



**Upper Tribunal  
(Immigration and Asylum Chamber)  
2022-006718**

**Appeal Numbers: UI-**

**and UI-2022-006719**

IA/00730/2022

HU/50481/2022

IA/00729/2022

HU/50480/2022

**THE IMMIGRATION ACTS**

**Decision and  
Reasons Issued**

**09**

**September 2024**

**Before**

**Deputy Upper Tribunal Judge MANUELL**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**(1) MR AJIT SINGH  
(2) MRS KUNDAN KAUR  
(NO ANONYMITY DIRECTION MADE)**

Respondents

**Heard at Field  
House  
on 27 August 2024**

**Representation:**

For the Appellant: Ms A Ahmed, Senior Home Office Presenting Officer

For the Respondents: Mr Z Raza, Counsel  
(instructed by Charles Simmons)

## **DECISION AND REASONS**

### *Introduction*

1. For clarity the parties to this appeal will be referred to by their designations as in the First-tier Tribunal. Permission to appeal was granted to the Secretary of State for the Home Department by First-tier Tribunal Judge Boyes on 13 September 2022 against the decision to allow the Appellants' linked Article 8 ECHR appeals made by First-tier Tribunal Judge Chamberlain in a decision and reasons promulgated on or about 13 July 2022.
2. The Appellants, husband and wife, nationals of India respectively born on 28 May 1950 and 15 June 1948, had applied for leave to remain outside the Immigration Rules on Article 8 ECHR private and family life grounds. Their applications were refused by the Secretary of State for the Home Department on 12 January 2022.
3. The Appellants entered the United Kingdom in October 2016 as visitors. They overstayed their visas and it was not until April 2021 that they made their settlement applications which are the subject of these appeals. The Appellants' claims were based mainly on their poor and deteriorating health, full details of which are set out in Judge Chamberlain's decision and which are summarised in the extract below. The Respondent refused the Appellants' claim on the basis that they could receive appropriate care and treatment in India.
4. In the United Kingdom the Appellant live with their only child, their daughter and sponsor. She has children and works as a carer. She was widowed in 2019.

### *The First-tier Tribunal Judge's decision*

5. After reviewing the evidence, which included extensive medical reports, First-tier Tribunal Judge Chamberlain found that paragraph 276ADE(1)(vi) of the Immigration Rules was met.
6. The Judge said:  
  
"30. I further find that the emotional support which Ms. Kaur gives to her parents could not be replicated by any third party carers.

31. I find that the Appellants would be returning to India without any family support or any other support network. The first Appellant needs assistance with his personal care, eating and mobilising. He also needs supervision on account of his memory problems. The second Appellant has hearing problems and needs assistance mobilising. She cannot provide the necessary care for the first Appellant. I find that they would be very vulnerable returning to a country where they have not lived for almost six years, during which time their health, both mental and physical, has significantly deteriorated.

32. I find that the Appellants would face very significant difficulties reintegrating into India. I find that neither of them would be able to form any kind of meaningful private life. The support of the other, given their medical problems, is not enough to enable them to access the healthcare and support that they need.

33. I find that the Appellants have shown that they meet the requirements of paragraph 276ADE(1)(vi). I find that there would be very significant obstacles to their integration in India."

7. The Judge also found that there was Article 8 ECHR family life going beyond the normal ties between adult parents and adult child, amounting to emotional dependency. Thus the appeals were allowed.

*The grant of permission to appeal*

8. On any view this was a sad case concerning the seriously unwell elderly parents of a recently and untimely widowed only child. Judge Chamberlain's decision to allow the linked appeals was perhaps hardly a surprising one. Nevertheless Secretary of State challenged the Judge's decision and obtained permission to appeal from First-tier Tribunal Judge Boyes. When granting permission, Judge Boyes stated: -
9. "The grounds assert that the Judge erred in the assessment of the factual matrix as it forms part of the 'very significant obstacles' test. It is argued that the Judge did not consider, inter alia, the healthcare available in India, provision of old age persons homes, that there would be family contact and help (it was not explained why it was accepted there was no help at all) and the Judge did not consider the very high public interest in removing the appellants given that they were accessing NHS resources to which they had no

entitlement and that their immigration history was as it was.

10. "Having considered the matter, I am satisfied that the grounds as contained in the application are arguable. It is clearly arguable that in assessing very significant obstacles the learned Judge maybe ought to have given some consideration to healthcare in India. In addition, the public interest always need considering." Permission was granted on all matters raised.

#### *Submissions*

11. Ms Ahmed for the Respondent conceded that the principal grounds of appeal, misdirection in law, were unclear and so difficult to argue. It had to be accepted that the Judge's various positive findings of fact had not been challenged by the Respondent. It was not easy to argue that the grounds of appeal amounted to more than mere disagreement with the Judge's decision. Ms Ahmed therefore relied on the grounds but did not press the Respondent's case further.
12. Mr Raza for the Appellant resisted the appeal. He submitted that the alleged misdirection in law had not been identified as none of the Judge's findings of fact had been challenged in the grounds, no doubt because it was recognised that the findings had been open to the Judge who made an assessment based on those findings. The Judge's decision had addressed all the points in dispute between the parties. There was no basis for disturbing the decision and the appeal should be dismissed.

#### *Discussion and decision*

13. Article 8 ECHR appeals involving elderly parents of settled persons are invariably difficult. Like most Article 8 ECHR appeals they are intensely fact sensitive. The typical situation, as seen in the present appeal, is of a child leaving their home country for greener pastures elsewhere, while their parents are still in good health and active, until the inevitable day comes when their parents have become frail and need at least some degree of assistance. The public interest issues such as NHS health care costs are significant, especially when (as in the present appeals), immigration control arises. The Appellants' entry had been for the purpose of a family visit, with a declared intention of returning to the Appellants' long term home, but what followed was an

overstay of several years, before any application was made to the Home Office.

14. In those circumstances some may consider Judge Chamberlain's decision to allow the appeals despite the overstay to be generous, but the Tribunal is only concerned with the grounds of appeal advanced by the Secretary of State, who went unrepresented at the First-tier Tribunal hearing. Those grounds of appeal made no challenge to the Judge's findings of fact, which addressed the issues raised in the reasons for refusal letter. The Judge separately addressed each element of section 117B of the Nationality, Immigration and Asylum Act 2002, which mandates consideration of the public interest in the Article 8 ECHR proportionality balancing exercise, both generally and in relation to private life. Again the findings the Judge reached were not challenged in the grounds of appeal. The Judge gave adequate reasons for finding that paragraph 276ADE(1) (vi) of the Immigration Rules had been met. That finding embraced the issue of the availability and adequacy of care in India, as raised in the reasons for refusal letter.
15. Thus the Secretary of State's complaints of misdirection were not shown to have any substance, and amount only to disagreement. The weight given to the evidence presented was a matter for the Judge. There is no basis for the Tribunal to interfere with the Judge's decision, which stands unchanged.

### **NOTICE OF DECISION**

The Secretary of State's appeal to the Upper Tribunal is dismissed.

There was no material error of law in the First-tier Tribunal's decision and reasons, which stands unchanged.

**Signed**     **R J Manuell**                     **Dated** 29 August 2024

**Deputy Upper Tribunal Judge Manuell**