IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001327

First-tier Tribunal No:
HU/57909/2021; IA/17280/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 10 July 2023

Before

UPPER TRIBUNAL JUDGE SMITH

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS NASIM ANWER

Respondent

Representation:
For the Appellant: Ms J Isherwood, Senior Home Office Presenting Officer
For the Respondent: Mr B Malik, Counsel instructed by Farani Taylor Solicitors

Heard at Field House on 22 June 2023

DECISION AND REASONS

BACKGROUND

1. This is an appeal brought by the Secretary of State. For ease of reference, I refer to the parties as they were in the First-tier Tribunal. The Respondent appeals against the decision of First-tier Tribunal Judge Ripley dated 23 January 2023 ("the Decision") allowing the Appellant's appeal against the Respondent's decision dated 26 November 2021, refusing the Appellant's human rights claim. The Appellant's claim was made in the context of an application to remain with her adult sons and their families in the UK. The Appellant had made an earlier application to remain on the same basis which was refused in January 2018. Her appeal against that decision was dismissed by First-tier Tribunal Judge Housego in

January 2019 and it is accepted that this decision forms the starting point for Judge Ripley's determination.

2. The Appellant is a national of India, born in 1939. She last arrived in the UK in November 2017 from Saudi Arabia, with entry clearance as a visitor. At the time, her husband was alive. He unfortunately passed away in 2020. She made her current application to remain on 11 November 2020. She said that her daughter who remains in India could not support her because of her own health needs. The Appellant also said that she could not live alone due to her age, health, vulnerability and because she is a Muslim.

3. The Respondent rejected the human rights claim on the basis that the Appellant could not show that there were very significant obstacles to her integration in India, under paragraph 276ADE(1)(vi) of the Immigration Rules ("Paragraph 276ADE(1)(vi)" of "the Rules"). The Respondent pointed to the conclusion of Judge Housego to that effect and asserted that there was no further evidence which undermined that conclusion. Outside the Rules, the Respondent also relied on Judge Housego's conclusion that Article 8 ECHR would not be breached by removal. The Respondent concluded that the Appellant could be supported financially on return by her sons in the UK and that her daughter in India could provide emotional support.

4. As I will come to, the Appellant's appeal was argued only on the basis that she satisfied Paragraph 276ADE(1)(vi). The Judge accepted that submission and allowed the appeal on that basis.

5. The Respondent appealed on two grounds which can be summarised as follows:

   Ground one: the Judge failed to give adequate reasons for finding that there would be very significant obstacles to the Appellant's integration in India, given that she had lived most of her life in that country and continued to have cultural and familial ties there. The Judge had misdirected herself in law by failing to consider "whether a person would find it necessary to re-integrate rather than simply resume their lives within their country …as [this] presumes that those links have been lost without evidence of the same".
   Ground two: the Judge failed to have "full regard" to Judge Housego's findings (per the guidance in Devaseelan) and had therefore misdirected herself in law. It is submitted that the Judge failed to give adequate reasons for departing from Judge Housego's findings.

6. Permission to appeal was refused by First-tier Tribunal Judge R Chowdhury on 11 April 2023 in the following terms:

   > "… 2. The grounds essentially disagree with the Judge's decision and that the Judge had not had proper regard to the previous First Tier decision or to Devaseelan. (The Judge refers to this at paragraph 16). In summary the

application amounts to no more than the Judge should have taken a different view. That is not an arguable error of law.

3. The Judge is not obliged to address every aspect or every issue provided it is clear from the decision that cogent reasoning open on the evidence has been provided. The Judge recorded at paragraph 10 that there was a material change and additional evidence to justify departing from the decision of January 2019, i.e. some 4 years prior. The Appellant's husband had died and her health deteriorated. The previous Judge noted she was mentally healthy. She now suffers from dementia and depression. The Judge had been provided further evidence (paragraph 16) that the Appellant was not previously entirely resident in India.

