



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2021-001831
UI-2021-001832
First-tier Tribunal Nos: HU/00577/2021
HU/00644/2021

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 16 January 2025**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**MRS MUMTAJ KADHER (FIRST APPELLANT)
MR FIYAZALI KADHER (SECOND APPELLANT)
(NO ANONYMITY ORDER MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellants: unrepresented

For the Respondent: Mr T Melvin, Home Office Presenting Officer

Heard at Field House on 23 July 2024

DECISION AND REASONS

1. The first named Appellant's date of birth is 5 June 1969. Her son, the second named Appellant, date of birth is 2 April 1997. They are both citizens of India.
2. In a decision which was promulgated on 10 October 2022 following a hearing on 15 September 2022, I set aside the decision of the First-tier Tribunal (Judge T Lawrence) dismissing the Appellants' appeals under Article 8 ECHR. The hearing was adjourned until 10 January 2023. The hearing did not proceed on that day. The Appellants' solicitors had not asked for an interpreter to be present and the matter was further adjourned. It is unfortunate that there has been a delay in re-listing the case.
3. Mr D Mariampillai from David Benson Solicitors attended the hearing. He told me that he did not have instructions from the Appellants. The solicitors had not been

able to contact the them. The solicitors had written to them and attended their address. They were told by a neighbour that they were on holiday. Mr Mariampillai withdrew from the case.

4. I decided to proceed in the absence of the Appellants, taking into account the overriding objective (The Tribunal Procedure (Upper Tribunal) Rules 2008, Rule 4). I was satisfied that the Appellants had been notified of the hearing.

5. The error of law decision reads as follows:

“11. At the hearing before me, Ms Everett [the Home Office Presenting Officer] conceded that the judge had materially erred as a result of inadequate consideration of the second Appellant’s circumstances and the impact on him of removal. She did not concede a stand-alone error in respect of the first Appellant. I agreed with Ms Everett. I communicated my decision orally to the parties at the hearing. I found an error of law for the reason identified by Ms Everett. I set aside the decision of the judge to dismiss the appellants’ appeals.

12. I heard submissions in respect of re-making. Ms Pearl asked for the matter to be remitted to the First-tier Tribunal. However in the light of the limited issue to be considered by the Tribunal, I agreed with Ms Everett that the matter should be re-made in the UT. While there must be reconsideration of proportionality generally properly taking into account the second Appellant, the judge made a number of findings that have not been challenged. I agree with the grant of permission that the grounds largely seek to reargue the case and are a disagreement with the findings. I would not have found an error of law were it not for the inadequate consideration of the second Appellant.

6. On 6 December 2019 the Appellants made human rights applications which gave rise to the decisions of 11 January 2021 which are the subject of this appeal. The first Appellant applied for entry clearance as a spouse with the second Appellant who was then a dependent child. The application was refused on 25 February 2015. The first Appellant appealed and her appeal was allowed. She was granted entry clearance along with the second Appellant which commenced on 6 March 2017 and expired on 6 December 2019.

7. The issue before me is very narrow. It was not advanced before the First-tier Tribunal that the Appellants could meet the requirements of the Immigration Rules (IR). It was accepted that the first Appellant could not meet the English language requirements. It was agreed that she was required to take a Common European Framework of Reference (CEFR) A2 test when applying to extend her stay in the UK. It was not argued before the First-tier Tribunal that there would be insurmountable obstacles to the Appellants continuing family life outside of the UK or that there would be very significant obstacles to the Appellants’ reintegration in India should they be required to leave the UK. The case was advanced on the basis that there were exceptional circumstances and it would not be proportionate for them to return to India. The Appellants say that the decisions of the respondent breach their rights under Article 8.

8. The Appellants' case before the First-tier Tribunal was that there were exceptional circumstances on the basis that they enjoyed family life with their husband/father, Mohamed Yusuf Kadher, a British citizen. The evidence was that he suffers from diabetes. It was the first Appellant's case that she was unable to pass the English language test because she was unwell. The second Appellant was working as an apprentice in the UK while living with his parents. The judge concluded that there was no "persuasive reason" that had been advanced why the family could not live together in India. The second Appellant relied on his family life with his parents and his private life established in the UK including that arising from his employment.

