Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/00018/2020
HU/20691/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 26 September 2022	**On 28 October 2022**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

BHAJAN SINGH
GIAN KAUR
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr A Jafar, counsel, instructed by Eden Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

Pursuant to s.12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007 the Upper Tribunal remakes the decision of Judge of the First-tier Tribunal L Murry who, in a decision promulgated on 12 March 2020, dismissed the appellants' joint human rights appeals against the decisions by the respondent dated 2 December 2019 to refuse their Article 8 ECHR human rights claims.

Background

1. The appellants, who are married to each other, are both nationals of India. The 1st appellant was born on 9 April 1953 and the 2nd appellant was born on 18 July 1946. They both entered the UK on 9 September 2015 as visitors. They made in-time applications for leave to remain on the basis of their private lives. These applications were refused and certified as clearly unfounded under section 94 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). The appellants became overstayers. On 30 August 2018 they made Article 8 ECHR human rights claims based on their relationship with and dependency on their son, Mr Kultar Singh Chopra ("the sponsor") and his family in the UK.

2. The respondent was not satisfied that the appellants met the requirements of paragraph 276ADE of the Immigration Rules, which relates to applications based on a person's Article 8 ECHR private life rights. The respondent was not satisfied that any medical treatment that the appellants required would be unavailable to them in India. Nor was the respondent satisfied that the appellants would not receive adequate care in India. The human rights claims were refused.

3. The appellants appealed the respondent's decisions to the First-tier Tribunal under provisions of the 2002 Act.

The decision of the First-tier Tribunal

4. The judge found that the sponsor and his wife looked after the appellants since their arrival in 2015 and that the appellants were financially dependent on their family in the UK, with whom they lived. The judge found that more than the normal emotional ties existed between the appellants and their family in the UK.

5. The judge found that there were no very significant obstacles to the appellants' integration in India in the absence of independent medical evidence or diagnosis of any condition undermining the appellants' cognitive abilities, and in the absence of any evidence that it would be beyond the means of their sponsor to continue to support the appellants as he did prior to 2015. Applying the approach to Article 8 ECHR cases identified in the authority of Razgar [2004] UKHL 27 the judge was satisfied that the proposed interference (by way of the refusal of the human rights claims) were of sufficient gravity to engage the operation of Article 8 ECHR and that such interference was in accordance with the law and necessary in a democratic society. The remaining issue for the judge was whether the interference was proportionate to the legitimate public end sought to be achieved.

6. Having directed herself with respect to, inter-alia, the authority of SSHD v Kamara [2016] EWCA Civ 813 and the decision in Treebhawon and Others (NIAA 2002 Part 5 – compelling circumstances test) [2017] UKUT 00013 (IAC), the judge noted that no evidence had been

adduced to demonstrate that the medication the appellants required was unavailable in India, that there was no diagnosis of any condition undermining their cognitive abilities, that neither was receiving any medication for depression, and that their sponsor had been able to support them in India prior to their arrival in the UK. The judge additionally noted the absence of any evidence to show that it would be beyond the means of their sponsor to employ someone to assist them with household chores, and that there was no supporting medical evidence showing that they required personal care because they were unable to look after themselves. Having noted that the appellants had lived all their lives in India until 2015 the judge concluded that there were no very significant obstacles to their integration in India (with reference to paragraph 276ADE(i)(vi) of the Immigration Rules).

7. The judge then considered whether the appellants could succeed in their Article 8 ECHR claim outside the Immigration Rules. In doing so the judge considered, by way of analogy, whether the appellants met the requirements of the Adult Dependent Relative ("ADR") provisions of Appendix FM, which only applies to entry clearance applications. The judge set out the requirements of E-ECDR.2.4 and 2.5, and the evidential requirements of paragraph 35 of Appendix FM-SE. The judge then set out an extract from Britcits v SSHD [2017] EWCA Civ 368, which considered whether the ADR provisions could be lawfully operated. The judge concluded that the appellants failed to demonstrate by way of medical evidence that they required long-term personal care in order to carry out everyday tasks. The judge noted the absence of supporting evidence that the appellants could not mobilise or cook whilst sitting down and there was no evidence that the 2nd appellant could not use a shower stool in order to wash.

