



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-005116

First-tier Tribunal Nos:  
HU/57339/2022 & IA/10391/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On 7<sup>th</sup> of February 2024**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**Shila Devi Adhikari**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr A Badar, instructed by Connaught Law

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

**Heard at Field House on 11 January 2024**

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge L K Gibbs, promulgated on 25 July 2023, into which she dismissed the appellant's appeal against the decision of the Secretary of State made on 30 September 2022, refusing her leave to remain and refusing her human rights claim.

2. The appellant entered the United Kingdom on 3 September 2009 as a student. She remained here lawfully until 1 December 2016 when she became appeal rights exhausted. She is a citizen of Nepal.
3. I note from her witness statement that she had previously studied at 360 GSP College and, whilst her application for further leave to remain as a Tier 4 Student there, the college's licence was revoked and her application for leave to remain as a Tier 4 Student was rejected on 21 July 2015 with a right of appeal and she was given 60 days to find a new sponsor but was unable to do so.
4. The appellant suffers from a number of physical and mental ill-health problems. She has chronic back pains and in addition has been diagnosed with severe depression, for which she has been prescribed medication.
5. Her case is that there would be very significant obstacles to her reintegrating into life in Nepal given the very different view there on mental ill-health, which has stigma, the lack of support from the network of friends and family and the lack of physiotherapy support for her back pain. She has a partner, Mr Pandeya whom she met in 2009. They underwent a religious marriage ceremony on 11 December 2020 and continued to live together.
6. The Secretary of State was not satisfied that there were very significant obstacles to her integrating into life again in Nepal or that requiring her to leave they would be in breach of her rights pursuant to Article 8 of the Human Rights Convention.
7. The judge had before her a bundle of evidence including an expert report from Dr Galappathie. She heard oral evidence from the appellant and her partner as well as submissions from Ms Besso, who represented the appellant in the First-tier Tribunal and Ms Huber, Presenting Officer.
8. The judge found that:-
  - (i) the appellant's mental health diagnosis of a severe episode of depression and generalised anxiety, may impair her ability to recall events and/or may affect the way she would be able to give her evidence;
  - (ii) there were concerns about Dr Galappathie's report [9] and [10] observing that Dr Galappathie made no comment of the appellant's account that she first went to the GP regarding her mental problems in around 2021, yet this was not mentioned in the GP records, finding that this inconsistency undermines the weight that can be attached to the report, the GP records making no reference to treatment for depression, save for a reference on 6 May 2022;
  - (iii) she was not satisfied by the evidence that the appellant is, as claimed, in unbearable pain, that being undermined by her GP record and there being little evidence that she required physiotherapy, nor that this could not be continued to be accessed in Nepal;

- (iv) given the concerns regarding the appellant's evidence and the weight that can be attached to Dr Galappathie's report, she was not satisfied that removal would be in breach of Article 3;
- (v) bearing in mind the previous credibility findings made by Judge Spicer, her decision promulgated on 8 November 2021, or is not satisfied the appellant would be at risk from her family, nor that her partner would be at risk if he should chose to return with her [16] and she did not suffer from any significant health problems that would impeach her ability to integrate to Nepal;
- (vi) she was not satisfied that despite living in the United Kingdom for fourteen years the appellant would face very significant obstacles for integration on return;
- (vii) little weight should be attached to her private and family life given the provisions of Section 117B(4) of the Nationality, Immigration and Asylum Act 2002;
- (viii) given the appellant did not meet the requirements of the Immigration Rules which carry significant weight in the public interest in her removal, although there was some question regarding previous bad advice, she had remained in the United Kingdom in a temporary category and should not expect to remain in the United Kingdom.

9. The appellant sought permission to appeal on three grounds:-

- (i) in failing to take into account the fact that the appellant had been given previous poor advice and that this was a case which fell within the scope of Mansur (immigration adviser's failings: Article 8) Bangladesh [2018] UKUT 274;
- (ii) that the judge had irrationally concluded that there would not be some difficulties for the appellant on return as disclosed in the GP records and the points raised by Dr Galappathie and thus the finding that she would not "suffer any significant difficulties because of mental and physical health problems" is an irrational finding;
- (iii) the judge erred in not considering material aspects of the appellant's claim in that she had not taken into account the letters of support which showed that she is a person who assists and contributes to society and the fact she gets the benefit of education, is of good character and has worked in the United Kingdom, had not been given positive weight.

10. On 16 October 2023 First-tier Tribunal Judge Dainty granted permission stating it was arguable the Article 8 balance did not go far enough, insufficiently identifying all the matters that fall in the appellant's favour and that although Mansur was not cited to the judge, the judge should have given full reasons for the weight to be given to the bad advice or circumstances of the case.

