendix FM to the Immigration Rules). Having considered the evidence about the Appellant’s medical conditions in depth, the Judge concluded that the ADR Rules could not be satisfied. He also found that Paragraph 276ADE(1)(vi) was not met. Outside the Immigration Rules, the Judge accepted that the Appellant enjoys family life with her adult children and their families. He found that the Appellant’s private life was mainly with her son and daughter-in-law and their family, their friends and neighbours and extended family members. The Judge accepted that it would be in the best interests of the Appellant’s grandchildren that the status quo be maintained. However, having balanced the interference with the Appellant’s private and family life against the public interest and taking into account those best interests as a primary consideration, the Judge concluded that removal would not represent a disproportionate interference. He therefore dismissed the appeal.
6. The first five paragraphs of the Appellant’s grounds focus on the Judge’s treatment of the evidence about the Appellant’s health and assert that the Judge has ignored evidence, made findings not open to him and reached conclusions which are irrational. Outside the Immigration Rules, it is said that the Judge ignored the regular travel of the Appellant to the UK “which is relevant to a proper assessment of proportionality”. It is also asserted that the Judge has materially misdirected himself in relation to the proper application of section 117B Nationality, Immigration and Asylum Act 2002 (“Section 117B”) ([6] of the grounds). At [7] of the

grounds, the Appellant takes issue with the Judge's application of the ADR Rules, asserting that the Judge has failed adequately to consider the policy behind those rules. Finally, the Appellant asserts that "the judge's assessment of proportionality is materially impugned since the Tribunal fails to carry out a proper balancing exercise taking account of all material factors for the appellant" ([8] of the grounds).

7. Permission to appeal was refused by First-tier Tribunal Judge Mills on 9 January 2023 in the following terms (so far as relevant):

"...3. I find the challenge fails to disclose any errors of law that could have made a difference to the outcome of the appeal and, ultimately, amounts to a simple disagreement with the Judge's well-reasoned and entirely rational conclusions.

4. The evidence which the Judge is said to have overlooked, specifically an updated GP letter, if anything undermines the appellant's case given that it shows that the appellant is no longer receiving medication for her mental health, suggesting an improvement of her situation as compared to the earlier medical evidence considered by the Judge. The Judge gives sound reasons for concluding that the evidence provided is insufficient to show that the appellant needs long-term personal care and that, in any case, any support she might need would be available in India through paid carers for which her UK based family would have no difficulty in funding. Likewise, I find that the Judge's proportionality consideration is legally sound."

8. Permission to appeal was granted by Upper Tribunal Judge Lindsley on 6 March 2023. Having set out at [3] of her decision the grounds as summarised above, she gave her reasons for granting permission to appeal as follows:

"..4. It is arguable that on the evidence before the First-tier Tribunal the appellant suffered from depression caused by being separated from or being afraid of being separated from her children who both live in the UK. It is arguable that the First-tier Tribunal Judge did not take this into account when finding that the appellant could be adequately treated in India as it is arguably not a matter of adequate carers of medical treatment in that country but of a reactive medical condition (depression and anxiety) to separation from her family in an elderly person. All grounds may be argued."

9. The matter comes before me to decide whether the Decision does contain an error of law. If I conclude that it does, I must then decide whether the Decision should be set aside in consequence. If the Decision is set aside, I must then either re-make the decision in this Tribunal or remit the appeal to the First-tier Tribunal for re-determination.

10. I had before me a core bundle of documents relating to the appeal, the Appellant's bundle ([AB/xx]), supplementary bundle ([ABS/xx]) and second supplementary bundle ([ABS2/xx]) and Respondent's bundle ([RB/xx]) before the First-tier Tribunal together with the Appellant's skeleton argument before the First-tier Tribunal.

11. Having heard submissions from Mr Solomon and Mr Clarke, I indicated that I would reserve my decision and provide that in writing which I now turn to do.

THE DECISION

12. As Mr Solomon submitted, the Judge was not satisfied that the Appellant required care for her medical conditions or that such care would not be available in India. The Judge therefore rejected the Appellant's case that she should succeed under Paragraph 276ADE(1)(vi) taking into account the ADR Rules.
13. I begin by looking at the Judge's reasoning in this regard. At [18] of the Decision, the Judge noted the Appellant's own evidence that "[t]here are residential homes in India, and living in a residential home, the Appellant acknowledged, would be a possibility". The Judge recorded the Appellant's evidence that "she did not like the idea and had preferred to be in her own home and not reliant on anyone when she had been there".
14. The Judge then recorded at [25] of the Decision the evidence of the Appellant's adult children who "had looked at a few residential homes" but had done so on behalf of an aunt and not the Appellant. The Judge also there noted the evidence of the Appellant's daughter that "[t]he bigger issue in the Appellant's case is anyway the loneliness she would suffer were she in India and the effect of that on her mental health". The Appellant's daughter said that "[w]hat the Appellant needs is emotional support and a residential home could not provide that". I pause to observe that this paragraph indicates that the Judge was well aware of the way in which the Appellant put her case in relation to the need for emotional support.
15. The Judge thereafter set out the issues and concluded that section at [28] of the Decision as follows:

