



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/06903/2016

**THE IMMIGRATION ACTS**

Heard At: Manchester Civil Justice Centre  
On: 14<sup>th</sup> August 2018

Decision and Reasons Promulgated  
On: 03<sup>rd</sup> September 2018

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Mahemudia Ismail Nagia  
(no anonymity direction made)**

Appellant

**And**

**The Secretary of State for the Home Department**

Respondent

**For the Appellant:** Ms G. Patel, Counsel instructed by Oakmount Law Solicitors  
**For the Respondent:** Mr M. Diwnycz, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant is a national of India born on the 17<sup>th</sup> December 1945. She appeals with permission the decision of the First-tier Tribunal (Designated Judge McClure) to dismiss her appeal on human rights grounds.

**Background and Matters in Issue**

2. The uncontentious factual background is that the Appellant is an Indian national who has been a frequent visitor to the UK over the years. She has 5 grown up

children who are lawfully resident in this country, and a number of grandchildren. She last entered the UK on the 9<sup>th</sup> July 2015, in the company of her husband Mr Ismail Ahmed Nagia. They had come together to visit their children, and intended to return to their home in India at the end of that trip as they had done many times before. Unfortunately that was not to be, because Mr Nagia died in London on the 23<sup>rd</sup> September 2015.

3. The Appellant thereafter remained living in the UK with her family members. On the 16<sup>th</sup> December 2015 she made an application for leave to remain on human rights and compassionate grounds. She averred that she has suffered from depression and since the death of her husband and that she is afraid of living alone in India. She stated that she was receiving emotional and financial support from her family in the UK.
4. The Respondent refused to grant leave to remain in a decision dated the 21<sup>st</sup> February 2016. The refusal letter considers paragraph 276ADE (1) of the Immigration Rules (the provision relating to Article 8 private life). The Respondent concludes that the Appellant cannot qualify for leave under any of the alternative heads in that rule. The letter moves on to consider 'exceptional circumstances'. The Secretary of State notes the Appellant's claim to be receiving emotional and financial support from her children but concludes that no reason has been shown why this cannot continue to be provided to her in India. The Appellant was apparently receiving medical treatment in India before she arrived in the UK, and there is no reason why that could not continue.
5. When the matter came before Designated Judge of the First-tier Tribunal McClure, the only ground of appeal was human rights, and specifically Article 8 ECHR.
6. The Tribunal begins its determination by setting out the relevant law. It notes that in its assessment of Article 8 'outside of the rules' the appropriate framework is that recommended in Razgar [2004] UKHL 27, and that in its consideration of proportionality the burden lies on the Respondent, which he hopes to discharge by pointing to the public interest factors set out in s117B of the Nationality, Immigration and Asylum Act 2002. With regard to Appendix FM the Appellant cannot qualify under the partner or parent route; she cannot make application under the 'dependent relative' category because she is not outside of the country and that only provides for applications for entry clearance. At paragraph 12 the determination then says this: "the provisions of the rules may be relevant in determining whether or not it is reasonable to expect the appellant to return to India to make an application and what the prospects of success may be for such an application". It goes on to note that these rules require evidence relating to finances. At paragraph 14 it says: "there was very little, if any, financial evidence submitted with the application. There are provisions under Appendix FM-SE as to the documentation that has to be submitted in support of such applications. There appear to be no bank accounts, payslips, letters from employers or any

other financial documentation...". Finally the Tribunal directs itself to consider paragraph 276ADE(1).

7. The next section of the determination records the evidence, and then the Tribunal turns to its conclusions. They are:

- i) That when the Appellant came to the UK it was her intention to return home with her husband [§55];
- ii) She has a house in India and a pension. There is no evidence that she was ever financially dependent upon her children whilst living in India [§56];
- iii) When she applied for entry clearance she had produced evidence that she had substantial savings [§57];
- iv) She employed a servant in the past and there is no reason why she could not do so again [§58];
- v) She has some medical problems but there is no reason why she could not employ a carer in India if necessary [§59];
- vi) The real matter of concern is the evidence that the Appellant is suffering from depression and psychological trauma as a result of the death of her husband. That bereavement notwithstanding, "adjustments have to be made and it may be that the time has passed when the appellant can claim to need the support of her immediate family" [§60];
- vii) The Appellant has not stayed with any one particular member of the family here, but has rather been moved around from person to person [§60-61];
- viii) The Appellant's daughter Mrs Ayuby has 5 children and although she offers her mother support it is not clear whether this is suitable since no evidence is offered in respect of accommodation or Mrs Ayuby's finances [§62];
- ix) Her son Mr Nagia had provided no evidence as to his financial circumstances [§63] and nor have any of the other children [§66];
- x) The evidence did not demonstrate that she could be supported in this country without recourse to public funds, but on the evidence presented it would seem that she could support herself in India by claiming her pension [§64];

