



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002137

First-tier Tribunal No:
HU/02184/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

12th September 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

Hazoor Singh
(NO ANONYMITY ORDER MADE)

Appellant

and

The Entry Clearance Officer

Respondent

Representation:

For the Appellant: Ms J Heybroek, counsel instructed by Kamran & Co Solicitors

For the Respondent: Mr N Waine, Senior Home Office Presenting Officer

Heard at Field House on 22 August 2023

DECISION AND REASONS

Introduction

1. This is the remaking of the decision of Judge EM Field dismissing the appellant's appeal against the decision of the Entry Clearance Officer refusing his application for leave to remain as a partner.

Anonymity

2. No anonymity direction was made previously, and there is no reason for one now.

Factual Background

3. The appellant is a national of India who, on 15 December 2020 applied for leave to enter the United Kingdom under Appendix FM to the Immigration Rules to join his partner. Prior to making that application from India, the appellant spent approximately ten years in the United Kingdom without leave, having entered unlawfully on 24 October 2010, using a false identity.
4. By way of a decision dated 3 March 2021, the Entry Clearance Officer refused the appellant's application under paragraph 320(11) of the Rules. Following the lodging of an appeal against that decision, a subsequent decision letter dated 18 January 2022 was produced which made reference to paragraph 9.8.2 of the Rules. In particular, the respondent considered that the appellant had 'previously contrived in a significant way to frustrate the intentions of the Immigration Rules by illegally entering the United Kingdom and overstaying once here.' In addition, the decision referred to other aggravating circumstances: 'absconding; remaining in the United Kingdom for 10 years without leave; working in the United Kingdom without permission and using a different identity.' The application was refused under. The application also fell to be refused on suitability grounds under paragraphs EC-P.1.1(c) and S-EC.1.5 of Appendix FM. The ECO accepted that the appellant met the eligibility requirements but concluded that there were no exceptional circumstances which meant that refusal of entry would result in unjustifiably harsh consequences for the appellant or his family.
5. The decision of First-tier Tribunal EM Field was set aside, with no preserved findings following an error of law hearing which took place on 6 June 2023.

The continuance hearing

6. I heard oral evidence from Mrs B, hereinafter referred to as the sponsor, with the assistance of a Hindi interpreter. I also heard submissions from both representatives. At the end of the hearing, I reserved my decision. Mr Waine relied on the updated decision letter and submitted that the respondent had applied paragraph 8.2 of the Rules correctly, with reference to *PS* (paragraph 320(11) discretion: care needed) India [2010] UKUT 440 (IAC). He argued that the respondent had followed the relevant

guidance, namely Suitability: previous breach of UK immigration laws, Version 5.0. Otherwise, the favourable factors did not outweigh the aggravating circumstances, the Rules were unmet, there were no exceptional circumstances justifying a grant of entry and the decision of the ECO was proportionate.

7. Ms Heybroek relied on the appellant's bundles of evidence as well as Version 2.0 of the Home Office Country Information Note, India: Medical and healthcare provision, dated April 2023. Her submissions focused on the proportionality of the decision under appeal, in that she accepted that the respondent had exercised her discretion but submitted that the outcome was disproportionate.

Decision on remaking

8. In making this decision I have taken into consideration all the evidence before me, even where not directly referred to, as well as the submissions made. The burden of proof is on the appellant and the standard of proof is the balance of probabilities.

9. Appendix FM, S-EC.1.5 states.

The exclusion of the applicant from the UK is conducive to the public good because, for example, the applicant's conduct ..., character, associations, or other reasons, make it undesirable to grant them entry clearance.