"The tribunal's task is to strike a fair balance between the public interest and the Appellant's private and family life. When striking that balance the tribunal should have regard to the policy objectives embodied in paragraph 276ADE(1) and paragraphs E-ECDR.2.4 and 2.5 of Appendix FM of the Rules and conclude that the Appellant's removal would not be unlawful under section 6 of the Human Rights Act 1998".

Again, I pause to note that the Judge there directed himself to the exercise which he was required to carry out and had regard to both Paragraph 276ADE(1)(vi) and the ADR Rules.

16. The Judge then proceeded to analyse the medical evidence in some depth. He began by setting out the treatment which the Appellant received in India before coming to the UK. That had some relevance to the issue of availability of care on return. The Judge there made reference to evidence of Dr Choprade, the Appellant's GP in India. Dr

Choprade's initial report (in the form of a letter) is dated 12 October 2020 and is to be found at [RB/C14]. There is a further letter to which I will need to return dated 26 August 2022 at [ABS2/1].

17. The Judge then turned to consider the treatment which the Appellant had received in the UK (privately paying) since April 2020. The Judge noted at [31] of the Decision that he had the Appellant's medical notes up to November 2021. At that time, the Appellant's "active problems ... were listed as type II diabetes, asthma and a urinary tract infection". Those medical records are at [RB/C15-C20]. They are replicated at [AB/18-35] accompanied by a letter from the medical centre dated 12 November 2021 at [AB/17].
18. The Judge said at [34] of the Decision that he had not been provided with GP records in the nine months between November 2021 and the hearing in September 2022. I will need to return to that point as it is accepted by the Respondent that the Judge did not make mention of a further letter from the medical centre dated 14 June 2022 with an update to the medical records as at that date which appears at [ABS2/2-3]. The Judge summarises the content of the GP records coupled with the witness and other evidence in that regard at [31] to [34] of the Decision.
19. The Appellant also referred to evidence from a Dr Piper. Dr Piper is "a Registered and Chartered Counselling Psychologist". He produced an initial report dated 1 September 2020 (following one video interview with the Appellant and her son and daughter-in-law in August 2020) ([RB/C1-C13]). The content of that report is summarised by the Judge at [9] of the Decision. Dr Piper's supplementary report dated 26 October 2021 following a video interview on 23 October 2021 (again with the Appellant and her son and daughter-in-law) is at [AB/3-16]. The Judge sets out what that report shows at [13] of the Decision.
20. Finally, the Appellant relied on a report of an independent social worker, Mr Laurence Chester dated 13 March 2022 which is at [ABS/10-24]. That report purported to deal with the Appellant's need for care following one video interview with the Appellant and her son and daughter-in-law. The Judge summarises that report and the issues with which Mr Chester was asked to deal at [14] and [15] of the Decision.
21. Given the centrality of the Appellant's medical condition to her case and to the Appellant's grounds, it is necessary to set out in full the findings which the Judge made about the medical evidence and other evidence about the Appellant's medical conditions against the issues which arose for his consideration. Those appear at [35] to [43] of the Decision as follows:

"35. The task of assessing whether the Appellant was capable of caring for herself was entrusted by the Appellant's solicitors to Mr Chester; and Mr Chester concluded she was dependent on Shashit and Poonam for her day to day physical needs. But I have concerns about that conclusion. Paragraph 34 of Appendix FM-SE of the Rules provides that evidence that a

person requires long term personal care as a result of age, illness or disability must be from a doctor or other health professional. Paragraph 34 is not directly in point because the Appellant made an application for leave to remain and the evidential requirement in paragraph 34 only governs applications by adult dependent relatives for entry clearance. Paragraph 34 serves as a useful reminder, nonetheless, that whether a person requires long term personal care as a result of age, illness or disability is a medical assessment which should be undertaken by a doctor or other appropriate health professional. The first of my concerns is that Mr Chester is a social worker, not a doctor or health professional. But I also have concerns about the manner in which Mr Chester's assessment was effected. He did not meet the Appellant face to face and have an opportunity to see for himself what she was, or was not capable of doing. He only spoke to her via a video link. And although he was provided with a copy of Dr Piper's updated report in which the Appellant's mental well-being had been addressed, it does not appear Mr Chester had been provided with copies of Dr Choprade's letter or the GP records to which I referred at paragraph 31 which cast light on the extent of the Appellant's physical limitations. Dr Piper's updated report apart, the sole sources of information on which Mr Chester founded his conclusion that the Appellant was dependent on her son and daughter-in-law for her day to day physical needs were the Appellant and Poonam, and that causes me concern because of the lack of candour the Appellant, Poonam and Shashit displayed in their dealings with the Respondent and with the tribunal.

