IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-003184
UI-2024-003185

First-tier Tribunal No:
HU/57755/2023
HU/57756/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 15th of November 2024

Before

UPPER TRIBUNAL JUDGE MAHMOOD

Between

Shaktisadhan Chakraborty
Gita Chakraborty
(NO ANONYMITY ORDER MADE)

Appellants

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellants: Mr A Arafin, counsel instructed by Shahid Rahman Solicitors
For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

Heard at Field House on 23 October 2024

DECISION AND REASONS

1. This is my oral decision which I delivered at the hearing today.

2. The Appellants appeal with permission against the decision of First-tier Tribunal Judge Taylor ("the Judge") dated 3 June 2024. The Judge had dismissed the Appellants' appeals against the Respondent's refusal of their human rights claims.

Background

3. The Appellants are nationals of India. They are aged in their 70s and 80s respectively. They have an adult daughter here in the United Kingdom. She is a British citizen and she is their Sponsor. The Appellants had arrived in the United Kingdom pursuant to visit visas on 5 December 2021. Their entry clearance was due to expire on 12 May 2022 and it appears that on that day they had made applications to remain in the United Kingdom based on human rights grounds.

The Appeal to the First-tier Tribunal

4. The background to what occurred at the First-tier Tribunal is unusual. The Judge noted at paragraph 6 of his decision, and there has been nothing provided to me to counter what the Judge said:

> "6. The appellant's representative made five applications for adjournment prior to the hearing because of unavailability of the appellant's representative, despite the hearing being listed on a date which took account of their submitted dates to avoid. The sponsor also did not wish to instruct Counsel. These applications, which were essentially repetitions of the same application were refused because the appellant's representatives had ample time to arrange alternative Solicitor or Counsel for the appeal hearing and did not identify any particular or unique feature of the case that would necessitate Counsel of choice to represent the appellants at the hearing. The Tribunal had to direct the representatives to stop making further frivolous applications."

5. As I have said that is a very unusual situation.

6. The Sponsor attended the hearing before the Judge with her husband but the Appellants did not attend and nor did the Appellants' solicitors. The Sponsor applied for an adjournment on the day.

7. The Judge refused that application for an adjournment. The Judge noted at paragraph 7 as follows:

> "The appellant's had had sufficient time to secure Counsel and had chosen not to do so and had also chosen not to attend the hearing in the knowledge that their five previous applications to adjourn had been refused and the hearing was scheduled to proceed. The Tribunal cannot accommodate a particular choice of representative where there has been no explanation as to any particular or unique feature of the appeal which necessitates Counsel of choice."

The Hearing Before Me

8. Mr Arafin, who appears on behalf of the Appellants today has provided much assistance to me, saying all that he possibly can on behalf of the Appellants. He told me that that he has been given no reasons as to why the particular solicitor had to attend the hearing at the First-tier Tribunal. Mr Arafin also said he did not know why counsel was not instructed for the hearing before the Judge. Mr Arafin confirmed that there was nothing received from his instructing solicitors or set out anywhere else as to what the nature of the 5 applications for the adjournment were and that there was no other basis for me to go behind what the Judge had said at paragraphs 6 and 7 of his decision.

9. It was submitted that the Judge noted at paragraph 8 that Mr Chakraborty had had a blackout the previous day. The Judge also noted however there was no supporting medical evidence provided.

10. I checked with Mr Arafin whether there was any medical evidence now, some 5 months later. I was told that there is not. Instead, Mr Arafin referred to pages 204 and 205 of the bundle. Those pages refer to Mr Chakroborty having suffered a fall. It is stated that on 22 February he had fallen in a bathroom and “LOC”, (which must mean lost consciousness) for 15 minutes.

11. Dealing with this aspect immediately, it can be seen at paragraph 19 of the decision, that the judge said in clear terms “his medical records indicate that he had a fall in February 2024 because he lost consciousness”. Clearly the judge was well-aware of the February loss of consciousness because he referred to it in his decision.