8. The judge then considered sections 117A and s.117B of the 2002 Act, which sets out public interest factors that must be considered by a court or tribunal when assessing proportionalty under Article 8 ECHR. the judge noted the absence of evidence that the appellants could speak English, but that they were financially independent as they were supported by their sponsor. The judge noted that the appellants had resided in the UK when their immigration status was precarious and that little weight could be given to their private lives pursuant to s.117B(5). At [35] the judge noted that the appellants did not meet the requirements of the Immigration Rules, that they would be returned together and would be able to continue their family life together. There was no adequate supporting evidence that they would be without medication or without assistance should they need it. The judge found that whilst the appellants enjoyed family life with their sponsor and his family in the UK, this was established when they were visitors and no good reason was advanced as to why they could not continue to visit as they did before 2015. The judge concluded that the respondent's decision was proportionate under Article 8 ECHR and dismissed the appeals.

The challenge to the judge's decision

9. The grounds of appeal contended firstly that the medical and oral evidence "clearly established" that the appellants required assistance for daily tasks such as travelling, cooking, cleaning and taking medication, and that insurmountable obstacles existed that prevented the appellants from enjoying family life outside the UK. It was argued that the judge inappropriately focused on the ADR provisions of the Immigration Rules when assessing the issue of proportionality and that she failed to undertake a full Article 8 ECHR assessment outside the Immigration Rules.

10. The second ground of appeal contended that judge failed to have regard to the specific circumstances of the appellants, particularly their claimed social isolation and depression, which could not be resolved by medication or the hiring of a maid. These were central aspects of the appellants' dependency that could not be potentially met if they were removed to India.

The 'error of law' decision

11. In my 'error of law' decision, promulgated on 22 October 2020 pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I found there was no merit in the 1st ground. The judge was entitled to consider, as a relevant factor, whether the appellants would have met the requirements for entry clearance under the ADR provisions. The ADR provisions were designed to apply to individuals in a similar position as the appellants, albeit that applications under the ADR provisions could only be made if the applicant was outside the UK. If the substantive requirements of the provisions were met then this would be a highly relevant factor when determining the issue of proportionality (applying TZ (Pakistan) and PG (India) v SSHD [2018] EWCA Civ 1109). Likewise, the failure to meet the substantive requirements of the ADR provisions was relevant in the proportionality assessment, particularly in light of s.117B(1) of the 2002 Act.

12. Contrary to the 1st ground of appeal it was readily apparent from a holistic reading of the determination that the judge did not focus on the ADR provisions to the exclusion of other factors relevant to the Article 8 ECHR proportionality assessment. The judge considered whether the appellants met the requirements of the ADR provisions, but she then went on to consider matters extraneous to the ADR provisions which were relevant to a full proportionality assessment, and in particular, the factors in s.117B of the Nationality, Immigration and Asylum Act 2002. The judge accurately set out and applied paragraphs 34 and 35 of Appendix FM-SE. The judge properly stated that an ADR applicant is also required to provide evidence from a health professional, and properly noted that the medical evidence that was served did not support the appellants' contentions regarding their care needs. The original grounds and further submissions at the

'error of law' hearing made general reference to the medical documents that were provided, reiterating the medical conditions besetting the appellants, but a recitation of those medical conditions did not answer the questions posed in either E-ECDR.2.4 or E-ECDR.2.5 of Appendix FM. The medical documents did not suggest that the requirements of E-ECDR.2.4 or 2.5 were met, either individually or cumulatively, and the judge had been rationally entitled to conclude that there was no adequate supporting evidence to show that the appellants would be without the medication they required or without assistance should they need it.

13. I did however find merit in the 2nd ground of appeal. In his oral evidence before the First-tier Tribunal the sponsor claimed that his mother would not allow a stranger to assist her in taking a bath because it was not within their culture. In his submissions Mr Jaffar argued that the intimate and personal needs of the 2nd appellant could not be met by people outside her family. The sponsor also gave evidence that, since the loss of his older brother, his mother had been stressed and cried all the time, and Mr Jaffar submitted that an emotional bond and emotional dependency existed between the appellants and their family in the UK, brought upon by the death of one of the appellants' sons in 2015. Although there was no independent medical evidence relating to the 2nd appellant's mental health, and although the evidence of emotional reliance was limited, the judge did not expressly reject the sponsor's evidence concerning the effect of the death of his elder sibling on the 2nd appellant after her arrival in the UK. Nor was there any analysis of the extent of 2nd appellant's claimed cultural rejection of the possibility of personal care involving intimate or bodily contact by someone outside the family. The judge failed to engage with that evidence when she undertook her proportionality assessment. I could not discount the possibility that she may have reached a different conclusion in respect of Article 8 ECHR. I was therefore satisfied that the failure by the judge to engage with this evidence was a material legal error and required the decision, at least to that extent, to be set aside.