11. I heard submissions from Mr Badar. In the event, having heard his submissions, it was unnecessary to hear submissions from Mr Lindsay.

### **Ground 1**

12. In assessing the grounds of appeal, I bear in mind what was said by the Court of Appeal in **Volpi v Volpi**, and **Riley v Sivier**.
13. Contrary to what is submitted both in the grounds and in the skeleton argument from Mr Badar, it is sufficiently clear that the judge was aware of the background to the poor advice. What that poor advice was, is less clear. It appears that the appellant, acting on advice, elected to have an earlier appeal decided on the papers rather than oral hearing but it is not the appellant's evidence (and I bear in mind that her credibility was very much in issue) what advice would have been given such that she could have succeeded or was otherwise prejudiced.
14. As Mr Badar accepted, there was an appellant's skeleton argument in this case which, although it refers to the poor advice from Malik Law Chambers at [4] says simply that she was not given proper supportive advice so that she had made a formal complaint to the SRA. Whilst I accept that Malik & Malik Law Chambers were the subject of an intervention and adverse criticism in the press, this is not a sufficient basis on which, even taking into account the very limited nature of the complaints made to the SRA and the limited nature, indeed the absence of any findings, are such to take us into the unusual territory of Mansur.
15. As was observed in that case, it will only have been a rare case that an advisor's failings will find a reason to qualify the weight to be placed in the public interest maintaining firm and effective immigration control. The circumstances here, as set out by the appellant, was that she had sought further leave to remain as a student but had been unable to find a college to sponsor her. As was observed in Mansur at [30], poor legal advice in the immigration field will have no correlation with the relevant public interest. The weight that would otherwise need to be given to the maintenance of effective immigration control is not to be produced just because there happened to be immigration advisors who offer poor advice and services. The facts in Mansur were very different from those here. The representative blatantly followed to fail the appellant's specific instructions, that being the sole reason why the application for leave failed to be treated as invalid.
16. Given that there is no indication the judge was addressed on Mansur or that it was submitted that significant weight ought to attach to this poor advice, the nature of which is unclear, it cannot be said that the judge erred in not attaching weight to it, given that weight was a matter for her. Further, what the appellant has not done in this case is indicate what the correct advice should have been and how it would have put her in a different position.
17. In turning to ground 2, I find that this is equally without merit. As Mr Badar accepted, there was no challenge in this case to the findings in

respect of Article 3. Further, there is no challenge to the adverse findings of credibility in respect of the appellant as to her physical ill-health.

18. Further, it is not at all clear what evidence was not taken into account. When asked to identify what evidence ought to have been taken into account, Mr Badar referred me to an article which set out the difficulties in obtaining medication for mental health conditions in Nepal. He was, however, unable to show me that there was any evidence that the medication prescribed to the appellant, sertraline, naproxen and amitriptyline were unavailable in Nepal.
19. Some of the other drugs prescribed to the appellant are available over the counter and I am aware from other cases that the drugs naproxen, amitriptyline and sertraline have been available for many years. Further, this is not a case in which the judge said that there were no difficulties. On the contrary. She simply found that there were no significant difficulties. That is an evaluative exercise and her analysis cannot be faulted in the light of her assessment of the evidence as a whole. There is insufficient basis to say that she did not take all the relevant evidence into account and there is simply no basis on which it can be argued that the judge's approach to the evidence was irrational. That is all the more so when she had found the appellant to be lacking credibility about her physical ill-health for adequate and sustainable reasons, and which have not been challenged.

### **Ground 3**

20. There is no requirement for a judge to set out a balance sheet approach although it is sensible to do so. Nonetheless, it is sufficiently clear from the decision that the judge had set out those factors which were for and against the appellant. There is no requirement of the judge to mention each and every item of evidence before her and I am not satisfied that the judge has failed to take into account any relevant evidence.
21. Insofar as the appellant has supportive people in the United Kingdom, that is the letters referred to in the grounds, the grounds do not take into account the fact that little weight was to be attached to the appellant's private life in the United Kingdom given it had been built up here when her presence here was precarious. Again, this is simply a matter as to weight.
22. There is no simply no basis on which the primary findings of fact in this case can properly be disturbed and, viewing the evidence as a whole, sufficient reasons are given as to why there were not in this case very significant obstacles such that the integration would be difficult, not least of which was the unchallenged finding that the appellant had not told the truth about the circumstances she faced on return in terms of her family and accordingly, it cannot be argued properly that the judge's decision is defective in any way.

### **Notice of Decision**

23. Accordingly, for these reasons, I find that there is no merit in the grounds of appeal and I dismiss the appeal.

Signed

Date: 2 February 2024

Jeremy K H Rintoul  
Judge of the Upper Tribunal