



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Appeal No: UI-2024-001026

First-tier Tribunal No: HU/52711/2023
LH/00079/2024

THE IMMIGRATION ACTS

**Directions issued at a hearing in Birmingham
on 24th September 2024**

On 26 September 2024

Before

UPPER TRIBUNAL JUDGE KEITH

Between

**Kanwaljit Kaur
(NO ANONYMITY ORDER MADE)**

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr T Muman, Counsel, instructed by Ishwar Solicitors

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DIRECTIONS

1. Withdrawal of concession - With no objection by the appellant, the respondent is GRANTED permission to withdraw its concession that the appellant and Stefan Emilov were and are in a genuine and subsisting relationship. For the avoidance of doubt, the appellant maintains that the relationship was and is genuine and this Tribunal has made no findings on the point.
2. Adjournment - With no objection by the respondent, the appellant's application to adjourn the remaking hearing on 24th September 2024 is GRANTED.
3. Remittal to First-tier Tribunal - In light of the withdrawal of the concession, the appellant has applied for Deputy Upper Tribunal Judge Chamberlain's dated 26th June 2024 to be varied, specifically para. [28] and directions [1] to [3], and instead, that remaking is remitted to the First-tier Tribunal in Nottingham, to a Judge other than Judge Nixon. That application is also GRANTED, and remaking is remitted to the First-tier Tribunal, subject to the following preserved findings of fact (paragraph references are to Judge Nixon's reasons). A Bulgarian interpreter

will be needed. The appellant will need to confirm promptly what other interpreters are required of other witnesses. The parties may at the remaking hearing adduce any additional evidence.

4. Preserved findings from Judge Nixon’s judgment

- a. “It has been suggested in their evidence that there is no work available for them [the appellant and the sponsor] in India. I do not accept this.” (para [12])
- b. “It is clear that counselling is available there and if necessary, she [the appellant] could avail herself of such counselling to mitigate the effect of relocation” (para [13])
- c. “The most compelling point for the appellant was that she is living in a home which she was able to buy outright from the proceeds of compensation following the death of her late husband in 2015” (para [14]).
- d. “I therefore take into account that having to leave that home behind would cause hardship for her in emotional terms” (para [14]).
- e. I do not find however that that hardship, even taken together with the factors referred to above, attains a threshold of very serious hardship (para [14]).

Reasons

5. The case had been listed for a remaking hearing in the Upper Tribunal following the error of law decision of Deputy Upper Tribunal Chamberlain sealed on 26th June 2024. Judge Chamberlain’s and Judge Dixon’s decisions had been premised on the respondent’s acceptance that the appellant and Mr Emilov were and are in a genuine and subsisting relationship. Following that hearing, the appellant adduced a medical expert report dated 13th September 2024, and also disclosed, apparently for the first time, what appeared to her full GP records. It was unclear to me whether the expert had had full sight of those records, as opposed merely to a ‘summary’. I explored with the parties how they wished me to proceed. While I emphasised that while I had made no findings nor formed any views, the GP records at least raised issues about the appellant’s contact with, and visits to family members; whether and when she lived alone and/or had paid tenants living with her; whether she had been in relationships akin to or with a view to marriage, other than Mr Emilov, and if so, when; whether she had been the potential victim of a fraud in relation to a former partner or marriage website, which has since been resolved, and whether that might be relevant to any continuing mental ill-health. In turn, a question arose of the extent to which Dr Vilanova had considered such background in producing his report.
6. The reason for the respondent only wishing to withdraw its concession now on the nature of the relationship was that the appellant had only very recently disclosed her GP records. I bore in mind the prejudice to both parties of allowing the concession to be withdrawn but concluded that it was fair and just to allow the withdrawal of the concession. I bore in mind the authorities of SSHD v Davoodipannah [2004] EWCA Civ 106, NR (Jamaica) v SSHD [2009] EWCA Civ 856, AK (Sierra Leone) v SSHD [2016] EWCA Civ 999 and AM (Iran) v SSHD [2018] EWCA Civ 2706. The respondent has made its application promptly, having only just been shown the GP records. There is a good reason for the withdrawal – while making no findings, the records are directly relevant to the appellant’s claimed relationship with the sponsor, how long she has lived with him and in what

circumstances. While there is prejudice to the appellant, it has been open to her to disclose these records at any stage and Mr Muman said that his instructions were not to object, provided that there was an adjournment to allow the parties to adduce further evidence, if necessary.

7. On the appellant's adjournment application, on the one hand, it has arisen in the context of the appellant's own disclosure. On the other hand, the issue which the respondent now seeks to address is fundamental to her claim, has never been tested in evidence and there are witnesses she seeks to call. In the circumstances, a fair hearing could not take place today.
8. I then considered whether it was appropriate to continue remaking in the Upper Tribunal. Remaking had been retained in the Upper Tribunal on a different set of assumptions. The nature and extent of any judicial fact-finding is broader than had been appreciated (see para 7.2(b) of the Senior President's Practice Statement) and with regard to para 7.2(a), while it is not due to any error of law, the effect of the withdrawal of the concession, while retaining remaking in the Upper Tribunal, would be to deprive the appellant of a two-tier decision making process on the issue of the genuineness of her relationship, as it has never been contested before (headnote (3) of Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC) applied).

J Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24th September 2024