



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-006388

First-tier Tribunal No: HU/55754/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 10 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**NARABDA NEMCHAND SHAH**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Martin, of Counsel, instructed by Indra Sebastian Solicitors

For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

**Heard at Field House on 4 April 2023**

**DECISION AND REASONS**

*Introduction*

1. The appellant is a citizen of India born on 31<sup>st</sup> January 1953. She arrived in the UK on 1<sup>st</sup> February 2020 with a visit visa. She applied to remain in the UK on the basis of her family and private life ties on 7<sup>th</sup> August 2020. The application was refused on 14<sup>th</sup> September 2021. Her appeal against the decision was dismissed by First-tier Tribunal Judge GD Davison after a hearing on the 6<sup>th</sup> May 2022.
2. Permission to appeal was granted by Judge of the First-tier Tribunal

Frantzis on 8<sup>th</sup> July 2022 (after extending time to admit the application) on the basis that it was arguable that the First-tier judge had erred in law in the consideration of the appeal with reference to paragraph 276ADE(1)(vi) with respect to the evidence of the state of disrepair for the appellant's home and the location of the appellant's supportive family.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so to decide if any such error was material and whether the decision should be set aside.

#### *Submissions – Error of Law*

4. In the grounds of appeal and in submissions from Mr Martin, in short summary, it is submitted as follows.
5. The appellant's case was that she would have very significant obstacles to integration if she returned to India and that her return would be a breach of the UK's obligations under Article 8 ECHR. The First-tier Tribunal found that the appellant had a property (a flat) in India which she could return to which was being looked after by a family member but the true evidence was that the flat was not occupied by anyone and the appellant would be returning to live there alone, that there had been a water leak there and it was in a state of disrepair, with half of the flats in the block unoccupied and a proposal to knock the block down, according to the evidence of the two sons. The issue of whether the appellant has a home to return to is clearly key in the decision-making and had not been properly addressed.
6. In addition, it is argued, the First-tier Tribunal finds the appellant has her husband's family nearby who could assist her and a hospital, but the evidence in her statement was that they lived at some distance in Nagpur and had reasons why they were not able to assist her, and that the nearby hospital is a cancer hospital and medical help is some 45 minutes away. The decision fails to identify who the relatives were who could assist the appellant. The First-tier Tribunal also failed to consider the expert psychologist report which details the appellant's depression (as well as her lack of mobility, high cholesterol and insomnia) and the impact this might have on her ability to take care for herself when finding she would be able to do this, concluding that return to India would have a devastating impact on her physical and mental health.
7. There was also a failure to properly consider that the appellant was named as a party in divorce proceedings against her son Viren Shah by his ex-wife in the Indian court proceedings, the papers being before the First-tier Tribunal. It was argued that the stress of having to deal with allegations of abuse against her would be particularly hard for the appellant to deal with given she would be returning to live alone in a dilapidated flat.

8. Finally, it was contended, that in the Article 8 ECHR proportionality decision outside of the Immigration Rules there was a failure to decide whether the appellant had family life relationship with her son in the UK given her period of cohabitation and to weigh this along with other factors in her favour deriving from the discussion under the Immigration Rules such as her ill-health as outlined in the psychological evidence, the fact the appellant would be returning to India to live alone and the disrepair of her flat.
9. It is argued that overall the decision of the First-tier Tribunal is insufficiently reasoned with insufficient consideration of all of the evidence, and that had a more detailed and careful assessment been conducted that the outcome of the appeal could have been different.
10. The respondent did not submit a Rule 24 notice, but Mr Terrell made oral submissions on her behalf. He argued that it was clear that the psychological report and other medical evidence had been considered at paragraph 20 of the decision, and further that it was open for the First-tier Tribunal to have found on the totality of evidence, particularly that set out at paragraphs 10 and 11 of the decision, that the appellant had the support of relatives and reasonable access to medical facilities. It was clear that it was found that the flat to which the appellant would return was being looked after by another relative, not that anyone lived in the flat, and this was consistent with the evidence of her son Rahul Shah. It was rationally open to the First-tier Tribunal to have concluded that the divorce proceedings relating to the appellant's son Viren Shah added nothing as there was no expert evidence indicating how the appellant might have to engage with the allegations made within them about her, and Viren Shah's separated wife and her relatives lived a long way away. Mr Terrell submitted that it was appropriate for the First-tier Tribunal to have focused on the proportionality aspect of the Article 8 ECHR analysis, having dealt with the appeal firstly through the prism of the Immigration Rules, and that this was rational and inclusive of all relevant matters as it was considered that the family in the UK would like her to remain with them in an ideal world.
11. At the end of the hearing I indicated to the parties that I found that the First-tier Tribunal had not erred in law. I set out my full reasons below.

