



**IN THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM  
CHAMBER**

Case No: UI-2022-003250

First-Tier Tribunal No:  
HU/53489/2021  
IA/09188/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 19<sup>th</sup> March 2024**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**MATHEW JOSEPH  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**REPRESENTATION**

For the Appellant: Mr Bellara, instructed by Legend Solicitors  
For the Respondent: Ms R Arif, Senior Home Office Presenting Officer

**Heard at Birmingham Civil Justice Centre on 22 August 2023**

**DECISION AND REASONS**

**INTRODUCTION**

1. The appellant is a national of India. He arrived in the UK on 1 September 2016 with leave to enter as a Tier 2 Dependent valid until 14 October 2018. On 31 July 2020 he applied for leave to remain on family life grounds. The application was refused by the respondent for reasons set out in a decision dated 29 June 2021. The appellant's appeal against that

decision was dismissed by First-tier Tribunal Judge Chohan for reasons set out in his decision dated 8 June 2022. The decision of Judge Chohan was set aside by me for reasons set out in my error of law decision dated 23 May 2023. I directed that the decision will be remade in the Upper Tribunal.

2. The appellant, his partner and their two daughters attended the hearing before me to give evidence. Ms Arif confirmed she did not challenge their evidence as set out in the witness statements before the Tribunal. I therefore heard submissions from Ms Arif and Mr Bellara. After hearing from the parties, I informed the parties that I allow the appellant's appeal against the decision of the respondent to refuse his application for leave to remain on Article 8 grounds. I informed the parties I would set out my reasons in writing and this I now do.

### **THE RESPONDENT'S DECISION DATED 29 JUNE 2021**

3. The respondent referred to the family life the appellant relies upon with his partner who I shall refer to as [MJ], and his two daughters who I shall refer to as [RM] and [PM] to provide them with anonymity. RM was born in December 2000 and is now 22 years old. PM was born in November 2005 and is now 17 years old. The respondent said the application does not fall for refusal on grounds of suitability in Section S-LTR of Appendix FM. The respondent noted the appellant cannot qualify for leave to remain under Appendix FM of the Immigration Rules because the appellant's partner, MJ is neither a British citizen nor a person settled in the UK.
4. The respondent also concluded the appellant does not meet the requirements for leave to remain on private life grounds because he does not meet the requirements set out in paragraph 276ADE of the Immigration Rules. The respondent was not satisfied that there would be very significant obstacles to the appellant's integration into India. Finally, the respondent concluded there are no exceptional circumstances to warrant a grant of leave to remain outside the Immigration Rules.
5. In the respondent's review filed in readiness for the hearing of the appeal before the FtT, the respondent said the appellant's application should have been refused on grounds of suitability. The respondent referred to section S-LTR: Suitability – leave to remain. The respondent claims the appellant's presence in the UK is not conducive to the public good because of his behaviour leading to his conviction. It is noted the appellant, as part of his community order, must complete a rehabilitation activity requirement. The respondent said there is no evidence that the appellant has completed any rehabilitation, to any satisfactory level.

### **THE EVIDENCE**

6. The evidence before me is set out in the appellant's bundle comprising of 29 pages that was before the FtT previously. I also have a series of further documents that were fled and served by the appellant's representatives under cover of a letter dated 24 July 2023. The additional evidence

includes further witness statements made by the appellant, his partner and their two daughters. I also have a copy of the respondent's bundle and the respondent's skeleton argument dated 7 July 2023.

7. In his witness statement, the appellant acknowledges he has been convicted of a sexual offence and the impact of his actions on others. He expresses considerable remorse and confirms that he has completed the community order imposed by the court. He has completed the 270 hours of community service that he was required to, under the supervision of a Responsible Officer. He confirms that his wife is employed as a full time Nurse working for the NHS in Worcester Royal Acute Hospital. She is the only one in the family in employment, and her income is used to support the family. As a nurse, she was a frontline worker during the Covid pandemic and her absence from the family home left the appellant to look after the day-to-day care of their daughters. The appellant confirms he has no other convictions.
8. The appellant's partner confirms that she arrived in the UK as a Tier 2 general migrant and she was joined by her husband and daughters as dependents. She confirms that she and their two daughters have now been naturalised as British citizens. She states that her work as a full time Nurse working for the NHS means that she has to rely upon her husband to care for their daughters whilst she is at work. Her salary is used to provide for the family and to support their eldest daughter's University fees and costs. She states it will be very difficulty for her to support their daughters if the appellant is removed to India, because she would be unable to continue working as she does, so that she can be available to support their daughters. She claims the appellant is, and will remain crucial to their daughters' everyday wellbeing as she is often at work and is unavailable to take care of them. The appellant has been unwavering in his commitment to raising the children, and he has taken every step to ensure their wellbeing. MJ states their two daughters are now at a vulnerable stage in their development where they begin to transition into adulthood, and require the guiding hands of both of their loving parents to ensure that they have a bright future.
9. Both of the appellant's daughters have provided a statement in support of the appeal. MR confirms she achieved grade A at 'A-level' in Biology, Chemistry and Maths and she is now studying Medicine at University. She has four remaining years of study at University. She candidly expresses her disappointment surrounding her father's conviction but describes a very close and loving family environment where they each provide mutual support. She candidly states that if her father is required to leave the United Kingdom the family would be left with the choice of returning to India together, or for the family to be separated. She refers to the detrimental impact that separation of the family will have upon her development. She confirms the family rely upon the sole income of her mother and that is only possible because of the support provided by the appellant in the day-to-day care of the family. In her witness statement PM refers to the relationships she has established with her peers and the stress that the family has been under because of the possibility that the