12. The grounds of appeal are numbered 1 to 5, but as it happens, in fact there are only four grounds of appeal because there is no ground 3. Ground 1 states in summary as follows:

> ***“****The Judge overlooked the distinction between '**fairness**' and '**reasonableness**', consequently misapplying the principle of fairness as established in 'Nwaigwe. (adjournment: fairness) [2014] UKUT 418 (IAC).”*

Grounds 2 and 4 were taken together by Mr Arafin which contend that there was an inadequate and erroneous assessment of the evidence. Ground 5 contends that there was a failure to appropriately apply the test for very significant obstacles and in respect of the Article 8 proportionality assessment.

13. I will not rehearse the submissions before me, but I shall refer to them where necessary when I set out my analysis and consideration of the matter.

Analysis and Consideration

14. The Appellants' grounds had appended a copy of an email from the Sponsor addressed to her from Counsel, under the email address of "onecounsel@..." email address with reference to a Mr A. Sayen. In my judgment that e-mail, as Mr Parvar identifies, in reality is a complaint that the Judge was wrong. The e-mail is not a ground of appeal. It sets out that the Sponsor said in part,

> "1. I have clearly stated that it is impossible for my parents to lead a life without me in India. ... There is no one even to look after their daily needs such as shopping or food supply. ... There is a misinterpretation of facts as in this circumstance. I had mentioned that if my parents are forced to go back then there will be no other option but for me to go back with them."

And then it also states:

> "2. It was mentioned that there is a health system in India to support my elderly parents. This is completely wrong. There is no health support, everything in India is private, which requires a huge amount of financial investment."

Then it states:

> "3. I have also mentioned that my parents are my kids now. Would the Home Office actually take away a child from their parents, then why in such a situation my parents who are my kids at this time being taken away from me."

15. I turn to the Judge's decision. He had refused the application for an adjournment and had set out the issues in dispute at paragraph 9 of his decision as follows:

(a) whether the Appellants would face very significant obstacles to integration in India; and

(b) whether the refusal decision was proportionate.

16. The Judge correctly set out the legal framework at paragraphs 12 to 14, including reference to paragraph 276ADE(1)(vi) of the Immigration Rules, Article 8 ECHR and Section 117B of the Nationality, Immigration and Asylum Act 2002.

17. The Judge considered the evidence including the written evidence. The Judge specifically referred at paragraphs 15 and 16 to the following matters:

(1) That the Appellants' health had deteriorated significantly since they arrived in the United Kingdom, that Mrs Chakraborty has a severe heart condition and requires constant supervision.

(2) Mr Chakraborty's Parkinson's has aggravated, that he can hardly balance his movement and coordination and that both of them require help with routine on a regular basis.

18. The Judge also heard oral evidence that the Sponsor's uncle, who had been caring for her parents in India, had passed away and that she was the only child and that there was no-one else who could look after them. If the appeal was not successful, the Sponsor said she would need to give up her job and go to India to care for them.

19. The Judge's decision also refers at paragraphs 18 to 22 to the ages of the Appellants', with references to various parts of the medical records, the history of medication, which had been prescribed, the treatment that was being received here in the UK and medical records referring to low back pain and knee pain. There was also reference to Mr Chakraborty's diabetes as well as Parkinson's and as I referred earlier, that in February he had lost consciousness.

20. Also recorded at paragraph 19 of the decision is that the Judge noted that one of the medical records stated as follows:

> "There is also a record from 10 October 2023 of an ambulance call which records that the first Appellant does a lot of gardening, he is out first thing every morning to water the plants and do small bits of adjustments."