- (1) All three of them spoke in the statements they made in support of the Appellant's application for leave to remain of their reluctance to rely on maids because of the risks of exploitation to which doing so might have exposed the Appellant. Only when each and [sic] was asked in cross-examination whether the Appellant had had a maid in Mumbai had they acknowledged she did. The Appellant, it transpired, had employed a maid during each of the six month periods she spent in India and the maids she employed had come to her flat every morning. Neither the Appellant nor Shashit or Poonam said explicitly in the statements they made in December 2020 the Appellant had not had a maid in India. The clear implication from their statements was however that she had not.
- (2) Shashit and Poonam told me when they gave their evidence they left the Appellant in the UK when they went to India with their daughters in July 2022. But they did so only in response to direct questions from Mr Dingley. Neither of them had mentioned in the witness statements they made on 11 June 2022 that it was their intention to leave the Appellant in the care of third parties when they went to India in seven weeks' time ; and when the Appellant was asked by Mr Dingley if Bankita or Shashit had been back to India in the last three years, she told me they had not, which was untrue.

So while I do not doubt Mr Chester's independence, his assessment of the extent to which the Appellant is capable of meeting her day to day physical needs herself is not one to which I feel able to attach significant weight. More informative about the extent of the Appellant's ability to care for herself than Mr Chester's assessment are Dr Choprade's letter, the subsequent GP records and the nature of the oversight Shashit and Poonam considered appropriate when they went to India in July 2022.

36. The Appellant's asthma, her type II diabetes and her hyperthyroidism have all so far, I find, been managed effectively. She is prescribed medication for high blood pressure and raised cholesterol. She experiences some pain from varicose veins. A recurrent urinary tract infection from which she suffered in 2021 was treated with antibiotics. Osteoarthritis in

her knees and mechanical lower back pain restrict the length of time she can spend unaided and the distances she can walk. Shashit and Poonam arranged for friends to pop in and see her during the 26 days they were in India. For much of that period, if not most of it, the Appellant was however unattended and fended for herself. The restrictions on her mobility from which she suffers are likely, I accept, to limit the extent to which she could do her own shopping, clean, or cook for herself were she back in India. But there is no reason to suppose she would be unable to meet her day to day physical needs were she provided with support equivalent to the support she enjoyed during Shashit's and Poonam's recent absence from the UK, and the Appellant has not satisfied me, as things stand, that she requires long term personal care as a result of her age, her medical conditions or her impaired mobility.

37. Concerned as I accept Shashit and Poonam are about the current limitations on the Appellant's ability to care for herself, it was plain to me their greater worry is the impact on her mental wellbeing of the loneliness and feelings of isolation she is likely to experience in India. When Dr Piper interviewed her in August 2020, the Appellant was not depressed; indeed she was happy. When he next spoke to her in October 2021, her application for leave to remain had been refused and she was exhibiting symptoms of moderate anxiety and depression which Dr Piper attributed to her fear that she might be required to return to Mumbai. The Appellant had presented with signs of depression when she saw Dr Choprade in September 2019 and on the basis of the history Dr Piper elicited from her she appeared to him to be vulnerable to depressive episodes when she is alone and isolated. Dr Piper believed she would descend into depression if she returned to India. Her depression would impact on her ability to manage her physical health effectively. She would no longer be able to take care of herself and her quality of life would be materially diminished.

38. Mr Dingley suggested I attach less weight to Dr Piper's opinions than would have been appropriate had he been a psychiatrist rather than a psychologist, but I reject that suggestion. Were there evidence that the Appellant suffers from, or is at risk of developing a severe mental disorder such as psychosis, I might have been more sympathetic to it. As it is, the conditions from which it is said the Appellant suffers, and would suffer on return to India, are anxiety and depression. Dr Piper is a chartered psychologist. He has, I accept, considerable experience of assessing and treating anxiety disorders and depression, and I am satisfied Dr Piper is competent to express the views which he has.

39. Research with which Mr Chester was familiar had highlighted the inadequacy of geriatric care and of the availability of treatments for depression more generally in India. I think it likely, however, the research to which Mr Chester referred had been in respect of public health provision. The medical treatments from which the Appellant benefited before she left India in 2019 were all procured privately. Were the Appellant to suffer the depressive episode Dr Piper believed she well might, there is no reason to suppose treatments she required would not be available privately in a city such as Mumbai, and Shashit told me cost would not be an issue.