Remaking

14. In remaking the Tribunal's decision I have considered the bundle of documents that was before the First-tier Tribunal which runs to 104 pages and which includes witness statements from the appellants and from their sponsor, medical records relating to the appellants going up to 28 June 2018, and several letters relating to the appellants, some of which were issued by Crosby House Surgery and the Royal Berkshire NHS Foundation Trust.

15. The appellants provided a supplementary bundle of documents which included further statements from them which were dated 2 August 2022, and further statements from the sponsor and his partner both of which were also dated 2 August 2022.

16. The supplementary bundle also contained a letter from a GP (Dr Hannah Stera) of Parkview Surgery, dated 21 July 2022, in respect of the 1st appellant. The letter stated that the 1st appellant suffered "multiple chronic conditions" including "type II diabetes, essential hypertension, reflux oesophagitis and duodenal ulcer as well as knee osteoarthritis." The letter confirmed that the 1st appellant's sponsor and the 1st appellant's daughter-in-law were hoping to meet his needs "… and he is unable to look after himself due to his health problems." It is unclear from this brief letter how the GP reached this conclusion. I could not ascertain whether this was a conclusion based on a medical assessment undertaken by the GP or whether it was a conclusion based on the information provided to the GP by the sponsor and his partner.

17. There is a further letter from the same GP, dated 11 July 2022 related to the 2nd appellant. This stated that the 2nd appellant was "… suffering from significant memory impairment and needs help on a daily basis, she also has diabetes which she does not look after well, she suffers from high blood pressure and deteriorating eyesight mostly due to diabetes." The letter then confirmed that the 2nd appellant "… is not safe living on her own and needs regular care." This letter did not explain whether the GP who wrote it had personally assessed the 2nd appellant's memory or had undertaken a medical assessment to determine whether the 2nd appellant did need help on a daily basis and whether she was safe living on her own (putting to one side the fact that she would be living with the 1st appellant if her appeal was dismissed), or whether it primarily was based on information provide by the sponsor, his partner and the appellants themselves.

18. The bundle additionally contained a "person-centred well-being care needs report", dated 26 July 2022, authored by an Independent Social Worker ("ISW"). Prior to the hearing Mr Jafar provided a helpful skeleton argument.

19. At the remaking hearing the 1st appellant adopted his statement of 2 August 2022 and gave further oral evidence, via the Punjabi interpreter, through cross-examination, clarificatory questioned I asked, and re-examination. The 2nd appellant was treated as a vulnerable witness in accordance with the Joint Presidential Guidance Note No 2 of 2010 and the authority of AM (Afghanistan) v SSHD [2017] EWCA Civ 1123. The 2nd appellant stated that she could not recall her statement so it was read back to her and she confirmed that it was true and accurate. She was asked questions in examination-in-chief, then cross-examination, then a few questions from the bench by way of clarification, and then re-examination. The sponsor and his partner also gave oral evidence after adopting their statements. I maintained a record of the oral evidence and the legal submissions made by each representative. I have read and considered with care all the documents before me even if they are not

specifically identified later in this decision. Both parties are aware of the evidence, both written and oral, that was before the Tribunal. This evidence is, in any event, a matter of record. I shall refer to this evidence only in so far as it is necessary for me to lawfully determine the appellants' appeals.

Findings of fact

20. I remind myself that the burden of proof rests on the appellants to prove that they meet the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules and that the respondent's decisions interfere with Article 8 ECHR. Once the appellants have shown that the decisions do interfere with Article 8 ECHR rights, it is for the respondent to demonstrate that the decisions are proportionate. The standard of proof is the balance of probabilities. In determining the appeals I must have regard to the best interests of the appellant's grandchildren, pursuant to s.55 of the Borders, Citizenship and Immigration Act 2009.

21. This appeal depends to a significant extent on the nature of the appellants' physical, mental and emotional needs and their relationships with their family members in the UK, primarily the sponsor and his immediate family, but also including the families of the appellants' two other adult children and the family of their late son. There were however no statements from the appellants' other son or daughter and neither attended the hearing. Nor was there any statement from the widow of the appellants' late son. Nor did she attend the hearing.