- xi) There is no evidence that she can speak English; she can speak Gujarati [§65];
- xii) Although many of the Appellant's children would be unable to accompany her to India because they have school-aged children of their own, no evidence had been given as to why Mrs Adam, [a daughter who lives in London] could not go to India for a short period of time with her mother whilst the Appellant makes a proper application from abroad [§68];
- xiii) Taking all of the above into account the Appellant "does not at this stage meet the requirement of the rules" [§70];
- xiv) The Appellant has not demonstrated a family life with any particular child, rather the evidence is that the family has acted as a "care structure" [§71];
- xv) The Appellant has not established a material aspect of private life in the UK. Clearly she has no assets or commitments above and beyond her family here [§72];
- xvi) Family life has not been demonstrated [§73];
- xvii) If Article 8 is engaged the decision is nevertheless proportionate. The Tribunal notes that there is no evidence that the Appellant could be cared for without recourse to public funds [§74-75];
- xviii) There are no significant obstacles to the Appellant returning home and being reintegrated into her home country [§76]

The appeal is thereby dismissed.

### **The Appellant's Appeal to the Upper Tribunal**

8. The Appellant now challenges the First-tier Tribunal's decision on the following grounds:
  - i) The Tribunal erred in having regard to the rules relating to 'Dependent Relatives' since these had not featured in the decision under appeal which was purely on Article 8 grounds. If the Tribunal considered these matters relevant it should have indicated as much to the parties and given them an opportunity to address the issue and provide evidence if necessary;

- ii) The Tribunal had failed to take material evidence into account, in particular the “wealth” of financial evidence relating to the sponsors in the UK;
  - iii) The Tribunal further erred in failing to take the most up-to-date medical evidence into account. Although the Tribunal had considered a letter from the Liberty Clinic that letter was approximately one year old at the date of the hearing and the Judge did not read it in the context of evidence given by witnesses that the Appellant’s mobility had significantly decreased since the letter had been written. Furthermore the Appellant had relied on a letter from Dr Haroon Moosa of the 6<sup>th</sup> March 2017 which stated *inter alia* that the Appellant had “poor mobility” The determination does not take that document into account;
  - iv) The Tribunal failed to take the evidence of the Appellant’s daughter Mrs Adam into account. If the Tribunal had additional questions for Mrs Adam these should have been put to her.
9. Permission to appeal was robustly refused by Designated Judge of the First-tier Tribunal Shaerf on the 20<sup>th</sup> November 2017. The Appellant renewed her application to the Upper Tribunal and on the 18<sup>th</sup> December 2017 Upper Tribunal Judge Grubb agreed to grant permission on all grounds, commenting as follows:

“Whilst the ‘Adult Dependent Relative’ rule in Appendix FM may well have been relevant in assessing the claim outside the rules it does not seem to have been raised by the respondent in the decision or at the hearing. Arguably, therefore, the appellant (and had the decision gone the other way, the respondent) were denied an opportunity to make relevant submissions on the rule. Equally although the report of Dr Moosa was filed the day before the hearing, it was the most up-to-date evidence on the appellant’s health and it is arguable that the Judge erred in failing to take it into account”.

#### **Error of Law: Discussion and Findings**

10. The Appellant’s position is the adult ‘dependent relative’ rules in Appendix FM are not applicable to her case. Those rules only apply to applicants for entry clearance: EC-DR.1.1 (a) “the applicant must be outside the UK”. Rather her application, made under cover of letter dated 16<sup>th</sup> December 2015, focused on Article 8 private life. It was Mrs Nagia’s case that she would face very significant obstacles to her integration in India so that she met the requirements of 276ADE(1)(vi). In the alternative, her unusual personal circumstances were such that a refusal to grant her leave on Article 8 grounds would place the UK in breach of its obligations under the ECHR. With that in mind, much is made in

the grounds of the First-tier Tribunal's apparent reliance on the rules relating to dependent relatives.