appellant may be returned to India. She too intends to go to university like her sister. She refers to the support provided by the appellant in ensuring that the family is able to take care of itself whilst her mother works to earn an income sufficient to support them all. She refers to the positive impact that the appellant has had upon her and the negative impact his absence is likely to have on her in particular, and the family as a whole.

## **SUBMISSIONS**

10. Ms Arif relies upon the matters set out in the respondent's decision, the respondent's amended review and the skeleton argument. She accepts the appellant has always lived in the family home with his wife and daughters and they have a family life for the purposes of Article 8. The appellant's eldest daughter is now an adult and able to make her own decisions about her future. Ms Arif acknowledges that it is in the best interests of the appellant's younger daughter that the family are able to remain living together as a family unit, but that is not determinative, and is not a trump card. She acknowledges the appellant's partner and daughters are now naturalised as British citizens, but she submits, it is a matter for the appellant's partner and daughters as to whether they remain in the UK without the appellant or join him in India. The appellant's daughters can remain in the UK without the appellant without any impact on them. She invites me to find the appellant's presence in the UK is not conducive to the public good as his conduct and character in particular, make it undesirable to allow him to remain in the UK. The appellant has a conviction that cannot be ignored and there remains a strong public interest in the removal of the appellant. Ms Arif submits there is no evidence before me of rehabilitation and no evidence of any meaningful contribution being made by the appellant to society. She submits the refusal of leave to remain is not in all the circumstances, disproportionate.
11. In reply, Mr Bellara submits the issue in this appeal is whether the appellant's protected rights, whether considered collectively with the rights of his wife and daughters, or individually, outweigh the public interest in the appellant's removal having regard to the policy of the respondent as expressed in the immigration rules and the 2002 Act. The appellant is not a 'foreign criminal' for the purposes of the 2002 Act. He pleaded guilty at the first available opportunity and he has not demonstrated any propensity to offend, as the passage of time has demonstrated. The appellant's wife is an intensive care nurse and there is evidence before the Tribunal of the stress related issues arising from this appeal that have caused her to have an s short absence from work between 31 May 2023 and 20 June 2023. Mr Bellara submits the appellant's absence will have a significant impact on the ability of the appellant's wife to provide for her daughters. He, in effect manages the household, whilst his wife works to provide an income for the family that is able to support them and allow their daughters to pursue higher education and flourish. The appellant's wife works long shifts as an intensive care nurse, often throughout the night, and that would not be possible without

the support of the appellant. Mr Bellara submits the balance here, weighs in favour of the appellant.