40. Much the same may be said of maids, housekeepers, carers and residential homes. The Appellant employed a maid during each of the periods of six months she spent in India prior to November 2019. Shashit and Poonam acknowledged in the statements they provided in support of her application for leave to remain that carers and housekeepers could be hired, but they had preferred not to hire any for fear that the carer or housekeeper would take advantage of the Appellant's vulnerability. And the Appellant herself accepted when she gave her oral evidence it would have

been possible for her to have lived in a residential home when she had been in Mumbai, but she had wanted to remain in her own home and not be reliant on others.

41. The Appellant is, I accept, financially dependent on Shashit.

42. Shashit may not reasonably be expected, I accept, to relocate to India in order to look after his mother there, given the strength of his, his wife Poonam's and their 14 year old daughter's connection with the UK.

43. Shashit and Poonam supported the Appellant emotionally as far as they were able when she was in India and they would, I am sure, do the same again were she required to return there. The reminders to the Appellant to take her medication and to eat rather than skip a meal Shashit and Poonam given her now would be conveyed to her in Mumbai by telephone call or message just as they were when the Appellant lived there prior to November 2019".

22. The Judge then moved on to consider the legal issues against the backdrop of those evidential findings. He accepted that the Appellant enjoys family life with her son, daughter-in-law and their children due to her financial dependence on them and the emotional support they provide ([46]). The Judge noted the limited private life which the Appellant enjoys which is restricted to her life with those family members, their friends and extended family ([47]). He accepted that there would be interference with that family and private life.
23. The Judge had regard to Section 117B and the public interest in the maintenance of effective immigration controls, and the desirability of those coming to the UK to live to be able to speak English and be financially independent in order better to integrate ([49]). The Judge found that the Appellant's immigration status had been precarious since her arrival on this occasion and when she had visited in the past. He found that "little weight" could therefore be afforded to the Appellant's private life ([53]). He noted however that there was no restriction within Section 117B to the weight to be given to the Appellant's family life. Although there is reference to the Appellant not speaking English, the Judge accepted at [54] of the Decision that there is no requirement for adult dependent relatives within the ADR Rules to speak English and he did not treat that as a negative factor.
24. Considering the Appellant's case within the Rules, the Judge began with Paragraph 276ADE(1)(vi). He directed himself in accordance with the judgment in Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813 ([51]). He there went on to make the following findings:
- "The Appellant is familiar with the way of life and cultural norms in Mumbai having resided there until 2019. It had been her intention to return there in April 2020 and she would have done so but for the pandemic. The restrictions on her mobility are likely, I have found (at paragraph 36 above), to limit the extent to which she could do her own shopping, clean or cook for herself; and the loneliness she would experience were she to resume her former life in Mumbai might well cause a worsening of the depression which was assessed by Dr Piper as moderate when he saw her in October 2021. But there is no reason to suppose she would be unable to meet her day to day physical needs were she provided with support equivalent to the support she enjoyed during Shashit's and Poonam's recent absence in India;

she would be supported by her children in the UK to the same extent that she was supported by them before she left; and with assistance from Shashit and Dr Choprade, should that prove necessary, the Appellant would have access to appropriate medication and therapies for her depression. Readjusting to life in Mumbai in her present circumstances will undoubtedly be a challenge. To be eligible for a grant of leave to remain under paragraph 276ADE however, the obstacles to the Appellant's integration have to be 'very significant', which sets the bar high, and the Appellant has not satisfied me the eligibility requirement to that effect in paragraph 276ADE(1)(vi) is currently met."

25. When considering the ADR Rules, the Judge directed himself in accordance with the judgment in Mobeen v Secretary of State for the Home Department [2021] EWCA Civ 886. He noted by reference to the extract cited at [55] of the Decision that those from overseas and settled in the UK were "not entitled to expect that they will later be able to bring their parents to join them". He also there referred to the "policy embodied" in the ADR Rules and, again by reference to the judgment in Mobeen that "[t]he Government has decided as a matter of considered policy that that right should generally be restricted to cases satisfying the strict criteria set out in [the ADR Rules]".
26. The Judge went on to direct himself to the ADR Rules and that it was "[o]nly if the adult relative in question is in need of long-term personal care to perform everyday tasks and the requisite level of care is not available in the country of their origin, or would be unaffordable, should they generally be permitted to join (or in the Appellant's case remain with) a family member in this country".
27. The Judge then made the following findings in the Appellant's case:

"56. The test embodied in paragraphs E-ECDR.2.4 and 2.5 has been judicially described as 'rigorous and demanding' and the Appellant has not satisfied me it is met in her case. She does not currently, I have found, require long-term personal care as a result of age, illness or disability; the consequences of her physical ill-health and of the loneliness she is likely to experience in India could be alleviated, in part at least, by provision of a carer or, in the final resort, being cared for in a residential home; and appropriate treatments would be available were the Appellant to suffer the depression Dr Piper fears she may. Dr Piper has made the point that family members may often be in a position to provide emotional support which a paid carer would be unable to offer, but I am satisfied 'the level of care' for the purposes of paragraph E-ECDR.2.5 the Appellant would require is available commercially."
28. The Judge also directed himself to the need to have regard to the best interests of the minor children who would be affected by the Appellant's removal ([50]). He accepted that the bonds between the Appellant and those minor children would be "diminished" by remote contact. He noted that Mr Chester considered that the Appellant's removal would have "a significant negative impact on both children's emotional well-being" ([52]). He there accepted that the best interests of those children would be best served by maintaining the status quo. However, he went on to find at [57] of the Decision that he was "not ...satisfied the degree of emotional harm each would be at risk of suffering, though significant, would be

substantial". The Judge noted the closeness of the relationship which the Appellant was said to enjoy in particular with the younger child (aged two). However, he also noted that the children would continue to have the emotional support of both parents. He also noted that the older child (aged fourteen) was described by Mr Chester as a "bright young woman" and found that there was "no reason to suppose she is other than reasonably robust emotionally". Given her age, she would also be in a better position to maintain the relationship with her grandmother remotely by virtual means.

29. Balancing the factors for the Appellant which the Judge had found against the public interest to which he also had regard, the Judge concluded that "[t]he balance ...comes down on the side of the public interest in the maintenance of effective immigration controls" ([57]). He therefore dismissed the appeal.

DISCUSSION

30. I deal with the grounds in the order of Mr Solomon's oral submissions which were by reference to the paragraphs of the grounds as pleaded.

Paragraph [1]: UK GP letter and records

31. It is common ground that the Judge did not have regard to updated medical records from November 2021 onwards (see [18] above). Mr Clarke submitted however that the GP letter at [ABS2/2-3] which the Judge failed to consider makes no difference and that the error in that regard is not material.
32. The letter at [ABS2/2-3] is dated 14 June 2022. It is from the GP treating the Appellant in the UK. It confirms the Appellant's physical ailments which were all accepted by the Judge. It lists in that regard "a comprehensive list of her active medications". None of that advances the Appellant's case which is well understood from the earlier records.
33. The only distinction between this letter and the earlier evidence relates to the Appellant's mental health. The letter in this regard states as follows:

"She was diagnosed with low mood in October 2021 and started on Sertraline. The Sertraline is no longer being prescribed at present and she is taking a holistic approach to treat her low mood".

Sertraline (one 50 mg tablet per day for 28 days) is shown as prescribed on 29 October 2021. There is no record of any repeat prescription in that regard. That therefore does not advance the Appellant's case beyond what is shown in the GP records at [AB/18].

34. I therefore reject Mr Solomon's submission that this was important because it confirms the Appellant's low mood as at November 2021. The Judge referred at [37] of the Decision to Dr Piper's evidence as to the Appellant's mental health in October 2021. This evidence does not

improve the Appellant's case in this regard; to an extent, it undermines it as she was only prescribed Sertraline, on the evidence, for a very short period.

Paragraph [2]: Evidence from Indian GP

35. In similar vein, the Appellant relies on the Judge's failure to have regard to a further letter from Dr Choprade, the Appellant's GP in India, at [ABS2/1] (see [17] above).
36. The letter at [ABS2/1] in large part repeats what is said in the earlier letter concerning the Appellant's physical ailments. That is unsurprising since Dr Choprade has not seen the Appellant since September 2019.
37. Mr Solomons relied in particular on the final paragraph of the letter which reads as follows:

"Mrs Mehta has shown some symptoms of depression when I saw her on 15th September 2019. I believe that this is due to her living on her own in India. Both her children are settled overseas and looking at her condition I have advised her that she should consider living with her children permanently **because adequate care is not available in India including from an elderly care home and paid carer. She requires care and emotional support from her children due to her mental health condition.**"
38. I begin by noting that only the part of the above citation which I have emboldened is in fact new. The remainder merely repeats what is said in the earlier letter.
39. Again, however, I accept Mr Clarke's submission that the Judge's failure to refer to this letter makes no difference to the Appellant's case. As was pointed out, and as Dr Choprade himself says, he has not seen the Appellant since September 2019. He says in his later letter that he has been in regular contact with the Appellant's son but has not apparently had any communication with the Appellant to assess her present mental state.
40. Furthermore, the Judge accepted Dr Piper's evidence as to the Appellant's mental state and need for support which on any view was more persuasive since Dr Piper had seen the Appellant more recently (see [38] of the Decision).
41. Insofar as it is suggested that the Judge should have taken into account what Dr Choprade says about the adequacy of care in India, again the Judge had more detailed evidence in that regard, including from Mr Chester on behalf of the Appellant (see [39] of the Decision). True it is that the Judge rejected that evidence on the basis that it was concerned with public sector provision. However, the Judge was not satisfied on the evidence that the Appellant needed such care (and Dr Choprade could not have assisted with what was needed as he had not seen the Appellant for several years). Moreover, the Judge had evidence that the Appellant was able to engage maids in the past ([35(1)], the Appellant herself accepted that there were residential homes in India ([18]) and the Appellant's son and daughter-in-law gave evidence that they had researched residential homes albeit for an aunt ([15]).

