Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/15811/2017

THE IMMIGRATION ACTS

Heard at: Manchester CJC	**Decision Promulgated**
On: 26 October 2018	**On 6 November 2018**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

RK
ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the appellant: Mr Nicholson, Counsel
For the respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant.

Introduction

1. The appellant has appealed against a decision of the First-tier Tribunal ('FTT') dated 5 April 2018 in which it dismissed her appeal on human rights grounds.

2. In a decision dated 13 August 2018, Deputy Upper Tribunal Judge Harris concluded that the FTT decision contains a material error of law but only in so far as it relates to a failure to consider the appellant's private life under 276ADE(1)(vi) of the Immigration Rules. In directions issued on the same date Judge Harris ordered the decision to be remade solely on whether there are very significant obstacles to the appellant's integration in India pursuant to 276ADE(1)(vi) but made it clear that "*all other factual findings of fact are to stand*". The matter was reserved to Judge Harris but a transfer order was made on 20 August 2018

Background

3. The appellant, a citizen of India, is 68 years old. She resides in the United Kingdom ('UK') with her daughter, a British citizen ('the sponsor') and her son-in-law.

4. On 11 August 2009 the appellant entered the UK as a visitor. During the currency of her leave, she made an application on 23 December 2009 to remain in the UK on the basis that in accordance with an older version of the Immigration Rules she would be living alone outside the UK in the most compassionate circumstances. This was refused and her appeal to the FTT was dismissed in a decision dated 9 October 2010 ('the 2010 decision'). A further application to remain on the basis of Article 8 was refused on 23 May 2011. The appellant remained as an overstayer. She was served with notice of her liability to removal in 2014 and again in 2017. On 2 November 2017 she submitted a statement of additional grounds outlining her claim that removal would breach Article 8. This claim was refused by the SSHD in a decision dated 13 November 2017. After considering the appellant's circumstances in detail, the SSHD provided comprehensive reasons for refusing the claim pursuant to 276ADE(1)(iv) and Articles 3 and 8 of the ECHR. The appellant appealed against this decision to the FTT.

FTT decision

5. The appellant did not give evidence at the hearing. The FTT noted that there was evidence from her GP and psychiatrist which described her oral skills and memory as severely impaired and that she was in a semi-mute state. The FTT heard evidence from the sponsor. The FTT then made factual findings before concluding the appellant could not meet the requirements of the Immigration Rules and her removal would not lead to a breach of Article 8.

Appeal to the UT

6. The appellant relied upon two grounds of appeal against the FTT decision. Judge Harris accepted the submission made in the first ground that the FTT failed to consider whether the appellant met the requirements of 276ADE and allowed the appeal solely on that basis. Judge Harris did not accept the submission in the second ground of appeal that inadequate reasons were provided for rejecting the medical opinion as to the availability of treatment for the appellant in India – see [16] of the UT decision.

Remaking the decision

Hearing

7. At the beginning of the hearing both representatives agreed that the FTT's preserved findings of fact can be summarised as follows:

   (i) The appellant is dependent upon the sponsor for her needs. Her GP has stated that she is unwell suffering from severe arthritis restricting her mobility to a shuffle and type 2 diabetes. She had been seeing a psychiatrist, Dr Bamrah, for eight years for severe anxiety and depression and at times was almost catatonic but has responded well to anti-depressant medication – see [14] of the FTT decision.

   (ii) The appellant needs very close care, most likely residential either in her own home or in a geriatric care establishment – see [15] of the FTT decision.

   (iii) The sponsor's evidence is recorded at [16] to [20] but the FTT considered that it must be approached with some caution given the adverse credibility findings made in the 2010 FTT decision – see [21] to [23] of the FTT decision. The sponsor's assertions were therefore not accepted in the absence of supporting evidence.

   (iv) Although the appellant has the illnesses described by her doctors, these are adequately managed by the treatment she receives – see [24] of the FTT decision.

   (v) The treatment required by the appellant would be available in a city in India. This would be affordable given the family's assets in India and the support from the sponsor – see [25] and [26] of the FTT decision. The requirements of E-ECDR.2.5 would not be met because the appellant is able to obtain the required level of care in India, it being both available and affordable – see pg 6 of the FTT decision.

(vi) The following facts are relevant to the proper application of section 117B of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act'): the appellant entered the UK as a visitor and has overstayed for an extended period of time; there is no prospect of the appellant integrating into UK society; she is a burden on taxpayers given her recourse to NHS treatments; little weight can be afforded to her private life as it was established when her immigration status was either precarious or unlawful.

8. As Judge Harris found, the FTT did not address whether or not the appellant could meet the requirements of 276ADE(1)(iv), when considering Article 8 or at all. Both representatives agreed that I should remake the Article 8 decision by applying the factual findings summarised above, as updated by the evidence before me, albeit with a particular focus upon 276ADE(1)(iv). Mr Nicholson made it clear that he did not wish to rely upon Article 3 of the ECHR.

Evidence

9. Both representatives agreed there was no need to hear oral evidence given the comprehensive preserved factual findings and the limited further evidence. The appellant's GP provided updated evidence agreeing with the sponsor that the appellant's short-term memory is so poor that she has been and continues to be too unwell to provide a statement or evidence.

10. The sponsor provided a second updated witness statement in which she asserted that the appellant's sister had health problems and the appellant's brother's attention was taken up with his own family including visits abroad.