The Evidence

9. The Appellants relied on a bundle containing 107 pages. The Appellants submitted witness statements on 3 January 2023. There is a statement from Mr Kadher of the same date and a medical report from a consultant psychiatrist Dr Dhumad for the hearing on 10 January 2023.
10. Within the bundle there is a letter from TS Accountancy Ltd of 16 December 2022 confirming that Mr Kadher is employed as a general office assistant and that his gross pay is £12,043.20 per annum. There are medical records relating to Mr Kadher which confirm that he is a diabetic. There are wage slips relating to the second Appellant.
11. There is a letter from South London and Maudsley NHS Foundation Trust of 15 November 2022 to the first Appellant indicating that she has reported symptoms of stress and anxiety and that a support plan has been agreed which would include cognitive behavioural therapy (CBT) and six-weekly sessions with a practitioner
12. Dr Dhumad, a consultant psychiatrist, interviewed the first Appellant via video link on 30 December 2022. He had sight of her medical notes and the decision of the Home Office. The first Appellant has been prescribed medication (Fluoxetine) and having started counselling with Croydon Talking Therapies. In Dr Dhumad's opinion her presentation is consistent with a diagnosis of severe depressive episode without psychotic symptoms. She has low mood. In respect of a suicide risk there are several protective factors such as her family in the UK. The risk is moderate, but will be greater if she is returned to India.
13. The Appellants rely on the Country Policy and Information Note (CPIN) India: Medical and healthcare provision, version 1.0 October 2020 and background evidence relating to the stigma attached to mental illness in India.

The First Appellant's Evidence

14. The first Appellant relies on her witness statement of 15 December 2022. The Appellant married Mr Kadher on 25 May 1989. When she first came to the UK with her son her husband was working full-time and earning £22,800 per annum. He changed his job in December 2021. The second Appellant is currently working at IX Electronic Exchange as a technician. The Appellant's husband and their son's joint income is £22,800 per annum.

15. Mr Kadher has been diagnosed with Type 2 diabetes for which he receives treatment. His condition has deteriorated over the last two years. The first Appellant takes care of him to control his diabetes.
16. The Appellant attempted the English language test on 19 October 2020 without success. She suffers from depression and anxiety as a result of her immigration status and the loss of relatives during the pandemic. She is not able to concentrate in order to complete the exam. She is currently prescribed Fluoxetine for depression and she receives counselling.
17. The second Appellant takes care of his parents. He cooks for the family and looks after them. He takes the first Appellant to hospital appointments. He contributes to the mental, emotional and financial wellbeing of the family. She worries that her husband will be left alone. She has suicidal ideation. She wants to be with her family.

The Second Appellant's Evidence

18. The second Appellant's evidence is contained in his witness statement of 15 December 2022. He first came to the UK with his mother on 31 March 2017. He has worked in various phone technical companies. He has now completed training and he works independently at IX Electronic Exchange Ltd as a phone technician. He has worked since he came to the UK and has supported his family financially. His mother is unable to look after his father as she used to because of her mental health condition. His parents are all that he has. They have supported him all his life and he worries that he will be destitute should he return to India. He takes his parents to hospital appointments and he looks after the family. He intends to establish his own phone technology company. He has established his own circle of friends. He worries that he would be unable to support his parents should he be removed to India.

Mr Kadher's Evidence

19. Mr Kadher's evidence is contained in his witness statement of 15 December 2022. He is a British citizen. He was born on 17 July 1961. He came to the UK in 2005. He was naturalised as a British citizen on 1 November 2012. He is currently in full-time employment at TS Accountancy Ltd. He has his own circle of friends in the UK. He is aged 61. Should he be separated from his wife and son this would affect his mental and physical health.
20. Mr Kadher has Type 2 diabetes which was diagnosed in 2004. His condition has deteriorated over the last two years. He has been looked after by his wife and son to ensure that his diabetes is controlled. His wife has been diagnosed with depression. She is mentally and emotionally supported by Mr Kadher and their son. He is concerned that the first Appellant will harm herself should she have to return to India and be separated from her family. Her mental health condition has affected her day-to-day activities rendering her unable to complete the English language test. Her memory has also been affected. She is unable to concentrate in order to learn.

