IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004816
UI-2024-004817

First-tier Tribunal Nos:
HU/60860/2023
HU/50047/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 7th of January 2025

Before

UPPER TRIBUNAL JUDGE O'BRIEN
DEPUTY UPPER TRIBUNAL JUDGE JACQUES

Between

SAMIR PATEL [1]
BHAVIKABEN PATEL [2]
(ANONYMITY ORDER NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. J Gajjar, counsel, instructed by Law Lane Solicitors
For the Respondent: Mr. E Terell, Senior Home Office Presenting Officer

Heard at Field House on 20 December 2024

DECISION AND REASONS

Introduction

1. The appellants appeal with the permission of First-tier Tribunal Judge Veloso against the decision of First-tier Tribunal Judge Farrall ("the judge"). By their decision, promulgated on 28 August 2024, the judge dismissed the appellants' appeals against the respondent's refusal of their applications for leave to remain in the United Kingdom based on Private Life.

Background

2. The appellants are nationals of India. The first appellant was born on 20 August 1997, and the second appellant was born on 30 March 1989. The appellants are married.

3. The appellants entered the United Kingdom on 24 November 2009 on the basis of the first appellant having acquired a Tier 4 student visa which was valid until 16 September 2011. The second appellant was included as a dependent on this visa.

4. On 2 July 2011, the first appellant applied for further leave as a Tier 4 student (with the second appellant included as a dependent) and on 18 January 2013, further leave was granted by way of a further Tier 4 student visa, which was valid until 26 January 2015.

5. On 3 April 2014, the first appellant's sponsor's licence was revoked. On 1 May 2014, the respondent informed the appellants by way of letter that their leave to remain was being curtailed as of 30 June 2014, thus giving a period of 60 days for the appellants to make any further application for leave to remain or alternatively to depart the United Kingdom. No applications were made by either of the appellants following this letter.

6. On 25 November 2015, the first appellant, was encountered by Enforcement Officers working illegally at Allway Car Care in Plaistow. The first appellant was served with forms RED.0001, RED.003 and an IS96.

7. On 31 July 2018, the first appellant applied for leave to remain on Human Rights grounds, with the second appellant included as a dependent. On 2 August 2018, the respondent refused this application with an out of country right of appeal. The appellant's did not leave the UK, nor did they appeal against the respondent's decision.

8. On 4 December 2018, the appellants submitted Stateless Leave applications. On 5 March 2020 the respondent refused those applications with no right of appeal. The appellants made no request for any administrative review of this rejection.

9. On 8 March 2021 the first appellant submitted further submissions to the respondent, however these were refused and rejected by the respondent under paragraph 353 of the Immigration Rules.

10. On 5 August 2022 the appellants both applied for permission to stay in the United Kingdom on the basis of Private Life.

11. On 24 August 2023 the respondent rejected the appellants' application by way of refusal letter. In summary, the respondent did not accept that there would be very significant obstacles to the appellants' integration into India (pursuant to Appendix Private Life PL 5.1) and the respondent did not accept that the appellants' removal to India would breach their Article 8 rights. The respondent also considered the first appellant's claim that he suffered from depression and anxiety and concluded that treatment would be available to the first appellant in his home country and that there would be no breach of the first appellant's Article 3 rights.

The Appeal to the First-tier Tribunal

12. The appellants appealed to the First-tier Tribunal and their appeal was heard by the judge in Taylor House on 19 July 2024. Mr. Gajjar represented the appellants at that hearing, as he does today. The respondent was represented by Mr Holloway, a Home Office Presenting Officer.

13. It was agreed between the parties that the issues for the judge to determine were a) whether the appellant's would face very significant obstacles under paragraph 276ADE(1)(vi) of the Immigration Rules (albeit Appendix Private Life PL applied at the time) if they were required to return to India and b) whether there were exceptional circumstances in the appeal which would render the respondent's refusal a breach of the appellant's rights under Article 8 ECHR.

14. The judge went on to hear the evidence and submissions in the case and promulgate their decision. The judge ultimately dismissed the appellants' appeals.

15. At paragraph 12 of their decision, the judge found that the first appellant "suffers from anxiety and depression, for which he takes medication and counselling."

16. At paragraph 15, the judge found that there would not be very significant obstacles to the appellant's integration into India, and of particular note in this appeal, the judge found at paragraph 15 (v) that there "is no evidence before me that (the first appellant) could not receive adequate medical care in India for his depression and anxiety."

17. At paragraph 16, the judge found that the appellants did not meet the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules (or Appendix Private Life as it now stands).

18. The judge at paragraphs 17 to 31 then proceeded to consider whether the appellants' removal to India would be a breach of their Article 8 rights. The judge applied **R (Razgar) v SSHD [2014] UKHL 17** and undertook a proportionality assessment.

19. At paragraphs 20 to 25 of their decision the judge made strong findings in relation to the factors that balanced in favour of removing the appellants from the UK and in particular at paragraph 25 found that "there is no evidence before me that the required medical treatment would not be available to the first appellant in India."

20. At paragraphs 26 to 31, the judge also considered the factors that balanced against the removal of the appellants and at paragraph 27, recorded that "the first appellant suffers from anxiety and depression which has been aggravated by the lengthy immigration process. He does not want to return to India and so this could be a contributory factor to his depression."

The Appeal to the Upper Tribunal

21. On 6 September 2024 the appellants made an application for permission to appeal. There was one ground relied upon by the appellants namely that the judge failed to properly engage with the medical evidence filed in support of the first appellant's mental health difficulties. Particular criticism was made that the judge failed to engage with the psychiatric reports of Dr Ul Haq dated 12 January 2024 and 15 March 2024 and Dr Kashmiri's report dated 7 August 2018.

