



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003462

First-tier Tribunal No: HU/57639/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 22nd of October 2024

Before

UPPER TRIBUNAL JUDGE LODATO

Between

Gurdev Kaur
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Layne, counsel

For the Respondent: Ms Cunha, Senior Presenting Officer

Heard at Field House on 9 October 2024

DECISION AND REASONS

Introduction

1. The appellant appeals, with permission, against the decision of Judge Gibbs ('the judge') to dismiss her appeal against the refusal of her Article 8 human rights claim.

Background

2. The procedural background was not in dispute between the parties and is summarised between [2] and [4] of the judge's decision. In brief summary, the appellant's case was that since she arrived in the UK to visit her adult daughter, her mental health has declined to such an extent that it would amount to a breach of her Article 8 human rights for her to be returned to India.

Appeal to First-tier Tribunal

3. The appeal was heard by the judge on 22 March 2024. At the hearing, the issues were agreed by the parties to be, firstly, whether the appellant would encounter very significant obstacles to integration on return and, secondly, whether her return would otherwise amount to a disproportionate interference with her Article 8 rights.
4. The Judge recorded, at [7], a preliminary ruling in January 2024 by Judge Moon where it was found that the appellant had capacity for the purposes of the proceedings.
5. At [11], the judge made findings of fact about the medical evidence she had considered, noting:

[...] I find that the medical evidence clearly establishes that the appellant is suffering from depression and anxiety with psychotic symptoms and I find that she has been prescribed medication consistent with this. [...]

6. The judge turned her mind, at [12]-[13], to the question of very significant obstacles by directing herself as to the applicable legal test and recording observations about the appellant's background and circumstances in India before it was recognised that the key factual consideration was her state of health. The parties agreed that the critical part of the judge's findings is at [14]:

On this issue it is not disputed that the appellant can access the medication that she requires in India. Further the appellant does not lack capacity. I also find that whilst there is reference to dementia there is no medical diagnosis of this condition. Further, with regards to communication, there is reference to "psycho motor retardation" but there is no explanation for this, analysis of how this affects the appellant on a day to day basis, nor whether the condition is stable. I find that both letters submitted on behalf of the appellant from her GP and consultant psychiatrist refer primarily to her presentation and appearance rather than any firm diagnosis over and above depression and anxiety.

7. The judge went on to attach importance to the absence of evidence going to the appellant's state of health at the point of her arrival in the UK and that it was therefore difficult to know the conditions under which she lived in India before she left and whether her condition had materially deteriorated ([15]). The reasoning which underpinned the conclusion that the refusal was not a disproportionate interference with her Article 8 rights was articulated at [16]:

The sponsor claims that the appellant is like a child, that there are no family members in India who could care for her, that therefore outside help would have to be engaged and that such carers are unreliable and untrustworthy. She also asserts that the appellant needs the love and support of her family and that engaging a carer is not a suitable alternative to this. However, whilst I accept that the sponsor wants her mother to be able to remain in the UK with her I find that this as a matter of common sense renders her a less than objective witness. Further, none of the medical evidence sets out the way in which the appellant is affected in her day to day activities and the level or type of help that she needs. I conclude that there is a lack of detailed evidence to persuade me that this is the situation that the appellant would face. Her family home remains available, her daughter can continue to financially support her and the appellant has had only a fairly brief spell living outside her country of

origin. She does not therefore meet the requirements of the Immigration Rules.

Appeal to the Upper Tribunal

8. The appellant applied for permission to appeal. The judge's reasons were challenged on various fronts including:

- Factual errors [paragraph 8 of the grounds],
- Tension in the preliminary finding about capacity and the respondent's acceptance of the appellant's mental health conditions [paragraph 9]
- A misunderstanding of the medical evidence [paragraph 10]
- A misunderstanding about the extent of the appellant's daughter's caring role and the appellant's care needs [paragraphs 11-12]

9. Permission to appeal was granted without limitation by First-tier Tribunal Judge Chowdhury despite noting, at [2], that the complaints raised at paragraphs [7]-[9] of the grounds were not arguable. The challenge which found favour was addressed, between [4] and [6], in the following terms:

At paragraph 14 the judge referred to the medical evidence which made reference to psychomotor retardation but the judge found there was no explanation for this, or analysis of how this affects the Appellant on a day-to-day basis nor whether the condition is stable. The judge found that the medical letter submitted on behalf of the Appellant refer primarily to her presentation and appearance rather than any firm diagnosis of an above depression and anxiety. However, it is arguable that these were assessments by medical professionals in acknowledging the clear lack of mental health the Appellant is suffering from. The Appellant had, it is claimed, in the grounds, provided mental health related appointments with medical professionals and treatment was still ongoing.