4. The Judge accepted the expert psychologist's report and was entitled to accept the Appellant's daughter's evidence of her own medical conditions and her frequent absence from India, given her daughter's passport endorsements (see paragraphs 20-23). The grounds raise no arguable error of law."

7. The Appellant renewed the permission application to this Tribunal on the same grounds. Permission to appeal was granted by Upper Tribunal Judge Sheridan on 22 May 2023 in the following terms:

> "The Judge (JFTT Ripley) found that the appellant fell within the scope of paragraph 276ADE(1)(vi) (very significant obstacles to integration) because, following removal to India, her health would be likely to significantly deteriorate and without the sponsor's support she would lose the 'motivation to integrate'. It is arguable that the judge identified reasons the appellant may suffer challenges and obstacles on return to India which are relevant to a proportionality assessment under article 8 ECHR, but not reasons she would face obstacles 'integrating' for the purposes of an assessment under paragraph 276ADE(1)(vi). Arguably, indicative of this error is that in the concluding paragraph (paragraph 22) the judge stated that the appellant would face very significant obstacles on return to India, omitting the word 'integrating'. All grounds can be pursued".

8. The matter comes before me to decide whether the Decision contains 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.

9. I had before me a core bundle of documents relating to the appeal, the Appellant's bundle, supplementary bundle and second supplementary bundle and Respondent's bundle before the First-tier Tribunal together with the Appellant's skeleton argument before the First-tier Tribunal.

10. Having heard submissions from Ms Isherwood and Mr Malik, I indicated that I found there to be no error of law in the Decision and would provide my reasons in writing which I now turn to do.

DISCUSSION

11. Ms Isherwood relied upon the grounds as pleaded. I incorporate her oral submissions and Mr Malik's response in the discussion which follows.

Given the format of the Decision, it is appropriate to consider the Respondent's second ground first.

Ground two: application of 'Devaseelan' guidance

12. The Judge correctly identified Judge Housego's decision as the starting point for her determination ([16] of the Decision). The Judge went on to accurately summarise the conclusions reached by Judge Housego.

13. The Appellant's submission in this regard is also recorded at [16] of the Decision. In short summary, as changes in her circumstances, the Appellant relied on later evidence that she had not always lived in India but had travelled regularly between India and Saudi Arabia, that her husband had died and was buried in the UK and that she was no longer physically and mentally healthy.

14. The Judge considered that argument at [17] and [18] of the Decision. She accepted that the Appellant "was not entirely resident in India" as Judge Housego had found ([17] of the Decision). She also had regard to the Appellant's age and health conditions. At [18] of the decision she said this:

> "At page 281 HB the appellant's GP has confirmed she suffers from diabetes. Considering the appellant's age, I would accept on the balance of probabilities, that she may also be becoming forgetful and, that following the death of her husband, she has been depressed. I am satisfied that this background forms sufficient grounds to depart from the conclusions reached by IJ Housego."

15. Ms Isherwood made the point that the Appellant has not as yet been diagnosed with any medical condition in relation to her memory. I accept that. However, although Judge Chowdhury referred to "dementia" when refusing permission to appeal, Judge Ripley rightly refers only to forgetfulness which is consistent with what is said by the psychologist (who makes the point that no diagnosis of dementia etc has yet been made).

16. Not every Judge would have taken the view that the further evidence and change of circumstance was sufficient to permit departure from the earlier findings. However, it was open to the Judge so to find for the reasons she gave.

17. There is no misdirection in law and the reasons given for the Judge's conclusions are adequate to explain why she departed from the earlier findings. She was entitled so to do. There is therefore no error of law established by the first ground.

Ground one: Paragraph 276ADE(1)(vi)

18. Having found that she was entitled to depart from the earlier findings, Judge Ripley then went on to consider for herself whether Paragraph 276ADE(1)(vi) was met.