21. The Judge said at paragraph 22:

> "I find that the appellants are able to manage stairs, take their medication, attend to their personal needs and tend a garden. Whilst the sponsor may cook for the appellants, there is no evidence before me that there is no-one in India who could be employed to undertake this task and the sponsor gave evidence that she would return to India with her parents if required. There is no medical evidence before me of any conditions which would prevent the appellants from integrating in India and I must take account of the fact that the sponsor would also go to India to assist her parents if required. The appellants can keep in contact with the sponsor and the wider family via the telephone and visits and thus be emotionally supported. Whilst I appreciate that the sponsor wishes to care for her parents herself and that this would also be their preference, I am not satisfied, on the evidence before me, either that there are very significant obstacles to integration or that the refusal is disproportionate. The circumstances of the appellants do not outweigh the public interest in effective immigration controls."

22. The Judge accepted the Respondent's submissions including that assistance and help could be provided if the Appellants were to return to India, that the medical evidence did not indicate how the medical conditions impacted upon their ability to live their daily lives, that there was medical evidence that the Sponsor's mother could undertake daily chores without help and that there is a functioning healthcare system in India. The Judge noted too that the Appellants had come to the UK on a

visit visa and not via a genuine route to settlement. The Immigration Rules were not met, which was a weighty factor and that the Appellants' private lives were established at a time when their leave to remain was precarious and thereby should be afforded little weight.

23. Mr Parvar's submissions were powerful in respect of this Judge having made robust and clear findings and conclusions. The judge recognised the factual matters which were before him.

24. In respect of the adjournment though, Mr Arafin is entirely right that I must look at that in isolation relating to fairness to assess whether there was thereby unfairness leading to procedural impropriety.

25. In doing so I consider the Court of Appeal's decision in *SH (Afghanistan) v Secretary of State for the Home Department* [2011] EWCA Civ 1284. Moses LJ, with whom Patten and Ward LJJ agreed, said that the question in a case such as this is whether it was unfair to refuse the adjournment application. The question is not whether it was reasonably open to the judge to proceed with the hearing. A decision reached by the adoption of an unfair procedure must be set aside unless it can be shown that it would be pointless to do so because the result would inevitably be the same.

26. On the facts of that case, the Court of Appeal considered that it would be pointless to remit the appeal to be heard afresh and it dismissed the appeal despite the errors into which the First-tier Tribunal and the Upper Tribunal had fallen. In *Nwaigwe (adjournment: fairness)* [2014] UKUT 418 (IAC)**,** the former President, McCloskey J, underlined that the question in such a case was not whether the First-tier Tribunal acted reasonably. As Moses LJ had stated in *SH (Afghanistan)* the test to be applied was one of fairness. I have to ask was there any deprivation of the affected party's right to a fair hearing?

27. In my judgment and having considered this carefully with the written and oral submissions provided to me, it was fair for the judge to proceed with the hearing in the absence of the Appellants and in the absence of their legal representatives. I note that although there was no specific medical evidence provided to the Judge to support the application for an adjournment, he had taken into account all that had been said to him by the Sponsor and by the Sponsor's husband who had attended on the day. Indeed, the judge also noted at paragraph 19 that in February there was a record of the first Appellant having lost consciousness. It is surprising that even now there is no medical evidence to confirm that there was a loss of consciousness the day before the hearing and even if there was, that it meant that neither of the Appellants could attend the hearing, not even via remote means such as via video.

28. Mr Arafin in discussion was reminded that it is of course possible under Rule 15(2) of the Upper Tribunal Procedure Rules for evidence to be admitted in respect of matters before me today.

29. In my judgment the Judge was being put in a very difficult situation whereby the Appellants' solicitors had made five applications to adjourn. Very unusually, the Appellants' solicitors had to be told that they must desist in making further frivolous applications. It still remains unexplained to me why so many applications were made, why this was the only solicitor apparently who could deal with this case in the country and why counsel instead could not have been instructed. It is of particular note that the hearing had been listed on a convenient date for the Appellants' solicitor, after 'dates to avoid' had been canvassed from the Appellants' solicitor.