11. I am not satisfied that the Tribunal sought to apply those rules directly to this in-country application for leave to remain on human rights grounds. What it did, as Mr Bates correctly submits, was to consider whether there was arguably a *Chikwamba* unreasonableness in expecting this frail lady to go back to India simply to make an application for entry clearance. That was a perfectly rational enquiry. After all, had it been found that she met the requirements of those rules, it is difficult to see how the Respondent could have argued that it was in the public interest for her to go home and make the application, given the factual matrix of the case: *viz* the Appellant had not cynically sought to circumvent those requirements but had found that her unexpected bereavement in the UK had changed her mind about where she wanted to live. It is clear from the opening sentence of paragraph 12 (cited above) that this was the extent to which those rules were considered in the context of this appeal. I am not satisfied that any error arises.
12. The second ground concerns the Tribunal's alleged failure to read the "wealth of documentation" that related to the family finances. In relation to this point the grounds read:

"It is inconceivable in the extreme that the Immigration Judge could have missed the documents that were before him in relation to this appeal. It is submitted that the immigration judges failure to fully consider the documents before him is a material error of law and procedural unfairness..."

13. Before me Ms Patel began her submissions by echoing the criticism in the grounds. Asked to take me to the 'wealth of evidence' referred to therein she took me to the covering letter sent by the Appellant's solicitors to the Home Office with her application on the 16<sup>th</sup> December 2015. That letter contained a long list of enclosures which included bank statements and payslips relating to the Appellant's children in the UK. It was at that point that Ms Patel acknowledged that none of those enclosures had in fact been put in evidence before Judge McClure. Ms Patel pointed out that the documents had been with the Respondent and that it would normally be the case that they would have been included in the Respondent's bundle. It was not for the Appellant to reproduce evidence which the Respondent had not taken issue with. Ms Patel submitted that it was procedurally unfair for the Tribunal to have found against the family on the matter of maintenance when it appeared to be accepted by the Respondent that this was not an issue.
14. First, let me record that it is apparent from the foregoing that the grounds are misleading in the extreme. There was not a 'wealth' of documentary evidence before the First-tier Tribunal. There was a letter which listed some enclosures

which no-one had bothered to photocopy. This was an in-country Article 8 claim and the relevant date for enquiry was the date of the appeal. It was a matter for the Appellant what evidence she wished to submit in respect of the position at that date. Second, it is not, contrary to Ms Patel's submissions, the case that the Respondent had accepted that the Appellant would be maintained and accommodated without recourse to public funds. The refusal letter is silent on the issue and in those circumstances it was a perfectly legitimate enquiry for the Tribunal to make in the context of its global Article 8 appraisal. This ground is not made out.

15. The third ground is concerned with the determination's failure to address a report by Dr Haroon Moosa, a Consultant Psychiatrist instructed by the Appellant's solicitors to conduct an assessment of her mental state. Mr Bates accepts that the report does not feature in the determination (I note that the file contains two bundles for the Appellant, identical save that one includes Dr Moosa's evidence appended at the end – it may be that the First-tier Tribunal had not appreciated that there was this additional evidence).
16. Having accepted that the report is not addressed, Mr Bates submitted that this omission could not be said to be material to the outcome of the appeal. It is therefore appropriate that I consider the contents of that report.
17. Dr Moosa visited the family home in order to assess the Appellant. He conversed directly with her in Gujarati. He does not say how long he was at the property for, and it seems that there was just one visit. He relates that the Appellant explained to him how she and her husband had visited the UK together but he had suddenly died whilst they were here. She said that she had been suffering from mobility problems including arthritis, and had a history of depression arising from a series of traumatic events, including three miscarriages and the death of a son, a child who died as an infant after being prescribed the wrong dose of medicine by doctors in India. She had suffered from depression as a result of these personal tragedies and her husband had done everything for her. She did not like going out and so he would take care of the shopping and bills. After he died she was shocked and "was able to grieve normally". However as time went on she began to be increasingly worried about the prospect of returning to India alone. She has fallen in the past and knows of a neighbour in India who died after a fall so this worries her. She has arthritis and is unable to walk without a stick. When she worries about going home she experiences palpitations and shortness of breath. Mrs Nagia's daughter told Dr Moosa that her mother often wakes in the night and cries. She prays a lot during the day and is often tearful. She is socially isolated and does not communicate much. She does not like going out and prefers to stay in the house. She gets easily tired. She had been married for 51 years when she was widowed.
18. Dr Moosa concludes that the Appellant is suffering from recurrent depressive disorder, with a current episode of moderate severity. She will need to maintain