19. Ms Isherwood pointed out that, until the appeal hearing, the main thrust of the Appellant's appeal was that she could meet in substance the Rules relating to adult dependent relatives. Whilst Mr Malik accepted that this is the way in which he had formulated the case in his skeleton argument for the First-tier Tribunal hearing, that was not the way in which the case was argued by Mr Lemer, who appeared for the Appellant. In my view, Mr Lemer was right not to pursue the appeal in that way but, either way, as Mr Malik submitted, this is irrelevant and a "red herring". What matters is the way in which the appeal was argued before Judge Ripley.

20. Turning then to the way in which the case was argued and Paragraph 276ADE(1)(vi), Judge Ripley correctly directed herself at [15] of the Decision to the relevant case law (although I observe wrongly heading this section of the Decision "Paragraph276ADE.1(iv)"). The Judge therefore understood the test as set out by the Court of Appeal in Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813. She rightly pointed out that the issue was "whether the appellant would be an 'insider' in terms of participating in society".

21. At [19] of the Decision, Judge Ripley noted the very fair concession by the Appellant's son that there was nursing care available in India and that he and his brothers could financially support the Appellant on return. However, the Judge there recorded that the Appellant's son was "seeking to motivate the appellant and to keep her cognitively active". The Judge accepted that evidence.

22. At [20] of the Decision, the Judge dealt with the psychologist's report. That is a report of Dr Saima Latif dated 18 September 2022 which appears at [1-26] of the Appellant's supplementary bundle. Mr Malik in his submissions referred me to various paragraphs of that report but I do not consider it necessary to set out what the report says. As Mr Malik submitted and I accept, the report was not apparently disputed by the Respondent. Although Ms Isherwood submitted that the psychologist's report did not take account of the Appellant's medical records, the Judge's findings in that regard are not challenged by the Respondent's grounds.

23. Moreover, what is relevant for my consideration is what Judge Ripley made of the report. That is set out at [20] of the decision as follows:

> "The sponsor's argument that the appellant's mental health would deteriorate is supported by the psychologist's report. Ms Willets did not dispute the psychologist's expertise. Her report is set out at pages 1-26 of the first supplementary bundle. Ms Willets argued that the psychologist had failed to explain her conclusions, and in particular the cause of the

> anticipated deterioration in the appellant's health. At section 10 of that report the psychologist has set out in detail, and with some repetitiveness, that the appellant's health would decline if she was required to break the close bond that she has established with the sponsor and his wife…"

24. The Judge then went on to deal with the Respondent's submission that the Appellant could be cared for by her daughter in India. The Judge found that the Appellant's daughter "suffered from depression and various physical conditions" ([20]). She also accepted that the Appellant's daughter was "often absent from India" because she was visiting her own children in Canada and the UK and that she could not look after her mother. The Judge made the following finding in this regard ([20]):

> "…I accept that because of her own health conditions [the Appellant's daughter] does not have the physical or emotional resource to care for the appellant. I accept that her daughter, the appellant's granddaughter in India, may not be available to provide the necessary care as she is a full-time student."

25. Having reached those findings on the evidence, the Judge then set out her reasons for finding that Paragraph 276ADE(1)(vi) was met in this case as follows:

> "21. I thus find that there is a factual background to support the psychologist's conclusions that the appellant's health is likely to deteriorate. I find it plausible that, without the attention and personal motivation that she receives from the sponsor that her overall health may decline. I also accept that the appellant derives some comfort from visiting her husband's grave here and an inability to do this may also comprise cause for a deterioration in her mental health. Further, without the sponsor's regular support, I find that she would not have the motivation to integrate, the relevant issue for the purposes of Paragraph 276ADE. I am satisfied that without close familial support, the appellant would not be motivated to participate in society and the lack of that support would provide a significant obstacle to her ability to integrate and her motivation to establish or maintain relationships.
>
> 22. Taking these factors together I am satisfied that the appellant would face very significant obstacles on return to India as required by paragraph 276ADE.1(vi). Miss Willis [sic] offered to provide submissions on Article 8 outside the rules, but Mr Lemer confirmed that the appellant only relied on paragraph 276ADE. In the circumstances, it is not appropriate to address Article 8 outside the parameters of the rules."

