Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/14446/2016**

THE IMMIGRATION ACTS

Heard at Birmingham	**Decision & Reasons Promulgated**
On 8 March 2019	**On 29 April 2019**

Before

UPPER TRIBUNAL JUDGE HEMINGWAY

Between

NRSP

(ANONYMITY DIRECTED)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Woodhouse
For the Respondent: Mr D Mills

DECISION AND REASONS

1. On 16 May 2016 the Secretary of State refused the claimant's application for leave to remain. The claimant appealed and on 22 December 2017 the First-tier Tribunal (the tribunal) dismissed her appeal. The claimant subsequently obtained permission to appeal to the Upper Tribunal and on 12 November 2018 I set aside the tribunal's decision and decided to remake the decision in the Upper Tribunal. On 8 March 2019 there was a hearing before me so that issues relevant to the remaking of the decision might be addressed. I have decided to remake the decision by allowing the claimant's

appeal from the Secretary of State's decision of 16 May 2016. What follows constitutes an explanation as to why I have done so.

2. By way of background, the claimant is a national of India and she was born on 30 November 1985. She married in India and, on 18 November 2008, entered the United Kingdom (UK) as a dependent of her spouse who had been granted limited leave to remain in the UK. The claimant says, however, that the marriage had been difficult because her husband had been violent towards her at various times. The marriage broke down but the claimant sought to remain in the UK. She obtained leave as a student but such was curtailed on 7 October 2014 because the educational institution which she had been attending had lost its relevant license. On 19 September 2014 she applied for leave to remain (as I understand it outside the Immigration Rules) but that application was refused on 31 December 2014. She appealed that decision and in pursuing it, asserted entitlement to international protection on the twin basis that if she were to have to return to India she would be harmed by her husband and that her mental health was such that if she were to be returned she would commit suicide. That appeal was considered by a tribunal on 29 April 2015 but the appeal was dismissed, the tribunal having found against her with respect to both of the above contentions.

3. The claimant then made the application for leave which led to the decision of 16 May 2016. By that time the claimant had obtained further medical evidence regarding her mental health difficulties. As noted above, she appealed that decision but she did not pursue the appeal on the basis that she was entitled to international protection. Rather, she asserted that her appeal should succeed under what are sometimes called the Article 8 related Immigration Rules. Specifically, she asserted that she met the requirements contained at paragraph 276 (ADE) of those Rules on the basis that there would be very significant obstacles to her reintegration in India. She also relied upon Article 8 of the European Convention on Human Rights (ECHR) itself, outside the Immigration Rules. Whilst reasserting her claim to have been a victim of domestic violence at the hands of her husband (though not now seeking international protection on that basis) and to have significant mental health problems, she also said that she had been a victim of domestic violence at the hands of her father and a victim of abuse at the hands of other family members when living in India in the past.

4. The detailed reasons why I decided to set aside the tribunal's decision of 22 December 2017 are contained in my decision of 12 November 2018. I need not set all of that out here. But in a nutshell, I concluded that the tribunal had erred through failing to undertake an adequate consideration as to the position under paragraph 276 (ADE) (1) (vi) of the Immigration Rules. So, the hearing before me of 8 March 2019 was a complete rehearing with respect to the position under that paragraph and under Article 8 of the ECHR outside the Rules. As to both, it was ultimately for the claimant to demonstrate, to a balance of probabilities, that she met the requirements as at the date of the hearing before me.

5. At the hearing I had the documentation which had been before the tribunal together with the Home Office Country Policy and Information Note version 2.0 of July 2018 relating to India; a supplementary bundle filed on behalf of the claimant for the purposes of that hearing; and a complete copy of the previous decision of the tribunal which it had made in April of 2015. I mention I had a full copy because at the time of the hearing of 8 March 2019 I did not have. What was on file was a copy comprising half the pages of the tribunal's decision. But I have subsequently been provided with a full copy which I have been able to read and take into account.