30. Mr Arafin is counsel and has attended today. It remains wholly explained therefore why counsel was not instructed for the hearing before the Judge too.

31. The Appellants solicitors will be well aware of the overriding objective. It is the duty of the Appellants' solicitors to assist the Tribunal to further the overriding objective. Perhaps in the past it was possible to put a Judge in a difficult position by not attending the hearing and leaving it to a Sponsor to seek an adjournment on the day, but in my judgment, such an approach is unacceptable and wrong. The overriding objective at the Upper Tribunal and at the First-tier Tribunal is in similar terms.

32. Nor was it then sufficient for the Appellants (or for their Sponsor) to contend that different more lax rules ought to apply as they were without legal representation. The Supreme Court in *Barton v Wright Hassall LLP* [2018] UKSC 12; [2018] 1 W.L.R. 1119 dealt with the matter of unrepresented litigants. Lord Sumption, with whom Lord Wilson and Lord Carnwath agreed, said:

> "18. Turning to the reasons for Mr Barton's failure to serve in accordance with the rules, I start with Mr Barton's status as a litigant in person. In current circumstances any court will appreciate that litigating in person is not always a matter of choice. At a time when the availability of legal aid and conditional fee agreements have been restricted, some litigants may have little option but to represent themselves. Their lack of representation will often justify making allowances in making case management decisions and in conducting hearings. But it will not usually justify applying to litigants in person a lower standard of compliance with rules or orders of the court. The overriding objective requires the courts so far as practicable to enforce compliance with the rules: CPR r 1.1(1)(f) . The rules do not in any relevant respect distinguish between represented and unrepresented parties. In applications under CPR 3.9 for relief from sanctions, it is now well established that the fact that the applicant was unrepresented at the relevant time is not in itself a reason not to enforce rules of court against him: *R (Hysaj) v Secretary of State for the Home Department [2015] 1 WLR 2472* , para 44 (Moore-Bick LJ); *Nata Lee Ltd v Abid [2015] 2 P & CR 3* . At best, it may affect the issue "at the margin",...There are, however, good reasons for applying the same policy to applications under CPR r 6.15(2) simply as a matter of basic fairness. The rules provide a framework

> within which to balance the interest of both sides. That balance is inevitably disturbed if an unrepresented litigant is entitled to greater indulgence in complying with them than his represented opponent. Any advantage enjoyed by a litigant in person imposes a corresponding disadvantage on the other side, which may be significant if it affects the latter's legal rights, under the Limitation Acts for example. Unless the rules and practice directions are particularly inaccessible or obscure, it is reasonable to expect a litigant in person to familiarise himself with the rules which apply to any step which he is about to take."

33. In my judgment it was also highly unsatisfactory for the Judge to have been provided with hundreds of pages of medical records and to then expect him to seek to decipher the small print in amongst them. Despite that though, the Judge did so and I note that the medical records (bundle pages 105 to 361) show the General Practitioner entries and the like. Anybody who has ever seen medical records will know that they span over a long period of time with various entries on each page. In addition, the Judge's task was doubled because there were two Appellants and not one.

34. It has been made clear in the Presidential Tribunal's decision in *Lata (FtT principal controversial issues)* [2023] UKUT 00163 (IAC) that there is a duty on the parties to provide the First-tier Tribunal with relevant information as to the circumstances of the case. This requires constructive engagement with the First-tier Tribunal to permit it to lawfully and properly exercise its roles. The parties are therefore required to engage in the process of defining and narrowing the issues in dispute being mindful of their obligations to the First-tier Tribunal. As is said in the judicial headnote at paragraphs 3 and 4:

> "3. The reformed appeal procedures are specifically designed to ensure that the parties identify the issues, and they are comprehensively addressed before the First-tier Tribunal, not that proceedings before the IAC are some form of rolling reconsideration by either party of its position.
>
> 4. It is a misconception that it is sufficient for a party to be silent upon, or not make an express consideration as to, an issue for a burden to then be placed upon a judge to consider all potential issues that may favourably arise, even if not expressly relied upon. The reformed appeal procedures that now operate in the First-tier Tribunal have been established to ensure that a judge is not required to trawl though the papers to identify what issues are to be addressed. The task of a judge is to deal with the issues that the parties have identified."