42. I will need to return to the evidence about the availability of care in India below. However, in the context of all the evidence which the Judge had about this and given that Dr Choprade's bare assertion is based only on what he was told about the Appellant's needs in 2022 as opposed to his own assessment, the Judge's failure to take account of this evidence on that issue is immaterial. It could not have made any difference to the Judge's findings.

Paragraph [3]: Irrationality of finding in relation to the need for care

43. The Appellant asserts that the finding at [36] of the Decision that the Appellant would not be able to do her own shopping, clean or cook for herself (cited at [21] above) is inconsistent with the finding at [51] of the Decision that she can meet her own day-to-day physical needs (see citation at [24] above). The Appellant asserts that the latter finding is also irrational.

44. There is no error in this regard. The finding that the Appellant could not carry out what may best be described as household chores is different from her ability to care for her everyday needs of a personal nature. The findings are not irrational. The Judge was entitled to find as he did on the evidence that the Appellant was able to look after herself in terms of personal everyday tasks and could deal with household chores with the sort of assistance she had when her son and daughter-in-law were in India. The Judge gave adequate reasons for those findings at [36] of the Decision.

45. That brings me on to the assertion in the same paragraph that the Judge "erroneously conflates the requirements of E-ECDR.2.4 and E-ECDR.2.5".

46. There is no error in this regard. The Judge sets out at [27] the two limbs of the ADR Rules. There are two issues. The first concerns the individual's needs and whether the individual requires "long term personal care to perform everyday tasks". That is what the Judge was considering at [36] of the Decision. The Judge found at [36] of the Decision that the Appellant's need for support was in relation to household chores but did not need assistance to meet such physical needs provided she had the sort of support which was available to her when her son and daughter-in-law were in India for almost a month and she had to fend for herself.

47. The second limb depends on the finding in relation to the first and concerns the availability of such support as is necessary. Having considered at [36] of the Decision what support the Appellant needed physically as well as (at [38] of the Decision) the support which the Appellant might need due to her mental health, the Judge went on to set out at [39] to [43] of the Decision what support would be available and accessible to the Appellant on return.

48. There is therefore no conflation of the two limbs. The findings in relation to the second limb depend on findings in relation to the first and to that extent the findings in relation to one limb overlap with the other. That does not disclose any error of law. The Judge was clearly aware that there were two limbs to the ADR Rules and he properly considered them both.

49. Insofar as the Appellant also argues that the conflation of those issues impacts on the Judge's assessment under Paragraph 276ADE(1) and outside the Immigration Rules, there is no error. Those issues involve different tests. The first concerns whether there are very significant obstacles to integration on return which requires an assessment of all factors holistically. The second is concerned with the degree of interference with an individual's private and family life and to that extent also requires consideration of all factors taken together.

Paragraph [4]: Mr Chester's report

50. The Appellant asserts that the Judge's finding that the lack of availability of care as set out in Mr Chester's report was limited to public sector provision is speculative and was for that reason not open to the Judge (see [39] of the Decision).
51. The evidence to which reference is there made is at [ABS/18]. Mr Chester says that, based on his "recent research", there is material which "supports the family's concerns about local services for Mrs Mehta that geriatric care may be insufficient". He cites one sentence from a paper published in January 2021 entitled "Importance of Geriatric Health Care in India during Covid 19 pandemic". He goes on to say that he is "also concerned by the findings of recent research in regard to public resources to support people with depression in India". He again relies on one sentence taken from a review carried out between 1997 and 2016.
52. As Mr Chester did not annex the full articles on which he has placed reliance and Mr Solomon did not produce them, I have had regard to those articles as they appear on the internet (from where no doubt Mr Chester obtained them since he does not profess to have any specialist knowledge of the position in India). It is worth noting that Mr Chester does not explain the methodology or ambit of his "research".
53. The first paper is written by three individuals from Tripura Medical College and Dr BRAM Teaching Hospital, Agartala, India. There is no information regarding their status and whether they are students or lecturers nor any information as to the extent of their own research and on what their opinion is based. The introduction recognises that India "has developed tremendously in providing health care delivery" but "not sufficient enough to fulfil the need of its huge population". The availability of care is also considered in the context of the pandemic as the title makes clear. Although the paper speaks in general terms about the population needs, the majority of the paper dealing with availability of care refers to programmes of care in the public sector. The sentence cited by Mr Chester appears at the start of that section but fails to record that the specific programmes which are referred to thereafter are public sector programmes. There is no recognition of that fact within Mr Chester's report. The quotation relied upon is at best selective. Moreover, having regard to the totality of the paper, the Judge's assessment that it is concerned with public sector provision is far from speculative.
54. The second citation is taken from a World Health Organization fact sheet dated 12 December 2017. The relevance of that to an appeal heard in