## DECISION

12. I start by reminding myself that the appellant was convicted at Greater Manchester Area Magistrates Court on 13 June 2018 of sexual assault on a female. The appellant intentionally sexually touched a woman aged 16 or over when she did not consent. The Court made a Community Order with a Rehabilitation Activity Requirement that the appellant comply with any instructions of the responsible officer to attend appointments or to participate in any activity as required by the officer up to a maximum of 30 days. The order was also subject to an 'Unpaid Work Requirement' that the appellant carry out unpaid work for 270 hours within 12 months, supervised by the responsible officer. The appellant was required to register with the police for five years. Finally, the appellant was required to pay compensation of £300, a victim surcharge of £85 and costs of £660.
13. I accept the appellant has a family life with his wife and daughters. They lived together in India prior to their lawful arrival in the UK and they have remained living together as a family unit since their arrival. I am left in no doubt at all that the appellant and his partner have provided a stable and nurturing home for their daughters that has enabled them to flourish as individuals. The appellant's conduct and conviction will inevitably have had an impact on the appellant's relationship with his partner and daughters, not least because of the nature of the offence. In her witness statement, MR refers to the disappointment she felt when she learnt of the appellant's conviction and the impact that had on her. Nevertheless, what is also entirely apparent from all of the evidence before me, and I find is that this is a strong family unit that all work together to do the best they can. The appellant and his partner in particular, are dedicated, working together, to ensuring their daughters are able to flourish in their education.
14. I find that the decision to refuse the appellant leave to remain has consequences of such gravity as to engage the operation of Article 8. I accept that the interference is in accordance with the law, and that the interference is necessary to protect the legitimate aim of immigration control and the economic well-being of the country. The central issue in this appeal is whether the decision to refuse leave to remain is proportionate to the legitimate aim. The burden shifts to the respondent to establish that the decision is proportionate.
15. There can, as Ms Arif acknowledges, be no doubt that it is in the best interests of the appellant's youngest daughter for the family to be able to continue to live together as a family unit in the UK. She arrived in the UK in September 2016 and was registered as a British citizen on 16 May 2023. She is a student and will start studying the second year of her 'A' levels in September 2023. She intends to follow in her sister's footsteps and attend University. The leading authority on section 55 remains *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4. In her

judgment, Lady Hale confirmed that the best interests of a child are “a primary consideration”, which, she emphasised, was not the same as “the primary consideration”, still less “the paramount consideration”. In reaching my overall decision I have considered whether the best interests of the appellant’s youngest daughter are outweighed by the public interest in the refusal of the application made by the appellant.

16. The only reason given by the respondent for refusing the application for leave to remain on family life grounds in the respondent’s decision dated 29 June 2021 is that the appellant does not meet the eligibility relationship requirement (E-ELTRP.1.2) because his wife is not a British citizen, present and settled in the UK, or in the UK with refugee leave or humanitarian protection. The respondent therefore considered the Article 8 claim on private life grounds only.
17. It is however now uncontroversial that the appellant’s wife and eldest daughter have been naturalised as British citizens, and that the appellant’s youngest daughter has been registered as a British citizen. Evidence of their British citizen status is in the appellant’s bundle. Although not previously relied upon by the respondent in the decision dated 29 June 2021, before the FtT and before me, relying upon S-LTR.1.6. of Appendix FM, the respondent maintains that the appellant’s application for leave to remain falls for refusal because the appellants presence in the UK is not conducive to the public good because of his behaviour leading to his conviction.
18. The assessment as to whether or not a person's presence in the UK is conducive to the public good because of their conduct, character, associations or other reasons, make it undesirable to allow them to remain in the UK, involves an evaluative exercise. The Tribunal must determine for itself whether the conditions of S-LTR.1.6 are met. The focus here is upon the appellant’s conduct and character. There can be no doubt that the appellant engaged in conduct resulting in a conviction for a sexual offence and that his conduct cannot be overlooked. The appellant arrived in the United Kingdom in September 2016 and the offence for which he was convicted occurred eleven months later on 19 August 2017. There is no evidence that the appellant had been convicted of any previous offences and there is no evidence before me that the appellant was anything other than of unblemished character previously.
19. The offence was committed on 19 August 2017 and the appellant was convicted in June 2018 following a guilty plea. The victim did not therefore have to go through the ordeal of giving evidence. The appellant was given credit for his guilty plea in the sentence imposed. I find that the appellant satisfied the conditions of the community order that was imposed. There is no evidence that the appellant has been involved in any other criminal conduct whatsoever since that conviction.
20. To his credit, the appellant candidly accepts that he committed the offence, that he was at fault, and that his actions have caused severe discomfort to others. He candidly states in his witness statement that he is ashamed of his actions and has had the chance to reflect over the years.

I accept, as Mr Bellara submits, the appellant does not have a propensity to offend and the offence committed was a 'one-off' and one in respect of which the appellant has expressed considerable remorse and regret. Having read the witness statements of the appellant's wife and daughters I accept that the appellant's conviction had an impact upon his wife and daughters but that with their support, the appellant has done everything he can to make himself a better person, not only for his sake, but also for the sake of his family. Despite the nature of the offence, the appellant's wife and daughters have been unwavering in their support for the appellant and that, combined with the shame the appellant feels, has, I find, driven home to the appellant the wider impact of his conduct upon the community and his family. Although there is, as Ms Arif submits, no evidence of any rehabilitation work completed by the appellant, the Community Order that was imposed by the Court included a 'Rehabilitation Activity Requirement' requiring the appellant to comply with any instructions of the responsible officer to attend appointments or participate in activity as required by the responsible officer to a maximum of 30 days. There is no suggestion that that requirement imposed was not completed by the appellant. I accept as evidence that he has completed with all the requirements imposed by the Community Order.