Submissions

21. I heard submissions from Mr Melvin. He relied on his response served under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Findings and Reasons

22. The Appellants were not represented at the hearing before me. Before the First-tier Tribunal they did not rely on there being very significant obstacles to integration or insurmountable obstacles to family life continuing in India (see [14]). The FtT accepted that they have family life with each other and Mr Kadher and private life in the UK so as to engage Article 8 (1). The determinative issue is therefore whether the respondent's decision breaches their rights under Article 8 (1) ECHR.

23. There is no up to date evidence from the Appellants. The latest statements relied on are dated 22 December 2022. I do not know why the case was not relisted until 23 July 2024. However, it is reasonable to have expected up-to-date evidence.

24. While the case is advanced on the basis that the Appellants would be returning to India without each other or their father, there is no cogent evidence that the family is unable to return together as a family unit. I accept that Mr Kadher is a British citizen. While he has lived in the UK for many years, he came to the UK from India in 2005. He was not joined by his family until 2017. There is no evidence that he could not seek employment in India. Similarly there is no evidence that the second Appellant could not seek employment in India and continue to help his parents. He came with his mother to the UK in 2017 when he was an adult. The family can return as a unit to India. They are familiar with India and the culture there.

25. I take into account the medical evidence in respect of both the first Appellant and Mr Kadher. I accept that the first Appellant is depressed and her husband has diabetes. There is no evidence that medical treatment would not be available and accessible to them in India. I accept that there is stigma attached to mental health in India. However, the family could continue to support each other. Dr Dhumad's report is not up-to-date, but even if I were to accept that his opinion reflects the current situation, he states at para 13.3 that the first Appellant is suffering from severe depression *due to her fears of separation from her husband and worries about her son*. There is no opinion given concerning the impact on her mental health of the family returning together to India.

26. While the Appellants did not argue that there would be very significant obstacles to integration in the context para 276ADE (1) (vi) of the Rules before the First-tier Tribunal, I find that this is not made out. They will be returning together. I have considered the likely reality of the first Appellant's life on return. The Appellants came here in 2017. They have spent most of their lives in India. There is treatment available and the first Appellant would have the support of her son and her husband who can reasonably be expected to return with his family. Moreover, the evidence does not support that family life there are insurmountable obstacles to family life continuing in India.

27. The maintenance of effective immigration controls is in the public interest (s117B (1) of the 2002 Act). The Appellants have precarious status. The first Appellant could not at the date of the hearing in the First-tier Tribunal meet the

requirements of the Immigration Rules (IR) because she had not passed the appropriate English Language test. I have taken into account that Dr Dhumad said in December 2022 that her concentration was poor and her evidence before the First- tier Tribunal was that she was unwell and unable to pass the test. She has not claimed to fall under an exemption from the test and there is no evidence that she has attempted to sit the test since the refusal. A near miss argument has not been advanced, but in any event, I take into account Patel and others v SSHD [2013] UKSC 72.

28.I have considered the factors in favour of the Appellants. There will undoubtedly be an upheaval and difficulties involved in the family relocating. Mr Kadher is a British citizen and has been here for many years. However, he lived in India until 2005 when he was an adult and he was born there. He is familiar with India and there is no reason why he could not find employment there.

29.Neither Appellant can meet the requirements of the IR. I accept that they have family life which each other. However, they have not identified compelling circumstances so that the decisions of the SSHD to refuse their applications on human rights grounds are not proportionate to any interference with their family/private lives.

Notice of Decision

30.The appeals are dismissed under Article 8 ECHR.

Joanna McWilliam
Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 July 2024