It is arguable that the treatment by the Judge of the medical evidence was perverse. Where evidence of a professional medical assessment is presented of a mental disability, it is arguably irrational for the judge to give greater weight to their own medically unqualified opinion. Not to accord a medical assessment significant weight and to reject it, absent of other evidence is arguably Wednesbury unreasonable.

The Appellant avers at paragraph 12 that the medical evidence clearly detailed signs of dementia and is suffering from psychomotor retardation i.e. a slowing down of thought and a reduction of psychical movements in an individual. It can cause a visible slowing of physical and emotional reactions, including speech and affect. It is not clear from the judge's decision whether this ability was weighed or assessed in the Article 8 balancing exercise.

10. At the error of law hearing, the parties' submissions focussed on the findings of fact at [14] of the judge's decision. Mr Layne argued that these findings demonstrated that the judge had disregarded cogent expert evidence about the extent of the appellant's mental health conditions. Ms Cunha, on behalf of the respondent, emphasised that the weight to be attached to the evidence was a matter for judicial assessment. She further stressed that the judge's summary of

the medical evidence cohered with the underlying material such that it could not be sensibly argued that it had been ignored.

Discussion

11. During the hearing, the central dispute between the parties crystallised around whether paragraph 14 of the judge's decision tended to reveal a judicial failure to engage with specialist and expert clinical commentary about the appellant's neurological and cognitive conditions. Mr Layne argued that the judge had glossed over a medical diagnosis that the appellant had psychotic depression with anxiety and cognitive deficits. It is important to look to the documents which underlie this submission. On the final page of correspondence from Dr Sultan, a consultant psychiatrist, the following was noted:

I believe her presentation is suggestive of Psychotic Depression with anxiety and Cognitive deficits, Although there has been slight improvement in her anxiety, sleep and mood but not significantly, therefore she would require assessment by memory clinic to rule out any organicity.

12. The above clinical observations were echoed in correspondence, dated 30 March 2023, from The Slough Memory Service. At page 4 of this letter, the author refers to signs of psychomotor retardation. At page 5 of this letter, it was stated that the team who had assessed the appellant found that her "*presentation is suggestive of a depressive disorder with psychotic symptoms due to combination of factors and triggers being psychosocial stresses [...]*".
13. I am not satisfied that the judge failed to give due weight to the specialist clinical findings. The reference to psychomotor retardation is plainly drawn from The Slough Memory Service correspondence and reflects that it was considered by the judge. I agree with Ms Cunha's submission that the weight to be attached to the evidence was for the judge to decide. She was not bound to uncritically accept what was stated in the medical letters. Instead, she was required to consider this evidence and reach findings of fact going to the issues to be decided in the appeal. The judge was entitled to point to limitations in this commentary. It was in no way irrational or perverse for the judge to emphasise two matters which properly emerged from these clinical reports. Firstly, the observations were plainly informed by the appellant's presentation – the writers of the letters said as much themselves. Secondly, Mr Layne's characterisation of the clinical findings as firm diagnoses is difficult to reconcile with the plain words used in these reports where it was clear that there were signs which were "suggestive" of the noted conditions – this is hardly the language of the firm diagnosis posited in submissions. It was open to the judge, on a fair and natural reading of this supporting documentary material, to conclude that firm conclusions had not yet been reached. I reject the suggestion that the judge disregarded medical evidence in the appellant's favour. The evidence was considered by the judge and she reached lawful conclusions about what it tended to show. The appellant may disagree with those conclusions, but that disagreement falls a considerable distance short of amounting to an error of law.
14. Mr Layne recognised that the challenge to the overall proportionality balancing exercise was necessarily intertwined with the lawfulness of the findings reached on the appellant's medical conditions. Considering the conclusions I have reached on that factual dimension of the appeal, on no sensible analysis can it be said that the judge's assessment of the proportionality of the refusal decision is tainted by an error of law.

Notice of Decision

I find that the decision of Judge Gibbs did not involve an error of law. I dismiss the appeal. It follows that her decision stands.

Paul Lodato

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 October 2024