22. On 18 October 2024, First-tier Tribunal Judge Veloso granted permission to appeal. The reasons given for the grant of permission were:

> "The in-time grounds argue that the judge erred in law in failing to take into account the medical evidence in the Stitched Bundle, which is relevant to whether there are very significant obstacles to the first appellant or both appellant's integration into India."

23. The respondent filed a Rule 24 response on 24 October 2024 opposing the appeal.

The Appeal Hearing and Submissions in the Upper Tribunal

24. We heard the appeal hearing in this matter on 20 December 2024. In preparation for the appeal, we considered the appeal bundle consisting of 323 pages and a skeleton argument prepared by Mr. Gajjar. On the morning of the hearing, Mr. Gajjar also produced a copy of **NC v SSHD [2023] EWCA Civ 1379** for us to consider.

25. On behalf of the appellants, Mr Gajjar framed his argument in accordance with the sole ground of appeal and took us through what he submitted were the judge's failure to engage with the medical evidence that was filed on behalf of the first appellant. Mr Gajjar submitted to us that the conclusions reached by the judge were overly brief and inadequate and that therefore the had judge reached an irrational conclusion. This, Mr Gajjar submitted, was an error of law.

26. Mr Gajjar also submitted that, in failing to take into account the first appellant's medical condition, the judge failed to properly consider the practical considerations of whether the first appellant could access the treatment that he required in India (irrespective of the availability of the same) and thus the judge failed to objectively consider what significant obstacles the first appellant would face were he to be returned to India, per paragraphs 25 and 26 of **NC v SSHD**.

27. On behalf of the respondent, Mr Terell submitted that the judge had considered the medical evidence and referenced in particular paragraphs 15 (v) and 27 of their decision. Mr Terell submitted that such findings were perfectly adequate in this particular case and that it was clear that the judge had considered the entirety of the evidence. Mr Terell further submitted that the judge had before them no evidence that the medical treatment required by the first appellant was not available to him in India and submitted that the first appellant had not sought to raise an Article 3 argument at the hearing.

28. Mr Terell argued that the judge had made significant findings in respect of the factors weighing in favour of the appellant's removal from the UK and that in those circumstances, even if it could be said that the judge should have expanded further in their reasoning, this was not a material error of law given the facts in this particular case.

29. In response, Mr. Gajjar reiterated that his sole ground of appeal related to a failure by the judge to engage in the medical evidence. When pushed by us, Mr. Gajjar struggled to identify where the judge had failed to take into account the medical evidence in the case, but did refer us to paragraphs 21 and 22 of the first appellant's witness statement where the first appellant detailed his medical conditions and the impact those would have upon him were he to be returned to India.

Analysis

30. The judge does not have to refer to every document in the appellant's bundle in their decision and per **HA (Iraq) v SSHD [2022] UKSC 22**, the Supreme Court held at [72]:

> "It is well established that judicial caution and restraint is required when considering whether to set aside a decision of a specialist fact finding tribunal. In particular:
>
> (i) They alone are the judges of the facts. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. It is probable that in understanding and applying the law in their specialist field the tribunal will have got it right. Appellate courts should not rush to find misdirection's simply because they might have reached a different conclusion on the facts or expressed themselves different.

(ii) Where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account.

(iii) When it comes to the reasons given by the tribunal, the court should exercise judicial restraint and should not assume that the tribunal misdirected itself just because not every step in its reasoning is fully set out."

31. We are satisfied that the judge's failure to specifically mentioned or deal in detail with the reports of Dr Ul Haq and Dr Kashmiri did not mean that the judge had not considered them when reaching their conclusion. The judge at paragraph 6 of their judgment specifically recorded that they had had regard to the documents in the hearing bundle which consisted of 461 pages, and which included those same medical reports of Dr Ul Haq dated 12 January 2024 and 15 March 2024 and Dr. Kashmiri's dated 7 August 2018. The judge, in their decision, references the first appellant's medical conditions, at paragraphs 15 (v) and 27 of their judgment, the details of which are contained within those same reports and the judge undertook a proper balancing exercise when conducting their Article 8 assessment.

32. Further and alternatively, the failure to specifically reference those reports in the decision was not material (per the test at paragraph 43 of **ASO (Iraq) v SSHD [2023] EWCA Civ 1282)** for the following reasons:

i) It is apparent when the decision is read as a whole that there were significant findings which weighed in favour of removing the appellant's when the balancing exercise was undertaken. The judge gave adequate reasons for the weight that was attached to those different factors. No challenge was brought by the appellant's against those findings.

ii) There was no Article 3 claim before the judge to consider and the same would not have succeeded in any event, per the high threshold as set out in **AM Zimbabwe [2020] UKSC 17**.

iii) It is accepted by the appellant that the judge had no evidence before them that the medical treatment required by the first appellant was not available to him in India.

iv) We are persuaded that given the materials before the First-tier Judge, any another judge would have come to the same conclusion as the judge in this case, per **SSHD v AJ (Angola) and Another [2014] EWCA Civ 1636**.

33. We are persuaded therefore that there was no material error of law in the decision dated 28 August 2024 and we dismiss the appellant's appeal.

Notice of Decision

34. The appeal is dismissed and the decision of the First-tier Tribunal dismissing the appellant's appeal stands.

G. E. Jacques
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
23 December 2024