her prescription of anti-depressants for at least 12 months and she may need to seek psychological therapy if her condition does not improve. He believes that the main cause of the current problems is her anxiety about returning to India. It is in his view highly likely that her depression will improve if the uncertainty and pressure is removed from her. Conversely if she returned to India it is highly likely that she would become more resistant to treatment and she may start experiencing severe hopelessness and suicidal thoughts. There is a significant risk of that happening unless she has support in India. In view of the fact that her sons and daughters are all abroad this would appear to be unlikely.

19. It was the submission on behalf of the Respondent that this report did not add anything of significance to the evidence that was considered by the Tribunal. At paragraph 16 the determination records that the file includes a psychologist's report and it would appear from paragraphs 51-53 that this was a reference to the work of Dr David A. Lee, who saw the Appellant on one occasion in December 2015. There was no interpreter present and the Appellant's children interpreted for her, so diagnosis using the usual tools such as the Beck Inventory was problematic (her son simply filled it in without even asking her the questions). Nevertheless, Dr Lee was able to conclude that the Appellant was suffering from a grief reaction and depression. Mr Bates submits that notwithstanding these shortcomings the Tribunal appeared to accept that the Appellant was indeed depressed. In those circumstances, he submits, it is difficult to see what Dr Moosa's evidence added.
20. I have given careful consideration to the Respondent's submissions but I am unable to conclude that the omission to consider Dr Moosa's evidence was immaterial. That is because it went to what was the central issue in this appeal: whether there were very significant obstacles to Mrs Nagia 'integrating' into Indian society. His key findings were that the Appellant is already socially withdrawn, does not like going out, is emotionally dependent upon her family, and that her depression is highly likely to get worse should she return to India. Crucially, he set out the background to her private life in India - one entirely dependent upon her husband - and her private life here, within the embrace of her extended family.
21. The purpose of paragraph 276ADE(1) of the Rules is to reflect the Secretary of State's view about where the balance should be struck in cases involving 'private' rather than 'family' life in the context of Article 8 ECHR. Where, for instance, the individual has accrued twenty years residence in this country the Secretary of State accepts, that simply by virtue of those long years, that he could not show a decision to remove that individual to be proportionate. In the case of an adult individual who has not achieved that length of residence the rule is rather more prescriptive. An applicant must demonstrate that she:

(vi) ...is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant



obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.

22. The test of 'very significant obstacles' was considered, in the context of deportation provisions relating to foreign criminals, in Kamara v SSHD [2016] EWCA Civ 813. At paragraph 14 of the judgement Sales LJ says this:

"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."

23. On the one hand this guidance simply reflects a body of human rights jurisprudence which suggests that the ambit of 'private life' within the meaning of Article 8 is broad, and not susceptible to exhaustive definition<sup>1</sup>. It also, however, focuses the test away from practical considerations such as whether one will be able to work, communicate fluently in the local language or secure housing<sup>2</sup> to whether one will be able to build and enjoy relationships with other human beings, a fundamental requirement when considering the physical and moral integrity of the person<sup>3</sup>: see the opinion of Judge Martens in Beldjoudi v France (App 234-A (1992)), Pretty v UK, McFeeley v UK No 8317/78 at 91.

24. Against that background, the relevance of Dr Moosa's report becomes apparent. This was more than simply a diagnosis of depression in an elderly widow. The report set out important context, and went to the question at the heart of the appeal under the rules: was this lady going to be able to enjoy meaningful human interaction should she be returned to India? Or put another way, would she be able to establish a private life in that country? Although the determination addresses paragraph 276ADE(1)(vi) in very brief terms at paragraph 76 I cannot be satisfied that consideration was given to these questions. The report was also relevant to the matter of Article 8 'outside of the rules' since Dr Moosa expressed opinion on the quality and nature of the Appellant's relationships with family members here, not a matter addressed by the test at 276ADE(1)(vi).

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<sup>1</sup> See for instance Pretty v UK 2346/02 [2002] ECHR 427.