35. Clearly none or very little of what has been said in *Lata* had been abided by the Appellants' solicitors in this case for the hearing at that First-tier Tribunal. That was not an acceptable approach by the Appellants' solicitors.

36. In my judgment, the Judge was left in a very difficult situation in which, in effect, he was being 'strongarmed' into a position where the Appellants had not attended and the Appellants' solicitors had not attended either. In the circumstances, in my judgment, it is demonstrably clear that the Judge quite properly and fairly came to the decision that he did. The Judge carefully balanced and considered the fairness aspects. I conclude that there was no unfairness and no procedural impropriety in the Judge's approach to the adjournment application.

37. I turn then to the substantive grounds. Mr Arafin grouped grounds 2 and 4 together and referred to Dr Kucheria's letter in the bundle at pages 204 and to Dr Ramos-Galvez's letter at pages 205 and 206. Mr Arafin submitted that these had not been been assessed correctly.

38. I note the reference to Dr Bhavesh Sachdev in the bundle at pages 230 to 232 and a discharge letter at page 260.

39. Having said what, I did in relation to the case of *Lata,* it was unacceptable to place hundreds of pages of medical records in the bundle and leave them for the Judge to decipher. However, the Judge did sufficiently and adequately deal with the medical records.

40. I cited some of the references earlier in this oral decision, but I refer again by way of example, to paragraphs 18 and 19 of the Judge's decision. There the Judge specifically referred to the medical records and specific entries including that there was a cardiac arrest. The Judge noted too the evidence in relation to Mrs Chakraborty's knee replacement and osteoarthritis as well as reference to a pacemaker. There was also reference in respect of Mr Chakraborty's records of February 2024 and also losing his balance and the attendance of an ambulance. In my judgment, it was not necessary for the Judge to summarise the hundreds of pages of GP records and medical notes and letters. The Judge fairly and adequately undertook that assessment within the decision. The Judge fairly and correctly took into account the medical reports.

41. Ground 5 alleges that the Judge did not appropriately consider the very significant obstacles and Article 8 proportionality assessment. In my judgment that ground is unarguable. The Judge undertook an adequate assessment, he noted the Appellants' immigration history and properly assessed Section 117B of the Nationality Immigration Act 2002.

42. Indeed, even if I had concluded that there was any demonstrable unfairness in the judge deciding to proceed with the hearing in the absence of the Appellant, there still remains a significant lacuna in the evidence from the Sponsor and her husband and from the Appellants and their representatives. The suggestion that the Sponsor's husband was compelled or forced to give evidence is simply not made out. It is only referred to in the grounds of appeal and there is no supporting evidence for that whatsoever. It is the Appellants' solicitors who drafted and signed

the grounds of appeal to the Upper Tribunal. They did not attend the hearing before the Judge to witness first hand what occurred and there is no supporting basis for such claimed compulsion having been placed upon the Sponsor's husband to give evidence. I reject that ground of appeal, if it was a ground of appeal. Even if I had concluded otherwise, I would have decided on the facts of this case that any error was immaterial to the outcome of the appeal.

43. In my judgment, the Judge took the Appellants' cases at their highest and found that they could not succeed under the Immigration Rules or Article 8 ECHR.

44. Having considered the evidence for myself and having invited the representatives today to take me to the evidence, I cannot see how a Judge of the First-tier Tribunal, directing themselves rationally and in accordance with the law, could have reached a different conclusion. I come to this view for amongst others, the following reasons. There was no viable basis for the appeal to succeed in relation to the Sponsor and Appellants' relationship. I note the reference to a grandchild. I of course acknowledge that any parent and any adult child wants the best for their parents. I accept that the Sponsor dearly loves her parents and I accept that the Appellants dearly love their daughter and granddaughter but that is not the test that the Judge had to consider.