22. The starting point in my assessment of the facts is the decision of the First-tier Tribunal. The judge found that the sponsor and his partner looked after the appellants since they arrived in 2015, that the appellants were financially dependent on their sponsor and that they were living with the sponsor and his family. The judge was consequently satisfied that "more than the normal emotional ties exist" and, although not expressly stated, that the relationship between the appellants and their sponsor and his family engaged Article 8 ECHR and that the respondent's decisions interfered with Article 8 ECHR rights.

23. The judge however found: (i) that no evidence had been adduced that the medication the appellants required was not available in India; (ii) there was no diagnosis of any condition relating to their cognitive abilities; (iii) there was no supporting medical evidence that the appellants required long-term personal care for everyday tasks or were unable to look after themselves; (iv) there was no supporting evidence that the appellants were not mobile or that the 2nd appellant could not use a shower stool in order to wash; and (v) that there was no evidence that the sponsor would be unable to employ someone to assist the appellants with their household chores. There has been no

successful challenge to the judge's factual assessment based on the evidence that was before him. I consequently proceed on the basis of the judge's factual findings as they were at the date of the judge's decision, based on the evidence that was before the First-tier Tribunal at that time. I now consider the further evidence provided by the appellants, both in terms of their statements and oral evidence and the further documentary evidence provided.

24. In his statement of 2 August 2022 the sponsor stated that, prior to entering the UK in 2015, the appellants had high blood pressure, diabetes, high cholesterol and gastroenteritis and that they were taking medication for these ailments. Whilst I accept that this is so, the appellants have not provided any medical documentation from India. It has not therefore been possible to gauge how serious each of their physical health conditions was in India, or to determine the degree to which these conditions have worsened since their arrival in the UK in 2015. It has not been suggested that the appellants did not receive adequate and appropriate medical treatment for their physical health conditions whilst living in India.

25. There were no independent medico-legal reports relating to the appellants. The GP medical notes relating to the appellants were relatively spartan and provided little practical information that would assist the Tribunal. The very brief GP letters dated 11 and 21 July 2022 did not explain in any detail how or why either appellants' physical or mental health conditions meant that they were unable to perform everyday tasks or why they could not look after themselves. Nor was it clear, when stating that the 1st appellant was unable to look after himself and that the 2nd appellant needed help on a daily basis and that it was not safe for her to live on her own, whether the GP was writing from her own medical assessment of the appellants or whether she was basing her letters on information provided to her by the appellants, the sponsor and his partner. There was no further medical assessment of the 2nd appellant's 'significant memory impairment' mentioned in the GP's letter.

26. In his most recent statement the 1st appellant asserts that he is suffering from a number of chronic illnesses which have hindered his ability to care for himself and to be independent. He lists diabetes, hypertension, movement issues and "other long-term debilitating conditions." He asserts, with reference to the death of his eldest son, that his "own mental health has deteriorated" but no further description or details are provided and he does not claim to suffer from any cognitive impairment. He asserts that he relies on his sponsor and daughter-in-law "for all daily tasks". The 1st appellant maintains that he was able to manage himself when in India "but over the past few years my situation has become increasingly tragic and unbearable." the 1st appellant asserts that both he and the 2nd appellant are unable to look after themselves and require the full-time care and assistance due to their long-term health needs.

27. The 1st appellant's most recent medical notes include a reference to a Patient Health Questionnaire (PHQ9) dated 8 January 2019 which identified the following non-specific points. "Little interest or pleasure in doing things", "feeling down or depressed or hopeless", "sleep disturbed", "feels tired", "Poor appetite or overeating" (these are opposite and alternatives suggesting that the points are non-specific), "feeling bad about yourself", "trouble concentrating on things", "moving or speaking slowly or agitated", "thoughts of suicide or self-harm". There is no further evidence in the GP notes after January 2019, some 3½ years before the remaking hearing, relating to the 1st appellant's mental health. There is no other independent medical evidence relating to any risk of suicide or self-harm. There was no evidence, and no suggestion, that the 1st appellant had sought counselling or therapy or that he had been referred to a community mental health team, or that he had been prescribed medication for how he felt. There was little cogent evidence that the 1st appellant suffered from any form of cognitive impairment and Mr Jafar did not invite me to treat him as a vulnerable witness. There was no independent medical evidence that the 1st appellant had to be prompted to take medication, or that he suffered from any cognitive impairment or other infirmity that would prevent or impair him from reminding the 2nd appellant to take her medication.