<sup>2</sup> All in themselves valid considerations: see Bossade (ss.117A-D-interrelationship with Rules) [2015] UKUT 415 (IAC).

<sup>3</sup> X and Y v The Netherlands (8978/80) A91 para 29

25. I am satisfied that the Tribunal did overlook the report of Dr Moosa, and for the reasons set out above I am satisfied that this must be a material omission and the conclusions reached must therefore be set aside to that extent.
26. I should add that I see little merit in the Appellant's pursuit of the case on the basis that her physical impairments prevent her from living alone. There is no disputing that she is advancing in years and that she has suffered from osteoarthritis for some time. This inevitably means that her mobility will gradually decline. That is to be expected. The First-tier Tribunal concluded however that concerns about the Appellant's physical health can be addressed by the provision of a paid carer. That was manifestly a finding open to it when assessing proportionality under Article 8. The submission that the Appellant would have 'no-one to look after her' in the physical sense was, on the evidence, nonsense. She and her husband had employed a servant previously, she had her own income and if Ms Patel is correct about the financial position of the family here, the Appellant has numerous close relatives who would be willing to remit money to pay for care.
27. The same cannot however be said for emotional support and the need for meaningful social interaction, for the reasons I set out above: this cannot be bought in the same way. I therefore set the decision of the First-tier Tribunal aside to the extent indicated above and remake the decision, on 276ADE(1)(vi) and Article 8.

### **The Re-Made Decision**

28. The Appellant's representatives have now obtained a second report from Dr Haroon Moosa. Further to his report of the 6<sup>th</sup> March 2017 (for which see above) Dr Moosa saw the Appellant again, at a clinic in Garstang, on the 7<sup>th</sup> August 2018. He clarifies that he initially came into contact with the Appellant when she was referred to mental health services by her GP. The GP was concerned about her low mood following the death of her husband. He first saw her in his outpatient clinic in March 2017. For the purpose of the present report he interviewed the Appellant in the presence of her son and daughter. Dr Moosa conducted the interview with the Appellant in Gujarati.
29. The Appellant confirmed to Dr Moosa that she continues to feel depressed. She is worried about her immigration status and is frightened of returning to India where she has no support. Her mobility is decreasing (her GP confirms that she has recently had to have steroid injections in her knees) and she now has cataracts in both eyes. This is a cause of upset because it has prevented her from reading the Qur'an, from which she had been able to draw major comfort. As a result she tends to sit on her own. Her blood pressure has increased, which she attributes to her feelings of stress and anxiety around being returned to India. Her GP has increased her dose of anti-depressants (citalopram) to 40mg.

She has been unable to access talking therapies because of the language barrier. She is also unwilling to engage in any form of psychological therapy as she does not want to “meet new faces or interact with others”. In an effort to keep her stimulated and engaged the family – on the GPs recommendation - have been taking it in turns to accommodate her, with her moving to stay with someone different every few weeks.

30. The Appellant told Dr Moosa that she continues to feel very low and often cries for no apparent reason. She finds it difficult to sleep and does not get more than three hours at night. She is often observed crying and trying to read the Qur’an. She has poor appetite and is losing weight. She does not like interacting with others and tends to be irritable, particularly with children playing in the house. She has palpitations worrying about dying alone without her family near her. She worries about death all of the time. She misses her husband greatly and feels hopeless about the future. Although she wishes she was dead she denies any suicidal ideation: rather “it would not bother her” if she had a terminal illness and passed away.
31. Dr Moosa concludes that the Appellant has Recurrent Depressive Disorder and is currently experiencing an episode of moderate severity. She will need to remain on anti-depressants long term. Dr Moosa finds that the primary cause of the current episode is the uncertainty over her future. He remains of the opinion that it is highly likely that her depression can improve significantly if this uncertainty were to be removed and the pressure removed from her:

“If she is reassured that she can reside in the United Kingdom with her family then it is possible that her depressive symptoms will improve significantly over the next few months. Her anxiety in relation to being on her own would also significantly reduce.

I remain of the opinion that should the opposite happen, i.e. if Mrs Nagia were to return to India then it is highly likely that her anxiety symptoms and depressive illness would worsen significantly. Her illness would become resistant to treatment and she may start experiencing severe hopelessness, including suicidal thoughts and planning. In my opinion there is a significant risk of this happening unless she has significant support back in India. In view of the fact that all her son and daughters are abroad, this is unlikely to be the case”.