#### *Conclusions - Error of Law*

12. It is clear that the First-tier Tribunal considered the submissions of the appellant in relation to the appellant's accommodation in India as these are set out at paragraph 17 of the decision. I find that the finding at paragraph 19 of the decision that the appellant has a home (flat) in India which is being "looked after" by a family member and which could be financed in terms of running costs from the UK family is entirely consistent with the evidence before the First-tier Tribunal. The

evidence of dilapidation is only that there was a leak which is now fixed and some evidence of proposals that it might be redeveloped in the future. There was no evidence before the First-tier Tribunal that the property was not fit for habitation or lacked basic services such as running water or electricity. The First-tier Tribunal did not find that the appellant would be living with a relative, but simply, at paragraph 20 of the decision, that there were a support network of relatives. This is consistent with the oral evidence the appellant gave that she is in contact with her husband's relatives, and that she has seven siblings still alive although they live between 18 to 20 hours away from her property.

13. I find that the psychological report of Ms Costa and other medical evidence was undoubtedly considered as it is referenced at paragraph 20 of the decision. I also find that the medical evidence was properly considered as a factor going to the issue of whether the appellant would have very significant obstacles to integration/ in the context of an Article 8 ECHR balancing exercised as the medical conditions are referred to as "factors that go into the overall claim". It is clear from this paragraph that the First-tier Tribunal acknowledges that the appellant suffers from depression. It is the view of Ms Costa that removal to India will adversely impact on the appellant's physical and mental health, affecting her quality of life, however this assessment was based on the premise that the appellant would be alone in India rather than have a network of relatives to turn to as is found (and I have found lawfully found) by the First-tier Tribunal. As set out in paragraph 20 of the decision there was no evidence identified as having been before the First-tier Tribunal that relevant treatment for the appellant's medical conditions, including depression, would not be available in India or that any care needs that might arise could not be met by the appellant's children paying for such to be provided. Whilst the hospital nearby might be a cancer hospital it is accepted for the appellant that medical services are only some 45 minutes to an hour away (as set out at paragraph 11 of the decision) and so there is no arguable issue of the appellant's Indian home being excessively isolated and inaccessible should any medical help be needed.
14. The relevance of the divorce proceedings of Mr Viren Shah, son of the appellant, is considered at paragraph 21 of the decision, and it is concluded that there is no threat from these proceedings as Mr Viren Shah's ex-wife lives 800km and there is no evidence that these acrimonious proceedings have caused any issue for family living in India. I find that there is no evidence on this issue going to the appellant having very significant obstacles to integration that was not considered, and that it was rationally open to the First-tier Tribunal to conclude that the divorce would not adversely impact on the appellant beyond being somewhat upsetting.
15. At paragraph 21 of the decision it is concluded, in summary, that the situation with the appellant having access to a home,

financial resources and a family network in India lead to the conclusion that there would be no very significant obstacles to the appellant's integration, and thus that she could not meet the requirements of the private life Immigration Rules at paragraph 276ADE(1)(vi) and given the fact that the appellant had lived in India, her country of nationality, all of her life until she became inadvertently stuck in the UK due to the Covid-19 pandemic in 2020, and thus has all her cultural and religious ties in India, I find that this was a conclusion that was rationally open to the First-tier Tribunal.

16. As regards to the consideration of the appeal outside of the Immigration Rules on more wide ranging Article 8 ECHR grounds I find that it is implicit in paragraph 23 of the decision that there is found to be family life between the appellant and her UK based sons and their families: it is said that they support her financially and they would (understandably) like her to stay with them. I find the First-tier Tribunal then, correctly, goes on to a balancing exercise but finds the public interest that has to be weighed against the appellant, as she cannot meet the private life or adult dependent relative (family life) Immigration Rules, outweighs the family bonds she has in this country deepened by the happenstance of the Covid-19 and preference on the part of the family and the appellant that she remain. The fact that the appellant would be financially independent (supported by her family) is correct weighed as a neutral factor. I do not find that any relevant matter has been omitted from this balancing exercise given the findings of adequate housing, medical care and contact with extended family in India made in the context of the decision under the Immigration Rules at paragraph 276ADE(1)(vi).

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
2. I uphold the decision of the First-tier Tribunal dismissing the appeal.

***Fiona Lindsley***

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**4<sup>th</sup> April 2023**