28. In his most recent statement the sponsor said that the appellants have become less able to walk, that they cannot manage more than a few steps and cannot sit in a position for too long. There was limited independent medical evidence to support these particular assertions, although I acknowledge that the 1st appellant has been diagnosed with knee osteoarthritis and that he has experienced knee pain. The medical records and the letters from the GPs do not make specific reference to any particular mobility issues affecting either appellant, and there is no detailed new medical assessment of the degree and seriousness of the 1st appellant's knee pain.

29. In her statement of 2 August 2022 the 2nd appellant referred, in relation to her and her husband, to "the drastic changes to our physical and mental health." She maintains that she and the 1st appellant are no longer in a position to care for themselves and are wholly dependent on their sponsor's family for their daily care needs. She states, with respect to the death of her oldest son in 2015, that

> "this has broken me inside to the extent that it has become impossible to overcome the tragedy. I think about him daily and miss him dearly. I struggled to sleep and the only consolation I have is my son, Kultar, daughter-in-law Rita and my grandchildren with whom I reside with. Only their presence in my life allows me to get through each day."

30. Having outlined her physical health conditions the 2nd appellant asserted that her memory had worsened and that she suffered from memory impairment. She claimed that she has to be prompted to eat

and bathe and take her medication. She claimed that she would be "unable to survive" if removed to India "as it is impossible with my current health and state to care for myself to be independent [*sic*]."

31. In her oral evidence the 2nd appellant stated that her "brain doesn't work properly" and that she can't remember. In his most recent statement the sponsor described the 2nd appellant as having become forgetful since her arrival in the UK. He gave as an example her leaving food to burn and forgetting to take her medication. He stated, "When we engage in any conversation with her it becomes clear that she is not mentally with us and her mind is elsewhere." In her oral evidence the sponsor's partner stated that the 2nd appellant's memory was "under investigation", that the GP conducted some "tests" (described as "asking a few specific questions") and that the 2nd appellant had been referred to and visited a "memory clinic", but this was not supported by any independent evidence. The only explanation offered for the absence of this clearly relevant evidence was that this "was quite recent." Given the importance of this evidence and the absence of any other explanation as to why such evidence could not have been provided, I do not find this a credible explanation. The sponsor's partner also described an incident in 2021 when the 2nd appellant woke up, had breakfast and went back to sleep, and then forgot everything she had for breakfast and what she did. The sponsor's partner said that the 2nd appellant was taken to a hospital and x-rayed, and she then went to her GP who referred the 2nd appellant to the memory clinic. The GP medical notes contain 4 references to the 2nd appellant having been seen in an A&E department but no details are provided concerning dates or the reasons why the 2nd appellant attended A&E. No evidence from the A&E department has been provided, and there is no evidence of any referral to a memory clinic.

32. The 2nd appellant suffers from type 2 diabetes and high blood pressure. There has been no suggestion that these conditions are not being adequately managed in the UK, or that they were not adequately managed in India. In addition to "significant memory impairment" (which I will consider shortly) she also suffers from deteriorating eyesight associated with diabetes. Few up-to-date details have however been provided in respect of the 2nd appellant's 'deteriorating eyesight'. Letters from a Consultant Ophthalmologist dated 15 March 2017 and 20 September 2017 indicated that the 2nd appellant had "very mild non-proliferative diabetic retinopathy" and "no clinically significant macular oedema" in respect of both eyes. Cataracts are identified as a 'problem' on 3 February 2021, and there is a reference to 'non proliferative diabetic retinopathy' (in respect of an entry on 23 April 2019), and further reference is made in the more recent medical notes to the 2nd appellant being seen in the ophthalmology clinic, but again no further details are provided. Gastritis is also mentioned as a 'problem' (in a note dated 9 June 2021) but there is limited information contained in the medical notes

as to how this impacts on the 2nd appellant's health. The medical notes relating to the 2nd appellant also refer to "sensorineural hearing loss" (in respect of an entry on 11 February 2017) but few details are provided. According to a letter dated 9 December 2016 from the 2nd appellant's GP to a Consultant ENT Surgeon at the Wexham Park Hospital she was scheduled to have an assessment of her hearing, but no further information has been provided. There is consequently very limited independent medical evidence concerning the 2nd appellant's hearing loss.

33. No detailed reference has been made in the medical notes or the letter from the GP of any significant mobility issues experienced by the 2nd appellant. It was reasonably open to the appellants to have provided detailed up-to-date medical evidence but they have not done so.