10. EC-P.1.1(c) states

the applicant must not fall for refusal under any of the grounds in Section S-EC: Suitability-entry clearance;

11. The relevant part of the Immigration Rules states.

9.8.2. An application for entry clearance or permission to enter may be refused where:

(a) the applicant has previously breached immigration laws; and

(b) the application was made outside the relevant time period in paragraph 9.8.7; and

(c) the applicant has previously contrived in a significant way to frustrate the intention of the rules, or there are other aggravating circumstances (in addition to the immigration breach), such as a failure to cooperate with the redocumentation process, such as using a false identity, or a failure to comply with enforcement processes, such as failing to report, or absconding

12. The following extract from *PS* was relied upon by Ms Heybroek.

In exercising discretion under paragraph 320(11) of HC 395, as amended, to refuse an application for entry clearance in a case where the automatic prohibition on the grant of entry clearance in paragraph 320(7B) is disapplied by paragraph 320(7C), the decision

maker must exercise great care in assessing the aggravating circumstances said to justify refusal and must have regard to the public interest in encouraging those unlawfully in the United Kingdom to leave and seek to regularise their status by an application for entry clearance.

13. The respondent's Country Information Note includes a brief section on mental health, which states that subsidised treatment is available at a public hospital in New Delhi including for treatment, follow up by a psychiatrist or psychologist as well as psychotherapy including Cognitive Behavioural Therapy (CBT). Elsewhere in the note, multiple sources are quoted which emphasise the extremely limited resources in practice. The Commonwealth Fund's IHCSP profile for India dated June 2020 summarised the position as follows.

'Despite recent policy measures to strengthen mental health care, resources are extremely limited. Across India, there is only one trained psychiatrist for every 250,000 people and fewer than one mental health worker for every 100,000 people. In addition, few hospital beds are dedicated to inpatient psychiatric care...

'National health initiatives have established psychiatric centers within specialized public hospitals. With the launch of the National Health Protection Scheme, comprehensive mental health care will also be available for beneficiaries at newly established Health and Wellness Centre programs.'

14. The DFAT 2020 Country Information Report on India says.

Across the country, an estimated 150 million people (12.5 per cent of the population) are in need of active interventions for mental illnesses, including nearly 12 million who are living with serious mental disorders. Given the shortfall of specialist and health services for mental illness, treatment is often unavailable or inaccessible even for those who actively seek health care.'

15. The WHO report, Indian Health System Review underscores the limited resources, thus.

'There are 42 mental health institutions with fewer than 26 000 beds, and 50% of these beds are occupied by long-stay patients. There are almost 4000 mental health outpatient facilities and 10 000 psychiatric beds in general hospitals, though little is known about the mix of beds for acute, chronic and long-term care. The mental health workforce faces major shortages. It is estimated that there are 3 psychiatrists, 1.6 mental health nurses, 0.47 psychologists, and 0.33 social workers per 1 million population in India. A significant proportion of the mental health workforce is concentrated in the private sector. The lack of training facilities in clinical psychology, psychiatric social work and psychiatric nursing is a major limitation for the delivery of mental health services in community and rural areas where access to medically trained psychiatrists tends to be limited.

16. Both representatives agreed that the ECO had regard to the respondent's guidance in arriving at the decision under appeal and further agreed that the conduct in which the appellant admitted that he had engaged amounted to that described in S-EC 1.5 of Appendix FM as well as 9.8.2(c) of the Rules and, in addition, that there were other aggravating circumstances.
17. The appellant's case turns on the proportionality of the decision to exclude him from the United Kingdom. That case was first set out in the grounds of appeal. In essence, the appellant is from a Sikh background whereas the sponsor is Hindu. Their respective parents do not support the marriage for this reason. In addition, the sponsor is a decade older than the appellant, had been married before and has an adult child from that marriage. A further issue raised is the mental health of the sponsor, which it is said has worsened owing to the separation from the appellant.
18. There was no criticism of the account relied upon or of the sponsor's oral evidence on behalf of the respondent. Rather, the point made was that she could reunite with the appellant in India, notwithstanding the disapproval of the appellant's parents and continue family life there. In addition, it was argued on the respondent's behalf that the Country Information Note showed that medical treatment was available in India for the sponsor's mental health issues.
19. There is no challenge on behalf of the respondent to the genuineness of the relationship between the appellant and sponsor. Therefore, I accept that there is family life between them. The respondent's view is that the decision under appeal need not amount to an interference in this family life as the couple could enjoy this in India. In her witness statement, the sponsor explains in credible detail the background to her mental health diagnoses of depression and anxiety as well as what she sees are the barriers to her relocating to India to be with the appellant. In short, the appellant had a previous 'toxic' arranged marriage which precipitated her mental health issues, and those issues have worsened owing to the separation from the appellant. She explains that her mental health has further been adversely affected by unsuccessful attempts to start a family with the appellant. The sponsor also mentions that she lacks support from anyone other than the appellant and that her adult daughter who lives in India, also strongly disapproves of the relationship. In terms of the situation in India, the sponsor confirms that the appellant's family do not support the relationship and that she fears being stigmatised owing to being a divorcee and suffering from mental health problems. She adds that