26. I begin with the specific point raised by Ms Isherwood about the Judge's reference to "motivation". It may be that this is what the Respondent had in mind in the pleaded grounds when submitting that the Judge had misdirected herself by failing to consider the necessity of re-integration. If that is so, and in any event dealing with Ms Isherwood's submission in this regard, I consider it misconceived.

27. First, there is no case law as far as I can ascertain which makes the point made in the pleaded ground. Ms Isherwood could not point me to any. Second, in any event, this misses the point that the Judge was making. As Ms Isherwood rightly submitted, it might be said of any individual seeking to avoid return that they would not willingly reintegrate as they did not wish to leave the UK. However, the point made by the Judge is a different one. The reference to "motivation" arises from what is said at [19] of the Decision about the Appellant's reliance on her son to encourage her cognitive ability. It is by way of a stimulus to assist with memory.

28. I did not understand Ms Isherwood to reject my suggestion that an individual's ability to integrate could be affected by mental capacity. For example, a person with dementia may not feel able to leave the house without support. That would undoubtedly impact on an ability to participate in society by way of formation and continuation of relationships which, as Judge Ripley pointed out, are relevant to reintegration. I recognise that the Appellant's forgetfulness has not reached the stage of a diagnosis for dementia, but the Judge's finding in relation to motivation to participate in society which is part of the reasoning at [21] of the Decision has to be read in that context.

29. The Judge has set out at [21] of the Decision the factors which she considered amounted to very significant obstacles to the Appellant's integration. She had made findings about the Appellant's past. She had regard to Judge Housego's findings that the Appellant had lived for most of her life in India. Whilst that finding was undermined to some extent by the fact that the Appellant had regularly travelled between India and Saudi Arabia, it was the changes in the Appellant's physical and particularly mental health which lay at the heart of the Judge's conclusion in relation to Paragraph 276ADE(1)(vi).

30. Whilst I accept that the Judge has not referred to "integration" at [22] of the Decision (and I should add has referred only to "significant obstacle" rather than "very significant obstacle" at [21] of the Decision), paragraphs [21] and [22] of the Decision have to be read together and in the context of the remainder of the Decision. The Judge was clearly aware that the test was what would happen on return, whether the Appellant would be able to integrate ([15], [19], [21]), and whether she would "be an 'insider' in terms of participating in society" ([15]).

31. I accept as Judge Sheridan pointed out when granting permission that the factors in play in this case might have equally been raised in an assessment of Article 8 outside the Rules. It is probable that this course was not taken recognising the public interest which would apply in those circumstances given the Appellant's immigration history. However, that does not in any event preclude those factors being relied upon as very significant obstacles under Paragraph 276ADE(1)(vi) provided they are sufficient to justify the conclusion reached.

32. As I observed in the course of the hearing, and I understood Mr Malik to accept, the Judge's conclusion in this case might well be a generous one and one which some (if not many) Judges (including myself) would have been unlikely to reach on these facts and this evidence. However, the Respondent has not argued that the Judge's conclusion was perverse and in any event I accept Mr Malik's submission that it could not be said that no Judge properly directed could reach this conclusion. The Respondent's ground is in effect a disagreement with the conclusion derived from the facts and evidence.

33. The Respondent has failed to identify any error of law by her ground two. The Judge did not misdirect herself in law. She has provided adequate reasons for her conclusion.

CONCLUSION

34. The Respondent has failed to establish that the Decision contains any error of law. I therefore uphold the Decision with the consequence that the appeal remains allowed.

NOTICE OF DECISION

The decision of First-tier Tribunal Judge Ripley dated 23 January 2023 does not contain any error of law. I therefore uphold the decision with the consequence that the Appellant's appeal remains allowed.

L K Smith

Upper Tribunal Judge Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 June 2023