6. At the hearing of 8 March 2019 representation was as stated above. I am grateful to each representative. I did not hear oral evidence from the claimant because, as I understand it, it was felt

inappropriate to call her bearing in mind her mental health difficulties. I did, though, hear evidence from two witnesses on her behalf being Reverend Alison Taylor and Fionnuali Mary Casey. I have referred to that evidence, where necessary or otherwise appropriate, below. I also received oral submissions from the two representatives. Mr Mills, in his submissions, accepted that the evidence disclosed some previous suicide attempts by the claimant. However, he suggested that there did not appear to have been any such attempts in the very recent past. He accepted that appropriate diagnoses with respect to mental illness had been made but asserted she would probably be able to access family support in India and that what had been found by the previous tribunal in 2015 might be relevant to a consideration as to that. If, however, she would be without family support in India and would be alone, then she would face some difficulty. As to Article 8 outside of the Rules, there was evidence showing a support network in the UK. But, as a church going Christian, she would be able to attend churches in India where she might secure some assistance and support. If she could not meet the requirements of the Immigration Rules then there was nothing to show that she could successfully rely upon Article 8 outside the Rules.

7. Mr Woodhouse argued that there would be very significant obstacles to the claimant's reintegration in India through an accumulation of various factors. At the forefront was her mental health difficulties. Further, the evidence suggests that there is still a stigma attached to those who suffer mental health problems in India. In the UK she has a protective environment stemming from her friends, her church connections and the professional support she is receiving. She would not have that in India. Whilst a tribunal had made adverse findings in 2015, there was now much more medical evidence available than there had been then. So, relevant findings about mental health can be departed from.

8. The appeal before me has, essentially, been pursued under paragraph 276(ADE) of the Immigration Rules and Article 8 of the ECHR outside the Rules. I did not detect any serious attempt on the part of Mr Woodhouse to persuade me that I should now allow this appeal under Article 3 of the ECHR on the basis of suicide risk. Nor, indeed, had any such argument been pursued before the tribunal at the appeal which had led to the decision of 22 December 2017. The above paragraph of the Rules relevantly provides:

> **Requirements to be met by an applicant for leave to remain on the grounds of private life**
>
> 276 ADE (1). The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:…
>
> (vi) Subject to sub-paragraph (2), is aged eighteen years or above, has lived continuously in the UK for less than twenty 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.

9. Pausing there, 276 ADE (2) has no application in the circumstances of this case.

10. I must, then, make my relevant findings concerning the above provision. My starting point, given the tribunal's decision of 29 April 2015, will be the findings of that tribunal. That is so because of what was decided in the well-known case of *Devaseelan (second appeals, ECHR, extra-territorial effect) Sri Lanka* [2002] UKIAT 00702. But, although those findings will be my starting point, I am able to depart from them in certain circumstances including where fresh evidence not previously available is now available and where matters have altered as a result of the passage of time.

11. As to the claimant's mental health, the 2015 tribunal accepted that she suffered from depression and that, in September/ October 2014, she had been displaying symptoms of acute anxiety. But it did not accept that she was suffering from post-traumatic stress disorder (see paragraph 19 of that decision). The tribunal bemoaned the "unfortunate and somewhat surprising" lack of up to date evidence from a psychiatrist or a psychologist (paragraph 24). It did not accept she would be at real risk of committing suicide in consequence of being removed to India or that her return to that country would "exacerbate her problems to such an extent that she will be unable to function in the community, unable to support herself or face an increased risk of suicide" (paragraph 37).

12. Pausing there, it might be thought that although the tribunal did not make a clear finding as to the possible application of paragraph 276 (ADE), that the findings regarding ability to function in the community in India had direct relevance to a consideration under that provision.

13. The medical evidence before me is significantly fuller than it appears to have been before the 2015 tribunal and much of it is, importantly, very recent. Whilst I have looked carefully at all the documentation before me I have paid most attention to the most recent evidence particularly in the context of mental health which, of course, can vary over time.