45. The Immigration Rules set out the tests which have to be applied. No amount of sympathy could have caused the Judge or me to come to a different conclusion. It is of course a situation which causes one to be sympathetic.

46. I remind myself that the First-tier Tribunal is an expert tribunal. First-tier Tribunal decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts and tribunals should not rush to find such misdirection simply because they might have reached a different conclusion on the facts or expressed themselves differently. Lady Hale's judgment in *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49; [2008] 1 AC 678, at [30] makes that clear.

47. I also remind myself that I must be particularly alert to 'island hopping'. In Volpi v *Volpi* [2022] EWCA Civ 464, [2022] 4 WLR 48, at [65], the Court of Appeal said in respect of appeals against findings of fact:

> '65. This appeal demonstrates many features of appeals against findings of fact:
>
> i) It seeks to retry the case afresh.

> ii) It rests on a selection of evidence rather than the whole of the evidence that the judge heard (what I have elsewhere called "island hopping").
>
> iii) It seeks to persuade an appeal court to form its own evaluation of the reliability of witness evidence when that is the quintessential function of the trial judge who has seen and heard the witnesses.
>
> iv) It seeks to persuade the appeal court to reattribute weight to the different strands of evidence.
>
> v) It concentrates on particular verbal expressions that the judge used rather than engaging with the substance of his findings.'

48. With those matters in mind, in my judgment the judge was clearly aware of the Court of Appeal's decision in *Secretary of State for the Home Department v Kamara* [2016] EWCA Civ 813 because he refers in his conclusions to the wording of the correct test stating that there were no very significant obstacles to the Appellants' reintegration to India. The Appellants had only been in the United Kingdom for a short period of time as visitors with visit visas. They clearly could not have lost their ties to India. Additionally, as the Judge quite properly noted, even if the Appellants' daughter decides not to go to India, there is no basis whatsoever to conclude that there will be no assistance for the Appellants from others. Home help and the like is readily available in India, even if the Sponsor's uncle has passed away. It might require money, but there is no evidence that the Appellants do not have it, or that their daughter will not provide it. Similarly, it may not be the preferred choice, but there is that choice.

49. Insofar as medical treatment is concerned, the medical records show that private treatment was obtained here in the UK. There is simply no evidence which suggests that that it would not be possible to access private medical treatment in India. In any event, in my Judgment, the financial support which the Sponsor provides here in the UK can just as easily be provided for the Appellants when they are in India. That is so even if the Sponsor decides to remain in the UK because she can send the money to India via her bank.

50. Insofar as Article 8 is concerned, that required a holistic analysis balancing all of those matters for and against the Appellants' removal. In my judgment, taking into account everything at its highest, the public interest in immigration control was far outweighed by the Appellants' private life and family life, such as it was. The Appellant's Article 8 private and family life was established at a time when their immigration status was precarious, being the term referred to in *Rhuppiah v the Secretary of State* [2018] UKSC 58.

51. Therefore, taking into account the legitimate public interest in the enforcement of immigration control there was only one rational answer to the proportionality analysis in this case. Therefore, albeit with sympathy for the Appellants and the Sponsor, in my judgment, it is abundantly clear that there was no procedural impropriety when the adjournment was refused. Further, in any event, it is very clear that there is no material error of law on the part of the First-tier Tribunal, even when one takes the Appellants' case at its highest.

52. In the circumstances, I find that there is no error of law in the decision of the First-tier Tribunal and that had I concluded otherwise, I would have declined to set aside the First-tier Tribunal decision in any event.

Notice of Decision

53. The Appellants' appeal is dismissed. The decision of the First-tier Tribunal which dismissed the Appellants' appeals thereby stands.

Abid Mahmood

Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 October 2024