2022 is at the very least questionable. Mr Chester also fails to mention in his report that the fact sheet concerns the issue of mental health in the world more generally and not in India specifically. What is there said applies equally to the UK. The citation therefore gives a misleading impression.

55. Reference is also made in the grounds to one article at [AB/108-109] which is dated 9 May 2018. That is from the Hindustan Times entitled “We can no longer ignore the rise in elder abuse cases”. That concerns abuse and neglect within the home by family and non-family members. Its relevance is unclear, particularly in circumstances where the Appellant was engaging a maid to look after her before she came to the UK (see [35(1)] of the Decision). It is not asserted that she was mistreated by those she employed.
56. Although not mentioned in the pleaded grounds, Mr Solomon also relied on the document at [AB/106-107]. That is an article in the “Economic Times” entitled “No country for the old: One in two elderly people in India are lonely”. It refers to a survey carried out in 2017. It makes the general point that elderly persons in India particularly in urban areas may suffer from loneliness and that many require psychological treatment. It does not say that such treatment is not available. It does not take into account as did this Judge that a person in that situation may employ someone to care for them or may live in a residential home as the Appellant accepted she could. The article has little if any evidential relevance to this case and in any event is somewhat dated.
57. Although the Appellant did not apparently rely on it before Judge Higgins, the grounds also cite the Respondent’s Country Policy and Information Note in relation to medical and healthcare provision in India dated 2020 (“the CPIN”). It is said that the Respondent produced this at the hearing before Judge Higgins. It does not appear as an item in the Respondent’s bundle but Mr Clarke confirmed that it had been produced. However, I am unable to access it since the CPIN has been superseded by a 2023 version. I am therefore unable to confirm whether what is said in the grounds is an accurate summary of the CPIN in 2020. Mr Clarke submitted that the 2020 CPIN drew a distinction between public and private healthcare. He also pointed out that the Judge’s primary conclusion was that the Appellant would be unlikely to need specialist care in a home and that she would be able to afford private care in any event. The Judge dealt with this at [39] and [40] of the Decision. Of particular note is the Appellant’s own admission that she would be able to live in a residential home in Mumbai but preferred not to do so.

Paragraph [5]: Mental health and emotional needs

58. This would appear to be the ground which gave rise to the grant of permission (see citation at [9] above).
59. The Appellant asserts that the Judge failed to take account of the emotional needs of the Appellant. Reliance is placed on the judgment in BritCits v Secretary of State for the Home Department [2017] EWCA Civ 368 (“BritCits”) and to the ADR Rules being “capable of embracing

emotional and psychological requirements” ([59] of the judgment). Whilst I have no difficulty with that submission in general terms it is worth noting that the words which follow those in the judgment are that the requirements should be “verified by expert medical evidence”.

60. In relation to the application of those principles to the Appellant’s case, the Judge considered the evidence of Dr Piper at [38] of the Decision. He accepted based on that evidence that the Appellant might suffer anxiety and depression on return to India. He therefore needed to consider what care would be available in that regard.
61. There is no challenge to the Judge’s finding that medical treatment would be available nor could there be. The point which is made at [5] of the grounds is that the Judge ignored the issue from “the perspective of the Appellant”. However, the ADR Rules are not about personal preference. They concern the availability and affordability of care. True it is that there has to be a person “who can reasonably provide” the necessary care. However, what is reasonable is objective and not based on what the Appellant might prefer.
62. Further, the Judge does take account of the Appellant’s emotional needs. She would be in the same situation in this regard as she was prior to coming to the UK in 2019. As the Judge noted at [43] of the Decision, her son and daughter-in-law supported her emotionally when she was in India in the past and would do so again.
63. The Judge also considered the impact of removal on the Appellant (and her family in the UK) emotionally in the context of Paragraph 276ADE(1) (vi) and outside the Immigration Rules. As Mr Clarke noted in general terms in the course of his submissions, the Appellant’s grounds involve “a lot of island hopping” between points and it is necessary to look at the evidence and findings as a whole.

