



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-001372

First-tier Tribunal No: HU/00438/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 16th of November 2023**

Before

**UPPER TRIBUNAL JUDGE L SMITH &
DEPUTY UPPER TRIBUNAL JUDGE BLACK**

Between

**SUDHABEN JITENDRABHAI DAVE
(NO ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Bellara (Counsel - direct access)

For the Respondent: Ms S McKenzie (Senior Home Office Presenting Officer)

Heard at Field House on 8 November 2023

DECISION AND REASONS

1. This is an appeal against the decision issued on 13 January 2023 by First-tier Tribunal Judge S Khan ("the Judge") which refused the appellant's appeal against a decision of the respondent dated 15 February 2022 refusing her application on human rights grounds as the dependent relative of her son.
2. The appellant, Mrs S J Dave, is a citizen of India and her date of birth is 14 December 1948. She entered the UK on 13 October 2019 as a visitor but extended her stay until 31 July 2020 because of the pandemic. She had previously visited in 2018 with her husband, who sadly died on 15 August 2019. Her son and his wife, both nationals of India, have two children who are British citizens and who have a strong attachment to the appellant. She has a daughter, son in law and three grandchildren in India.
3. In her refusal letter the respondent considered private and family life in and outside of the Rules. Suitability requirements were met. There were no very significant obstacles to the appellant's reintegration in India and there were no

unjustifiably harsh consequences for the appellant or her family. The respondent considered that GEN 3.2 was not met or Article 8 outside the Rules. Any private life was established when her status was precarious.

4. The Judge heard oral evidence from the appellant and her son. She found that the family as a whole could return to India if they choose to do so [25]. She found that the appellant was diagnosed with mild cognitive disorder but that did not impact on her daily life in any significant way [26]. The Judge accepted the diagnosis of mixed anxiety and depression by her GP [27]. Placing weight on the independent social worker and GP 's reports, she found that the appellant did not require help for personal hygiene in her day to day care, was independent in her personal care, and required minimal support with daily living [30]. The Judge accepted that the appellant required emotional support and that this should be from her family [29]. The Judge found that the appellant's daughter, residing in India, was unable to provide any care given that she was in a coma and in the long term was cared for, together with her three children, by her husband [31]. The Judge went on to conclude that it would be possible for the appellant to return to live in her former home where her daughter and family could also live and that they could provide her with emotional support and where she would be surrounded by her family [32]. The Judge concluded that Paragraph 276ADE (vi) was not met. The Judge concluded that Article 3 on medical grounds was not met having regard to the medical evidence [34]. Having found that GEN 3.2 did not apply she then concluded that Article 8 was not breached when considered outside the rules as the decision was proportionate [35].
5. In grounds of appeal the appellant argued that the appellant's mental health was central to her appeal. The Judge failed to properly consider the unchallenged medical evidence as to the appellant's mental ill health and /or consider Article 3 with reference to AM (Zimbabwe). She failed to give adequate reasons for finding that the whole family could return to India and/or where the best interests of the children lie. She gave insufficient attention to the evidence as to the impact of the appellant's mental health on her day to day living and physical needs. The Judge failed to consider the evidence in line with the principles in Kugathas v SSHD 2003 EWCA Civ 31 as to family life and dependency. There was no credibility assessment of the witnesses' evidence. Her conclusions were based on speculative findings, and such matters were not put to the witnesses and there was no evidence in support. There was no consideration of section 117B 2002 Act (as amended).
6. Permission to appeal was granted by First-tier Judge Cox who found that it was arguable that the Judge failed to consider the sponsor's children's best interests in reaching a conclusion that they could relocate to India. The children are British citizens and attend school.
7. There was no Rule 24 response.
8. At the start of the hearing before us, Mr Bellara informed us that Ms McKenzie had indicated that the grounds raised as to error of law were conceded by the Secretary of State. This was entirely in keeping with the preliminary view that we had formed and accordingly there was no need to proceed further with the hearing. We were satisfied that the grounds of appeal were made out and that the Judge failed to deal with relevant issues in particular the impact of the separation on the family and where the best interests of the grandchildren lie. Further we took the view that the consideration of paragraph 276ADE (vi) and Article 8 were

flawed and overall the Judge had reached speculative findings in support of her conclusions that were not supported by any evidence. The Judge speculated that the appellant could return to India and live with her daughter and family. As for the medical evidence we are of the view that this is unlikely to reach the threshold for Article 3 and to that extent the Judge did not err. However, there does appear to be a somewhat inadequate engagement with the medical evidence. We canvassed the representatives as to future disposal and given the need for extensive findings of fact to be made, decided that it was suitable for remittal. Both parties agreed with this view

Notice of Decision

The decision and reasons contain material errors in law and shall be set aside.

The appeal is to be remitted to the First -tier Tribunal (excluding Judge S Khan) for a hearing afresh.

—

G A Black

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

9 November 2023