32. The Appellant has signed a further witness statement, dated 8<sup>th</sup> August 2018. She reiterates the personal history set out in her earlier statement and confirms that she continues to feel depressed. She states that she has withdrawn from wanting to be with other people and does not like to socialise: “my temperament is low, and I prefer to be in my own company”. Having said that, she fears separation from her family and that if left alone her depression will become worse. She states that when they were in India her husband made all

the decisions in her household and she feels lost without him. She experiences constant physical pain and needs help washing. She cannot cook for herself and can barely hold a cup of tea because her hand shakes. Her fears are compounded by the fact that her home in India is isolated. There is a frequent loss of electricity and the doctor is approximately one hour away. If there was an emergency there is no one for her to turn to. She has no close relatives there any more.

33. I was also provided with an up-to-date statement from Mr Mustak Nagia, the Appellant's son. Mustak confirms what his mother, and Dr Moosa, have said about her mood and mobility problems. He states that when she has stayed with him he has regularly found her sitting up in bed at night, crying. This is very upsetting for him.

34. The Appellant's daughter Nasima Ayuby echoes her brother's concerns (in fact her statement is drafted in near identical terms to his). She confirms that when her mother is staying with her she is to be found sitting awake at night and worrying. Nasima says that the Appellant is naturally socially withdrawn but says that she becomes upset if she is left on her own for any length of time, as she becomes preoccupied with memories of her late husband and her fears of being on her own in India. Nasima states that the Appellant interacts and depends upon other people in the family, but she does not want to speak to anyone else: if guests come to the house where she is staying she will retreat to her bedroom.

35. None of that evidence was challenged. I note that it is consistent with the undisturbed findings of Judge McClure and I am satisfied that significant weight should be attached to the evidence of the Appellant, her family members and Dr Moosa.

36. The Respondent takes no issue with the Appellant's 'suitability' under 276ADE(1)(i). It is common ground that the only requirement in issue is at subsection (vi) of the 'private life' rule:

(vi) ...is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK.

37. I am quite satisfied that there are no physical barriers to the Appellant resettling in India. She owns a substantial home there and the family accept that they have sufficient funds to pay for her upkeep. A servant could be employed to deal with cooking and cleaning, and a carer to help with the tasks that the family themselves currently undertake, such as personal care and ensuring that the Appellant takes her medications at the appropriate time. I

am satisfied that any medicines the Appellant needs would be readily available to her in Gujerat.

38. That is not to say that the Appellant's physical difficulties are irrelevant to the decision I must take. I accept that she is increasingly frail, and that she finds basic things like getting up out of a chair on her own difficult. She has poor mobility and her eyesight is failing her. Whilst these health complaints are not such that they would found an arguable case under Article 3, nor in isolation Article 8, I accept that they are important because they form the backdrop to the Appellant's fears about living on her own in the village. For the past three years the Appellant has been assisted in her day to day existence by her immediate family members. I have no difficulty in accepting that she would find it distressing if that role had to be taken over by a paid carer, since it would underline her dislocation from her family, and the fact that she is, in effect, alone.
39. It is that loneliness that lies at the heart of this appeal. The usual practical considerations that arise when considering 'integration' are of little application here: the Appellant is not going to be working, or needing to find accommodation. The question is whether, as Lord Justice Sales put it in Kamara, the Appellant will be able to "operate on a day-to-day basis" in India and "to build up within a reasonable time a variety of human relationships" to give substance to her private life. It seems to me, on the basis of the uncontested assessment of Dr Moosa, that this is plainly not the case.
40. When the Appellant was last in her home in India she was 68. She lived with her husband of some 51 years. They were helped by a servant and lived a comfortable life. Although she had some age-related health issues they continued to travel regularly to see their children and grandchildren in the United Kingdom. Today her world is radically altered. She is now 72, and in the aftermath of her husband's death her health has taken a significant turn for the worse. She is now wholly dependent upon her children in a number of ways - financially, physically, but more importantly emotionally. She has, as her daughter puts it, "withdrawn from the world" and only takes comfort in her children and grandchildren being around her. In Dr Moosa's opinion the Appellant is currently suffering from depression and anxiety but this would significantly worsen should she be returned to India. The Appellant is preoccupied with dying alone and return would precipitate feelings of "severe hopelessness", including thoughts of suicide. In those circumstances the prospect that she would have a sudden personality transplant and be able to go out, socialise and form relationships with other human beings is extremely unlikely. Whilst she would be able to get physical help from a paid carer, such a relationship that might be established with such an individual would not in this case be capable of constituting a meaningful 'private life'. The Appellant would, for all intents and purposes, be completely isolated. Housebound, depressed, physically unwell and unable to turn to her children and