11. I have taken into account the evidence contained in the bundle before the FTT and the supplementary bundle.

Submissions

12. Mr McVeety invited me to find that the appellant comes from a family of means, and they are capable of paying for her medical and social care needs in India. He submitted that her emotional need for contact with others could be met by family members in India. They would be able to visit her and the costs of her medical and social care treatment could be met by the sponsor. In these circumstances, the appellant did not have very significant obstacles integrating into India. Mr McVeety disagreed with the reasoning set out in an unreported decision of the Vice-President (PA/08750/2017), relied upon by Mr Nicholson and invited me to dismiss the appeal.

13. Mr Nicholson relied upon the reasons contained in the Vice-President's unreported decision. As an unreported decision Mr Nicholson required the Tribunal's consent for it to be relied upon. I gave consent on the basis that Mr Nicholson was merely inviting me to follow the reasoning contained in that decision i.e. that appellant's particular mental state was such that she could not integrate into any country and was therefore entitled to succeed under 276ADE(1)(iv).

14. Mr Nicholson acknowledged that some aspects of the evidence needed to be treated with caution but certain straightforward aspects should be accepted. These include the undeniable fact that the appellant is dependent upon her daughter in the UK in almost every sense, and lives with her. Her medical, social care and emotional needs are all met living at the sponsor's home. By contrast the position with the family in India is less certain. At best they will visit her from time to time for short periods. Mr Nicholson invited me to find that the appellant had spent nearly a decade with her daughter in the UK and the interruption of this would cause her to face very significant obstacles in integrating in India, even if her medical needs are met.

15. At the end of submissions, I reserved my decision, which I now give with reasons.

Discussion

16. This is a case that involves the private life of an elderly lady, who is not a foreign national offender, but in relation to whom it is now accepted cannot meet the requirements of the Immigration Rules, save that it has been submitted on her behalf that she meets the requirements of 276ADE(1)(iv). The burden is therefore upon the appellant to establish that there would be "very significant obstacles" to her integration into India.

17. A similar provision (section 117C(4)(c) of the Nationality, Immigration and Asylum Act 2002) albeit in the context of deportation was considered in SSHD v Kamara [2016] EWCA Civ 813, wherein Sales LJ said this at [14]:

> "In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the

> society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

18. I now turn to updating the preserved factual findings by reference to all the relevant evidence available to me. Having considered the evidence in the round and attached caution to the evidence emanating from the sponsor, I make the following findings of fact.

    (i) The appellant is almost entirely dependent upon the sponsor (and to a lesser extent the sponsor's husband) for her medical, psychiatric, social care and emotional needs. These are extensive. The appellant has very little interaction with anyone apart from the sponsor and her immediate family. This state of affairs has become entrenched with time having commenced over nine years ago.

    (ii) The appellant's medical, psychiatric and social care needs could be met in a city in India. This would be affordable given the family's assets in India and the support from the sponsor.

    (iii) Although the appellant has family members in India including her brother and sister and other more distant family members, they are not in a position to look after her in their respective homes. It is difficult to see how they could meet her emotional needs by merely visiting her given the nature and extent of the mental health concerns - see Dr Bamrah's letter dated 31 January 2018 in which he describes the appellant's severe depressive state and her semi-mute presentation.

    (iv) The appellant's mental state is such that she has not integrated into the UK and there is no prospect of this for the foreseeable future.

19. I am satisfied that the nature, extent and duration of the appellant's emotional dependence upon the sponsor is deep-rooted and closely connected to her medical and social care needs. Her mental health is such that it is difficult to appreciate how the sponsor will cope emotionally if living outside of the home of the sponsor. The appellant's presentation is such that she has not been able to integrate into the UK in any meaningful manner and she is unlikely to be able to integrate in India. The reason for this is not because of a lack of medical treatment or facilities in either country. Rather, it is because even with the benefit of treatment, the appellant's severe depression means that she finds it impossible to participate in wider

society. There are significant obstacles to her integration in the UK – these are largely related to the consequences of the appellant's mental health. The appellant is likely to be worse off in India because that will inevitably involve separation from her daughter, the settled status quo she has become accustomed to and the daily constant emotional support she receives in the sponsor's home. There are therefore likely to be very significant obstacles to the appellant's integration to India given the combination of her mental health and the absence of the emotional support that is available to her through living in the sponsor's home.

20. In reaching my findings I have not found it necessary to rely upon the reasoning set out by the Vice-President in the unreported decision referred to above. That case involved a different factual matrix and turned on its particular and very exceptional circumstances.

Final points

21. This decision turns on its own particular and exceptional circumstances. That the appellant has become dependent upon the sponsor for a very lengthy period is a consequence of both (i) overstaying her visit visa, and (ii) the respondent delaying in removing her – there were no barriers to removal from as long ago as June 2011 to October 2017. The current situation has represented the status quo for a lengthy period and this has been a factor in my decision that the appellant would face very significant obstacles in integrating into India.

22. Mr McVeety made it clear that if I accepted that the appellant meets the requirements of 276ADE(1)(iv) of the Immigration Rules, then that is the end of the matter and no separate public interest considerations needed to be factored in, such that he conceded that the appeal would have to be allowed on Article 8 grounds.

Decision

23. I allow the appeal on Article 8 grounds, having found that the appellant meets the requirements of 267ADE(1)(iv) of the Immigration Rules.

Signed: Ms Melanie Plimmer Dated: 26 October 2018
Judge of the Upper Tribunal