



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-
000729

First-tier Tribunal No: PA/01931/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:

6th December 2023

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

RAJEEV KANT

(no anonymity order made)

Appellant

and

Secretary of State for the Home Department

Respondent

No appearance by or for the appellant

For the Respondent, Mr M Diwyncz, Senior Home Office Presenting Officer

Heard at Edinburgh on 22 November 2023

DECISION AND REASONS

1. FtT Judge Gillespie dismissed the appellant's appeal by a decision promulgated on 8 September 2021.
2. The FtT declined to admit an out of time application for permission to appeal to the UT.
3. The appellant applied for permission to the UT on 3 grounds:- (i) misdirection on the test in a medical case, (ii) error on relocation, in

respect of absence of evidence of a Jehovah's Witness Kingdom Hall in the areas suggested, and (iii) incorrect legal test, and inadequate consideration of background evidence, on relocation.

4. On 16 January 2023 UT Judge McWilliam decided: ...

The application before the First-tier Tribunal was not admitted because it was out of time. I find that it is in the interests of justice to admit the application before me applying *Bhavsar* (late application for PTA: procedure) [2019] UKUT 196. The judge arguably applied the wrong test when considering whether the appellant met the Article 3 threshold in accordance with *AM (Zimbabwe)* 2020 UKSC 17 see [48]. There is less merit in the other grounds.

5. On 23 February 2023 the SSHD responded: ...

3. The Respondent does not oppose the appellant's appeal on ground 1. It is accepted that the Judge has misdirected themselves in law when considering whether the appellant met the Article 3 threshold in accordance with *AM (Zimbabwe)* [2020] UKSC 17 [28]. If an error is accepted on ground 1 only then it is submitted that this matter can remain to be determined in the Upper Tribunal as the other findings can be preserved.

4. The Respondent opposes the appellant's appeal on ground 2 and 3. It is submitted that these grounds are nothing more than a mere disagreement with the findings of the Judge.

5. In relation to ground 2 the appellant was asked specifically at the hearing as to the three states in India that the appellant and his family could relocate to [24]. The background information was also referred to during cross examination which showed that there were 49,743 ministers within the Jehovah's Witnesses in India and almost 700 congregations. [26]

6. The Judge details the background information that was referred to during the hearing [38-40] and finds that whilst there is a concerning trend that is echoed in the report of Dr Smith there are 28 states in India and focusing entirely on those with BJP majority-run government does not reflect what is going on in the entire country and that the appellant's alleged problems can be addressed by relocation [43].

7. In relation to ground 3 the Judge correctly identifies the correct legal test for internal relocation in that it is necessary to determine whether it would be unreasonable or unduly harsh to expect the appellant to relocate to another part of the country. The Judge finds that it would not be unreasonable or unduly harsh as the appellant can return to an area where anti-Christian sentiment is not strong as per the CG case of WF [46]. ...

6. The appellant is no longer legally represented. Notice of the hearing was issued on 2 November 2023. He has not since then been in touch with the UT or with the respondent. There was no appearance by or on his behalf. It was appropriate to proceed in his absence.

7. I note from the administrative file an indication that the appellant had previously been in touch by telephone, apparently with a view to withdrawing his appeal, and had been advised that he needed to confirm that in writing to the UT, not to the FtT. However, I deal with the appeal on its merits.

8. The FtT erred in its exposition of the legal test for a medical case. It should have considered, as set out in the grounds, “(1) the general availability of health treatment and the individual’s access to it, and (2) whether return would result in a serious, rapid and irreversible health decline resulting in (i) intense suffering; (ii) or a significant reduction in life expectancy”.
9. The mis-statement might have been thought immaterial; but in light of the rule 24 response, the decision is set aside.
10. The appellant has not brought any case by which the test might be held to be satisfied. His evidence in the FtT plainly fell well short of that level.
11. There is no error in the FtT’s findings that risk did not extend throughout India.
12. Grounds 2 and 3 are only insistence and disagreement in respect of relocation, and are answered in the response. They do not show anything by which the decision would fall to be set aside.
13. The decision of the FtT is **set aside**, based on ground 1 only, and on the concession of the respondent.
14. The decision is **remade** thus: the appeal, as brought to the FtT, is **dismissed** on all grounds.

Hugh Macleman

Judge of the Upper Tribunal
Immigration and Asylum Chamber
22 November 2023