14. There is in the claimant's most recent bundle a psychiatric report prepared by one Dr M Shaffiullha, who is a Consultant Psychiatrist. He has, in fact, seen the claimant on four occasions. He says that she is "suffering from severe depressive disorder with co-morbid post-traumatic stress disorder". He also notes that she suffers from "social anxiety" and indicates that she does not like to venture out alone. He suggests as I understand it (see page 48 of the most recent bundle) that her mental health difficulties have worsened, his observing that in the past she had been given a diagnosis of adjustment order with prolonged depressive reaction but that in his view "her current symptoms have progressed to a clinically significant depression". He does express the view that if deported she would be "most likely to try and harm herself". I also have what amounts to an updating report on the claimant prepared by one Dr F Mantia-Conaty who is a Senior Clinical Psychologist who has had involvement with the claimant's treatment. It is stated, therein, that the claimant has been receiving assistance from an organisation known as ASSIST which "offers specialist intervention for women who present with high levels of vulnerability and risk and who are deemed to have multiple and complex needs". Reference is made to there being a risk of self-harm and also to the claimant having talked to members of ASSIST (presumably including the author of this report) about what was described in that report as a "persistent and pervasive history of physical, emotional and sexual abuse from her husband, and physical and psychological abuse from her father and uncles, all of which live in India". There is then a letter of 9 November 2017 (and so not quite as recent as the two reports I have just referred to) written by one Hannah Jell of an organisation called Anawim, which is associated with ASSIST, and which sets out some historical detail of her treatment which has included medication and psychiatric input. It is said that she receives a considerable amount of support from her local Community Mental Health Team, from Anawim, from ASSIST, and from her church community.

15. The 2015 tribunal did accept that the claimant had mental health difficulties though not to the extent there would be a suicide risk or that, as it put it, she will be unable to function in the community, if returned to India. Nor did it accept the diagnosis of post-traumatic stress disorder. But it did note what it felt to be, to an extent at least, inadequate written evidence concerning the extent of her mental health difficulties. I have much more medical evidence. Further, it seems to me as a matter of common sense that mental health ailments are susceptible to change over time. Putting all of that together I have concluded that it is appropriate, in this case, for me to depart from

the 2015 tribunal's findings and to assess, whilst respecting and keeping in mind those findings, the current situation on the basis of the totality of the evidence as it now is.

16. There is some cause to treat the content of the above evidence concerning the claimant's mental health with a degree of caution because the relevant caseworker and psychiatrists do appear to have accepted, uncritically, the history which the claimant has offered. But it does not seem to me that that should significantly detract from the substance of the actual findings as to the claimant's current mental health state, whatever her history might be and whatever the causes might be. I have found the report of Dr Shaffiullha to be of particular assistance. That is because the report is detailed and considered and because it is based (unlike many such reports I have seen) on more than one attendance upon the claimant. I accept, therefore, that the claimant is currently suffering from severe depressive disorder with co-morbid post-traumatic stress disorder and that she is also suffering from social anxiety. I accept that, putting together all of the evidence, but especially in light of Dr Shaffiullha's report, that her current mental health difficulties are of real and troubling substance. Indeed, although I would have reached that view any way, I do not think Mr Mills was seeking to persuade me that the evidence indicated I should reach any other view.

17. The second important issue, though, with respect to paragraph 276 (ADE) is what the claimant might or might not receive with respect to support if she is to be returned to India. She says, of course, although her claim for international protection has not been repeated, that her husband is present in India and is likely to harm her. The 2015 tribunal rejected that claim, pointing out that there was no evidence before it to demonstrate that the husband was in India (paragraph 21). Although the claimant has continued to maintain to the Home Office and to others that she fears her husband I do not see anything in the material before me which would cause me to conclude that the 2015 tribunal's findings as to that, should not remain in place. It does appear that the marriage has broken down and I am prepared to accept that, on balance, the husband has been violent to her in the past. But I find that whilst she has a subjective fear of her husband (she has been consistent about this to a range of health professionals for many years) such is not objectively made out. So, if she is to be returned to India, her integration will not be affected by anything her husband might do. There is then the question of her wider family. The 2015 tribunal did not accept her evidence that her family would be unwilling to support her. In a witness statement of 20 June 2017, the claimant said that her family in India, due to matters relating to religion and custom, would try to force her to live with her husband and that she has not been supported by her family in the past. There are references in various of the medical reports and letters before me, to her having told those involved in her treatment and support, that she has been the victim of ill-treatment and abuse in various ways by her own father and by wider family members in India.