she requires the medical help she receives in the United Kingdom to recover her mental health and would not be able to access equivalent care in India.

20. Supporting medical evidence has been provided in the form of a report by a Cognitive Behavioural Therapist, Mr Zabair Hussain, who has been treating the sponsor, as well as her GP medical records which show she is prescribed Citalopram. Mr Hussain's opinion is that the sponsor's symptoms, which include persistent and chronic low mood, high levels of stress and anxiety and of hopelessness and low self-esteem, are typical and consistent with Major Depressive Disorder and Generalised Anxiety Disorder.
21. Mr Hussain explains why he has come to his conclusions with reference to the sponsor's presentation and experiences. He also refers to the sponsor's behaviour in that when experiencing chronic low episodes, she self-neglects and struggles to engage in activities of daily living. Mr Hussain makes several recommendations most of which were uncontroversial, however I will concentrate on what he had to say about the prospect of the sponsor joining the appellant in India which is the respondent's principal argument.

Given her previous failed marriage, she has been subjected to societal stigma and now that she is married to another person where there is caste, cultural and age differences, she has been subjected to furthermore rejection and scrutiny from her own family and her husband's family. Therefore, living in India would not be conducive to her mental health.

22. I take into consideration Mr Waine's criticism of the report, including Mr Hussain's reference to country conditions in his report but note, in this regard, that his academic research was focused on mental health difficulties for Black, Asian, and Minority Ethnic (BAME) service users and that the report illustrates awareness of mental health provision in the countries his patients come from. Mr Hussain cites academic authorities regarding the level of available healthcare in India which is entirely consistent with that quoted in the respondent's Country Information Note. Nonetheless, I accept that Mr Hussain is qualified to provide an opinion on the sponsor's mental health and treatment as well as to provide contextual information which is relevant to his overall recommendations. I therefore place considerable weight on this report.
23. I am satisfied that the decision to refuse the appellant entry clearance amounts to interference with his family life and that of the sponsor. While I note that the sponsor visited the appellant in 2021 (staying in a hotel for the duration of the one-month long visit), she has not returned to India, and I accept her explanation that the appellant did not tell their respective

families she was in the country and that she was fearful of her own and the appellant's family discovering her presence. I find that the sponsor has provided an honest account of her mental health difficulties and the impact her diagnoses have on her life. Her description of the opposition to her marriage to the appellant on account of age, caste, religious differences and being divorced is entirely plausible. That she does not feel able to cope with the prospect of living in India, despite the presence of the appellant, her own adult child, and parents, underscores her fears of stigmatisation. Evidently, the decision under appeal has led to the appellant and sponsor remaining apart.