grandchildren for comfort in what are, inevitably, her final years. I am satisfied that there is no realistic prospect of the Appellant being able to 'integrate' into Indian society in the sense that she would be able to meet and form relationships with other people such that she would have the bare minimum of a 'private life'. I therefore allow the appeal on Article 8 grounds with reference to paragraph 276ADE(1)(vi) of the Immigration Rules.

41. It follows that I need not deal with Article 8 'outside of the rules' but for the sake of completeness I do so briefly.
42. Before me Mr Diwnycz accepted that Article 8 was engaged on the grounds that the relationships that the Appellant enjoys with members of her family here amount to 'family life', since they are characterised by a *Kugathas* dependency. Ms Patel in turn accepted that the decision was taken in pursuit of the legitimate aim of protecting the economy and that it was one lawfully open to the Respondent to take.
43. In assessing proportionality I am bound to take into account the public interest factors set out at paragraph 117B of Nationality, Immigration and Asylum Act 2002.
44. The maintenance of immigration control is in the public interest. I accept that the Appellant has always been compliant with the rules and restrictions that she has been subject to when entering the United Kingdom. The present application was made prior to the expiration of her visit visa and so she continues to have valid leave by virtue of s3C of the Immigration Act 1971. If the Appellant does not qualify for leave under the Rules it would of course be in the public interest for her to be refused further leave.
45. The Appellant speaks no English. It is in the public interest that persons who seek to settle in the United Kingdom speak English because that assists in their integration. I accept that this factor is in a small way mitigated in the particular circumstances of this case since the small section of society that the Appellant does seek to integrate with - her immediate family - all speak fluent English as well as Gujerati and so are on hand to assist her. I also accept that the weight to be attached to the public interest under this statutory provision is further diminished by the fact that the Appellant is over 65 and so would not be required, under the Immigration Rules, to pass an exam in English in order to qualify for leave.
46. The Appellant is financially independent. She owns her own property in India which, if required, could be sold to support her. I am therefore satisfied that she has independent means and that there is no prospect of her becoming dependent on public funds. I have no hesitation in accepting that in reality it will be her adult children in this country, all able and willing, who will support her. Nasima and Mustak both run their own businesses. Her two daughters in

London, Rizwana and Yasmin, are both in full time employment, as are their husbands.

47. None of the factors at 117B(iv-vi) apply to the Appellant since she does not in this context seek to rely on her private life, she has no partner or dependent children.
48. The factors that weigh in the Appellant's favour are these. She is a relatively elderly lady who is suffering from ill-health, depression and anxiety. She is fearful of being alone after the loss of her husband. In this country she is cared for by a large, supportive and close-knit family, all of whom are British citizens. Her adult children have all worked together to look after her. She enjoys a close relationship with them, as well as the 16 grandchildren that she has in this country, aged between 3 and 23 years old. It is living in the extended family system that is providing comfort to the Appellant at this challenging time in her life.
49. Going back to India would be possible for the Appellant. She has her own home there, and she could hire help and medical support. Her children and grandchildren could, albeit with difficulty and huge expense, operate a 'rota' of people going out to visit her. It would be *possible*. I am not satisfied, on the particular and sad facts of this case, that it would however be reasonable or proportionate. This is a lady who comes before this Tribunal for no reason other than the tragedy of suddenly losing her life partner of some 51 years. She has always complied with immigration control and has never had any recourse to public funds. Whilst the maintenance of immigration control is a matter that weighs heavily in the public interest, I am satisfied that it is here outweighed by the exceptional and compelling nature of the case.

### **Decisions**

50. The decision of the First-tier Tribunal contains an error of law and it is set aside to the extent identified above.
51. The appeal is allowed on human rights grounds.
52. I was not asked to make an order for anonymity and on the facts, I see no reason to do so.



Upper Tribunal Judge Bruce  
24<sup>th</sup> August 2018