18. I have asked myself whether there is anything, bearing in mind what is said in *Devaseelan*, to cause me to depart from the findings of the 2015 tribunal with respect to prospective family support in India. I did not, of course, have the advantage of hearing oral evidence from the claimant about that matter. There are, as I have said, indications in the evidence before me that she has asserted ill-treatment at the hands of her family to those affording her assistance. For example, she had told Dr Shaffiullha that when a child she had been "sexually abused by her uncle" that her mother had instructed her not to talk to anyone about that, and that her father had "neglected her and physically abused her" (see page 46 of the claimant's most recent bundle). Although the focus of the letter from Hannah Jell is largely upon the nature of support that she is receiving in the UK, that letter does make reference to the claimant having disclosed a history of physical and psychological abuse from her father and her uncles. Going back a little further, there is a letter of 23 June 2017 written by a forensic and clinical psychologist associated with Anawim, which refers to the claimant having indicated that she was a victim of physical and emotional abuse from her father and that "her father

did not want her as she was a girl". Reference once again to her having indicated that she had been the victim of sexual abuse as a child is to be found in a letter of 11 February 2016 from another clinical psychologist one Dr F Anwar.

19. Of course, it is possible that the claimant has invented the history of abuse and ill-treatment at the hands of family members because she thinks that if she does so and asserts such a history to a range of professionals, that will assist her in securing the immigration outcome which she seeks. Another possibility, though this is merely speculation, is that there has been no such history but as a consequence of her various mental health difficulties, she has genuinely come to believe that there has been. However, I have concluded, on balance, that the claimant has made these assertions, which appear to be consistent, because that is what actually happened to her. Much of the material in which it is recorded that she has asserted such a history to those supporting her was not before the 2015 tribunal. I have decided therefore, this is an area where I am able to depart from the findings of that tribunal. I find that the claimant was the victim of sexual abuse as a child and that she has been unsupported by her family and, effectively, disowned by her father. I would conclude, therefore, that she will be without family support if she is to be returned to India.

20. I have before me an expert report from one Dr Panjwani which addresses various aspects of life in India and the sorts of difficulties the claimant might face in India. There is a section addressing mental health care, the thrust of which asserts that there is a shortage of mental health facilities in India. But it is not suggested that mental health treatment is unavailable. So, whilst I would conclude that the claimant will not receive the sort of intense, personalised treatment she is receiving in the UK, I do conclude she will receive a level of mental health treatment which would reach, at least, a basic level.

21. It is against all of the above that I must decide whether the paragraph 267 (ADE) (1) (vi) test is met. I have decided that it is. That is because I have concluded that the combination of the claimant's significant mental health problems and the lack of family support, notwithstanding the availability of some mental health treatment, will result in there being significant obstacles to her reintegration into Indian society. Of course, she would be returning to a country with which she is familiar. She no doubt speaks an appropriate language. I do not discount the possibility that she might be able to obtain some support from a Christian church. But the mental health difficulties seem to me to significantly outweigh all of that, particularly in circumstances where they will not be significantly ameliorated by family support. I would also make the point that despite the quality and intensity of the mental health treatment she has received in the UK, that has not, according to Dr Shaffiullha, prevented her condition from declining and, against that background, there is no reason to suppose that that will be reversed by any treatment she will receive in India. In terms of finding herself a means of income and accommodation, she will, in my judgment, be significantly disadvantaged by the nature and extent of her mental health difficulties including the post-traumatic stress disorder and the social anxiety. So, her appeal does succeed under the Immigration Rules.

22. My having reached the above view I do not consider it necessary to go onto decide whether she would have succeeded under Article 8 outside of the rules. The evidence I heard from the two witnesses, whilst I am grateful for it, seemed to me to touch largely upon the outside the Rules sorts of issues. So, I have not found it necessary for me to address that evidence to any extent in my written reasons.

23. Finally, the tribunal granted the claimant anonymity. Because of the highly sensitive nature of aspects of this appeal's subject matter, I have decided to continue the grant of anonymity.

Decision

The decision of the First-tier Tribunal has already been set aside. In remaking the decision, I allow the claimant's appeal under the Immigration Rules against the Secretary of State's decision of 16 May 2016.

The First-tier Tribunal granted the claimant anonymity. I continue that grant pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Accordingly, no report of these proceedings shall identify the claimant or any member of her family. This applies to all parties to the proceedings. Failure to comply may lead to contempt of court proceedings.

Signed: Dated: 23 April 2019

Upper Tribunal Judge Hemingway

To the Respondent
Fee award

No fee is payable and, therefore, there can be no fee award.

Signed: Dated: 23 April 2019

Upper Tribunal Judge Hemingway