24. The real issue in this appeal is the proportionality of that decision, in assessing this I have taken into account the provisions of section 117B of the Nationality, Immigration and Asylum Act 2002 and adopt the balance sheet approach as set out in *Hesham Ali* [2016] UKSC 60.
25. It is not disputed that the maintenance of an effective immigration control is in the public interest. In terms of 117B (2) and (3), I note that the appellant can meet the English language eligibility requirement. Furthermore, the sponsor is employed, funds her treatment privately and therefore the appellant is unlikely to be a burden on taxpayers. Nonetheless, these are not factors which assist the appellant, in that they are simply neutral in their effect of the outcome of the proportionality assessment.
26. I recognise that the appellant's relationship with the sponsor was formed when the appellant was in the United Kingdom unlawfully and thus that the relationship is deserving of little weight, applying 117B (4).
27. The next point, on the respondent's side of the scales, is that the appellant was unable to meet the Suitability requirements of the Rules, and this is a weighty factor. Indeed, it is accepted on the appellant's behalf that he engaged in the conduct listed in the decision letters, in that he entered the United Kingdom in an irregular manner, provided a false identity, absconded from immigration control, and thereafter remained and worked in the United Kingdom without permission for approximately ten years.
28. On the appellant's side, it is to his credit that he left the United Kingdom voluntarily, withdrawing his appeal against an earlier decision to refuse to grant him leave to remain based on his relationship with the sponsor

rather than prolonging his stay further by exhausting his appeals. I have also taken into consideration the guidance in *PS*, to the effect that regard must be had to the public interest in encouraging those that are in the United Kingdom unlawfully to return home and apply to return lawfully.

29. A factor deserving of some weight, on the appellant's side is the extent to which he could otherwise meet the Immigration Rules for partners, in that the eligibility requirements were met.
30. The appellant's relationship with the sponsor has withstood the test of time, despite a separation of over two years, fertility struggles and the sponsor's poor mental health. The sponsor has provided a detailed, candid, and consistent account of the lack of support she faces in India, in addition to the likelihood that she would struggle to access the mental health therapy she currently receives from Mr Hussain.
31. While I accept that there is treatment available in India for mental health conditions, the mismatch between the number of professionals and existing and prospective patients, means that it is more likely than not that the sponsor would not be able to receive treatment in practice. There is also a question mark as to whether the sponsor would be in a position to attempt to seek out and accept treatment in view of the evidence that she self-neglects when her mental health deteriorates.
32. In her unchallenged oral evidence, the sponsor explained that her parents and daughter refuse to take her calls. I find that this demonstrates that she could not rely upon her own family for support. I also find that the appellant could not expect any support from her parents-in-law for the reasons she has explained at length.
33. I have taken into consideration that the appellant would be able to provide emotional support to the sponsor in India much as he does now. However, as was clear from Mr Hussain's report, even with this support, the sponsor experiences episodes in which she is unable to care for herself including eating and washing. Therefore, the presence of the appellant is not a complete answer to the sponsor's poor mental health, for which there are complex reasons which do not solely relate to her current separation from the appellant.
34. This is a finely balanced case. Having considered all the evidence in the round, I am just persuaded, with reference to Mr Hussain's opinion and recommendations, that the sponsor's circumstances mean that the refusal of entry clearance would result in unjustifiably harsh consequences for the sponsor. As indicated above, I have placed weight on Mr Hussain's report, and I accept his recommendations. In that report, Mr Hussain emphasises

that the sponsor needs to continue to engage in her current CBT sessions and comply with her pharmacological treatment to improve her mental health and he highlights the difficulties that there would be with this treatment being sustained in India as well as the impact of being stigmatised owing to her mental health concerns. He also concludes that living in India would not be conducive to the sponsor's mental health and that there is a risk of further deterioration if the appellant is not able to join his wife in the United Kingdom.

35. On balance, I conclude that notwithstanding the appellant's previous conduct, the decision to refuse entry is disproportionate, based on the current evidence which was not before the Entry Clearance Officer. I find that this new evidence demonstrates that the personal circumstances of the sponsor and appellant outweigh, albeit only just, the aggravating features of his immigration history.

Decision

The appeal is allowed.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 August 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent” is that appearing on the covering letter or covering email