Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number:
HU/13418/2019 (P)

THE IMMIGRATION ACTS

Decided under rule 34	**Decision & Reasons Promulgated**
On 19 November 2020	**On 16 December 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

BHAVIKABEN [P]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. This decision has been made on the papers, under Rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008, further to directions issued by the Upper Tribunal on 18 September 2020.

2. The appellant is a national of India born on 16 May 1980. She arrived in the United Kingdom on 17 August 2007 on a visit visa and overstayed her visa. On 12 June 2019 she applied for leave to remain on the basis of her private life and on the basis of compassionate circumstances. In the application made on the appellant's behalf, it was submitted that her marriage had broken down and that she was the victim of domestic violence. She had been subjected to violence since marrying her husband in 1999 but the problem had worsened over the past two years. Her husband suffered from alcoholism and he abused her physically and verbally. It was submitted that the appellant's mother was deceased and her father was elderly. She was unable to return to India as her remaining family members would not accept her back into the family because she was separated from her husband.

3. The appellant's application was refused on 30 July 2019. The respondent considered that the appellant could not meet the requirements of Appendix FM as she was separated from her husband and that she could not meet the requirements of paragraph 276ADE(1) of the immigration rules as there were no very significant obstacles to her integration in India. It was not considered that the domestic violence the appellant had experienced amounted to exceptional circumstance justifying a grant of leave outside the immigration rules.

4. The appellant appealed against that decision. Her appeal was heard on 1 July 2020 by First-tier Tribunal Judge Mehta. The judge noted the evidence that the appellant's husband had been sentenced to 12 months' imprisonment in the UK and placed under a restraining order as a result of his violence towards her. The appellant confirmed that she had reported the domestic violence to the police and to her doctor. She and her husband had two children, aged 16 and 18, who lived in India with her husband's parents. They had left the children there when they came to the UK. Her father was a cancer patient and was looked after by her brother in India. Her brother would not be able to support her financially. Her in-laws would probably send her children to her if she returned to India and would stop their support for them. She would not be able to find a job in India and would face threats from her husband if he was sent back there. She would bring shame on herself and her family if she got divorced from her husband. She would have no means of support in India.

5. The judge concluded that the appellant would not face very significant obstacles to integration in India and that she could not meet the requirements in paragraph 276ADE(1) of the immigration rules. The judge considered that the respondent's decision was not disproportionate in breach of Article 8 and accordingly dismissed the appeal.

6. Permission was sought by the appellant to appeal the judge's decision to the Upper Tribunal.

7. Permission was granted by Upper Tribunal Judge Martin, on 19 August 2020, on the grounds that it was arguably perverse of the judge to find no insurmountable obstacles to the appellant's integration in India when arguably

the only family she had was her in-laws, whose son she had caused to serve a prison sentence as a result of domestic violence; and that it was arguably irrational to suggest that her two children, aged 18 and 16, could support her when they lived with her in-laws.

8. The case was reviewed by the Upper Tribunal due to the circumstances relating to Covid 19. In a Note and Directions sent out on 14 September 2020, Upper Tribunal Judge Smith indicated that she had reached the provisional view that the question of whether the First-tier Tribunal's decision involved the making of error of law and, if so, whether the decision should be set aside, could be made without a hearing. Submissions were invited from the parties.

9. Written submissions have been received on behalf of the appellant, with no response from the respondent to the Tribunal's directions.

10. Although the grounds are not well particularised and tend towards re-arguing the case, I share the concerns of Upper Tribunal Judge Martin in granting permission. It seems to me that the challenge to the judge's decision succeeds in particular on the basis of the judge's failure properly to engage with the evidence and the impact of that evidence on the consideration of the obstacles the appellant may face on return to India. The judge accepted that there had been domestic violence but did not give any detailed consideration to the evidence from the safeguarding unit of the Metropolitan Police or to the supporting letter from Aanchal which referred to the appellant's emotional vulnerability. The judge considered the appellant's evidence that she would not be able to access support from her brother and father, but made no actual findings on that, concluding instead that she could be supported by her two children. However, given that they were 18 and 16, it seems to me that the judge's assessment of support in India was unrealistic. Furthermore, at [35], the judge held against the appellant the fact of her overstaying on the expiry of her visit visa but gave no consideration to her evidence in her statement at [6] and [7] that she had had no choice in the decision to live in the UK, and was forced to accompany her husband.

11. For all these reasons it seems to me that the judge's assessment of the appellant's circumstances on return to India was not a full and proper one which comprehensively engaged with the evidence. The decision is not sustainable and I therefore set it aside. The appropriate course is for the matter to be remitted to the First-tier Tribunal to be heard *de novo* before a different judge.

DECISION

12. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law and the decision is set aside. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard afresh before any judge aside from Judge Mehta.

Signed: S Kebede
Upper Tribunal Judge Kebede Dated: 19 November 2020