21. I find the appellant's wife and daughters have all had a positive influence over the appellant and the passage of time since the offence and conviction has demonstrated that the appellant has been able to abstain from any conduct that would call into question his character. Standing back, I find that the respondent has not established that the presence of the applicant in the UK is not conducive to the public good because his conduct (including conviction), character, associations or other reasons make it undesirable to allow him to remain in the UK. I find the appellant's application for leave to remain does not therefore fall for refusal on grounds of suitability.
22. In the circumstances, I find that the appellant satisfies the requirements for leave limited leave to remain as a partner as set out in Appendix FM of the immigration rules. As set out by the Court of Appeal in *TZ (Pakistan)* [2018] EWCA Civ 1109, compliance with the immigration rules would usually mean that there is nothing on the respondent's side of the scales to show that the refusal of the claim could be justified. At paragraphs [32] to [34], the Senior President of Tribunals confirmed that where a person meets the rules, the human rights appeal must succeed because 'considerable weight' must be given to the respondent's policy as set out in the rules.
23. Although not necessary for the determination of this appeal, I find that in any event, the decision to refuse the application for leave to remain is disproportionate to the legitimate aim.
24. The appellant is not a 'foreign criminal' as defined in s117D of the 2002 Act. I have had regard to the public interest considerations set out in s117B of the 2002 Act and I acknowledge the maintenance of effective immigration controls is in the public interest. The appellant lives with his

wife and daughters. His wife is in full-time employment and the appellant is not a burden on taxpayers. He is able to speak the English language and has integrated into society. These are all factors that are nevertheless neutral in my assessment of the relevant public interest. The appellant and his wife were married and had established a family life together with their daughters prior to their lawful arrival in the UK. The appellant's wife is now a British citizen. I accept her evidence regarding her employment as an intensive care nurse in an NHS hospital, where she works shifts and often long hours. She is, I accept, a valuable member of the NHS staff, and she has been entirely candid in her evidence previously that if the appellant is forced to return to India, the entire family would wish to remain as a family unit. and would be forced to return to India.

25. I find the appellant has a genuine and subsisting parental relationship with his two daughters. Both are now British citizen's and have persevered and excelled with their education even during the difficult times experienced by the family because of the appellant's conduct. His youngest daughter is under the age of 18. She arrived in the United Kingdom in September 2016 and as at date of the hearing of the appeal before me, she has lived in the United Kingdom for a continuous period of six years and 11 months. I accept she is not a 'qualifying child' as defined in s117D of the 2002 Act. I also acknowledge that I am not considering whether it is a 'near miss'. Nevertheless, it would in my judgement be unreasonable to expect her to leave the United Kingdom. She has now lived in the United Kingdom for a number of years and is at a critical stage in her education. She has an elder sister that she clearly looks up to. Her older sister is studying medicine at University. This is a family that I have no doubt are very close and any separation, would have an undue impact on the family.
26. I have had particular regard to the evidence before me from the appellant's partner and his daughters regarding the support that is provided by the appellant that in the end, enables his wife to work so that the family has an adequate income and appellant's daughters are able to receive the education they wish. I accept, as Mr Bellara submits, that in the event that the appellant is removed from the United Kingdom, the loss of the support he provides would have an adverse impact upon his wife's ability to continue to work and support their daughters in the way that she now does. She would, I find, be likely to have to reduce her working hours to be available to care for and support her youngest daughter. That is likely to have an impact upon the resources available for the appellant's wife and his daughters. I also find that the separation of the appellant from his wife and children would have an adverse impact upon the appellant's two daughters who are at a critical stage in their development and education. They have a very close relationship with their father and rely upon him for the support that he is able to provide. In my final analysis, I find the appellant's protected rights, considered collectively with rights of the appellant's wife and his daughters in particular all of whom are now British citizens, are such as to outweigh the public interest in the appellant's removal having regard to the policy of the respondent as expressed in the



Immigration Rules and the 2002 Act. I am satisfied that on the facts here, the decision to refuse leave to remain is disproportionate to the legitimate aim and I allow the appeal on Article 8 grounds.

**NOTICE OF DECISION**

27. The appeal is allowed on Article 8 grounds

**V. Mandalia**  
**Upper Tribunal Judge Mandalia**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**19 February 2024**