Paragraph [6]: Weight given to private life

64. The Appellant suggests that the Judge has ignored the amount of time which the Appellant spent in the UK previously. That is clearly not the case (see [3] of the Decision).
65. It is said that the Judge has failed to take this into account when assessing the interference with the Appellant’s private life. That assertion is inconsistent with what is said at [53] of the Decision where the Judge refers to “all her previous visits”. However, as the Judge there notes, then and now the Appellant’s immigration status was always precarious.
66. That then leads on to the other point made at [6] of the grounds that the Judge should not have given only “little weight” to the Appellant’s private life.
67. The starting point of course is that the Judge was bound to have regard to Section 117B(4) which provides that “little weight” should be given to a private life formed whilst a person’s status is precarious. The Judge’s self-direction in that regard at [53] of the Decision cannot be open to criticism. The Judge said that he was “required” to give the Appellant’s private life little weight but the assertion that this is inconsistent with him only having

to “have regard” to that section is a matter of semantics. The relevant sub-section is in mandatory terms (“should be given”) and the Judge is bound to have regard to that sub-section by Section 117A.

68. Whilst I accept that, notwithstanding Section 117B(4), “little weight” does not mean “no weight” the question of what weight should be given depends on the evidence which a Judge has before him or her. The Judge’s findings in that regard are at [47] of the Decision. The Appellant’s private life is limited to her relationship with her family (which is also her family life), with their “neighbours and acquaintances” and “extended family members”.
69. The Judge has clearly had regard to the extent of interference which removal would cause to the Appellant’s private life. Moreover, as the Judge recorded at [53] of the Decision, there was “no restriction” on the weight which he could place on interference with the Appellant’s family life.

Paragraph [7]: Policy of the ADR Rules

70. It is suggested by reference to the judgment in BritCits that the policy imperative underlying the ADR Rules is to reduce the burden on the taxpayer and that no account is taken of the fact that the Appellant’s son and daughter-in-law are able to pay (and have been paying) for private medical treatment for her since her arrival in 2019.
71. The Appellant’s grounds suggest that the only policy imperative is to avoid a burden on public health resource. That submission is unsustainable having regard to the whole of [58] of the judgment which reads as follows:

“First, the policy intended to be implemented by the new ADR Rules, as appears from the evidence, the new ADR Rules themselves and the Guidance, and confirmed in the oral submissions of Mr Neil Sheldon, counsel for the SoS, is clear enough. It is twofold: firstly, to reduce the burden on the taxpayer for the provision of health and social care services to those ADRs whose needs can reasonably and adequately be met in their home country; and, **secondly, to ensure that those ADRs whose needs can only be reasonably and adequately met in the UK are granted fully settled status and full access to the NHS and social care provided by local authorities. The latter is intended to avoid disparity between ADRs depending on their wealth and to avoid precariousness of status occasioned by changes in the financial circumstances of ADRs once settled here.**”

[my emphasis]

72. That the burden on public health resources is not the only policy imperative is further underlined by the fact that the ADR Rules themselves preclude recourse to public funds. Moreover, the situation of this Appellant and her family members is precisely that referred to by the appellants in BritCits as a “Catch 22” where those who are able to pay privately for treatment in the UK will find it difficult to show that treatment would be unaffordable in the appellant’s home country.

73. There was for that reason nothing which required the Judge to have regard to the family's ability to pay privately for the Appellant's care in the UK. The Judge had regard to the policy imperative underlying the ADR Rules at [55] of the Decision as being that only where an individual satisfies those rules "should they generally be permitted to ...remain with a family member in this country". In order to satisfy the ADR Rules, the Appellant would have to show that she needed long-term personal care which was not available or affordable in India (to paraphrase). That was the issue which the Judge considered and decided adversely to the Appellant for the reasons he gave.

Paragraph [8]: Balancing assessment

74. The Appellant submits that the Judge erred in his assessment of proportionality because he failed to have regard to all material factors in favour of the Appellant and particularly in light of his finding as to the best interests of the Appellant's grandchildren.

75. I have dealt above with what were the material factors in the Appellant's favour. The Judge considered those under the ADR Rules and Paragraph 276ADE(1)(vi) as well as at [52] to [57] of the Decision. The Judge did not have to continually repeat the factors in favour of the Appellant. The Judge recognised and accepted that the best interests of the grandchildren favoured the maintenance of the status quo. However, in his assessment at [57] of the Decision, he balanced those interests against the public interest as he was required to do.

76. The weight to be given to relevant factors and the balancing assessment in relation to proportionality is a matter for the Judge who hears the evidence unless legal errors are disclosed. No error is disclosed in this Judge's assessment.

CONCLUSION

77. The Appellant has failed to identify any material error of law in the Decision. I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

Notice of Decision

The decision of First-tier Tribunal Judge Higgins dated 24 November 2022 does not contain any material error of law. I therefore uphold the decision with the consequence that the Appellant's appeal remains dismissed.

L K Smith

Upper Tribunal Judge Lesley Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 May 2023