34. The 2nd appellant's medical notes refer to a Patient Health Questionnaire (PHQ9) dated 10 June 2019 which refer to her as "feeling down or depressed or hopeless". The same questionnaire identified "little interest or pleasure in doing things", "sleep disturbed", "feels tired", "Poor appetite or overeating", "feeling bad about yourself", "trouble concentrating on things", "moving or speaking slowly or agitated", "thoughts of suicide or self-harm". There is no independent medical evidence relating to any risk of suicide or self-harm. There is no further evidence in the GP notes after June 2019 relating to the 2nd appellant's mental health or her depression. There are only two brief references in the medical note before the First-tier Tribunal, covering the period 2016 to 2018, to the 2nd appellant's mental health. On 6 October 2017 and 11 October 2016, with respect to "Assessment", the notes state; "Depression screening using questions mood OK". Given the description provided by the appellants and their sponsor and the sponsor's partner of the degree of the 2nd appellant's grief response to the death of her son in 2015, I am surprised that no specific reference was made to this in the GP medical notes from 2016 to 2018.

35. The 1st appellant confirmed that the 2nd appellant was not receiving any anti-depressant medication. The 2nd appellant claimed she was receiving anti-depressant medication, but there was no independent medical evidence that this was the case. I do not however hold this against her as a credibility issue given that I have treated her as a vulnerable witness.

36. The GP's letter dated 11 July 2022 indicated that the 2nd appellant was suffering "from significant memory impairment and needs help on a daily basis." "Memory impairment" was also identified as a problem in respect of a consultation the 2nd appellant had with a Dr Damani, although there is no date in respect of when this consultation occurred. There were no independent details of the nature or severity of her memory impairment. As already mentioned, it is not apparent

whether the GP's letter concerning the 2nd appellant suffering 'significant memory impairment' was based on an actual assessment by the GP or information provided to the GP by the 2nd appellant and her family. I have not been provided with a detailed medical assessment of any memory impairment, and, similarly to the observations of the First-tier Tribunal judge, there continues to be an absence of independent detailed medical evidence concerning any cognitive impairment suffered by the 2nd appellant. I note by way of observation only that there were no problems identified in the GP medical notes covering the period 2016 to 2018 in respect of the 2nd appellant's memory.

37. The supplementary bundle contained a "person-centred well-being care needs report by Fallia Zemmouri, an Independent Social Worker ("ISW") operating as 'Kidzhope'. The qualifications and experience of this individual were not provided. Whilst I accept that the ISW is a registered social worker the absence of any details of her qualifications and experience, and the absence of any information or explanation as to how her qualifications and experience enable her to provide an expert opinion in respect of these particular appellants, reduces, albeit by a small degree, the weight I can attach to her report.

38. The ISW report itself is deficient in several respects. The ISW states, in the final page of her report, that she had "six weekly observations and conversations with family Chopra" but no specific details have been provided as to the circumstances of the observations and conversations, how long they lasted, what questions were asked during the conversations, or the general methodology adopted in undertaking the assessment, other than by reference to the Care Act 2014 and a number of relatively generalised goals.

39. The ISW report contains a number of assertions with little supporting explanation. For example, the ISW said that there was "a clear positive attachment" which had been "observed among the family", but no details were provided as to how this observation occurred or what particular elements of the observation led to the conclusion that there was a clear positive attachment, or the details and nature of this attachment. Whilst I accept that there is a positive attachment between the various family members the ISW report does little to assist in determining the precise nature or quality of those relationships. The ISW report makes bold assertions that removing the family support that the appellants currently receive would place them in a vulnerable position and would "cause destructive consequences." This vague assertion is insufficiently reasoned or particularised.

40. At (g) of her report the ISW refers to the 2nd appellant's "severe frailty", but the independent medical evidence does not, in my judgment, support this strong description. The ISW report lists various medical ailments and health conditions in respect of each appellant

but these are usually general in nature and there is limited assessment of how the particular ailment actually affects these particular appellants. The ISW makes reference at (d) and (e) to emotional support being provided by the sponsor's partner to the 2nd appellant, but little detail is provided in respect of the nature or content of this emotional support. I do however note, at (h), that the ISW stated that the sponsor's partner plays a significant role around polyuria support. The 2nd appellant explained to the ISW, in relation to this "personal and private issue", that any negative feelings that she had of losing control, which could affect her dignity and herself as well as her self-esteem, was mitigated by the matter-of-fact attitude and understanding and humour shown by the sponsor's partner.

41. At (m) of her report the ISW refers to the sponsor's partner "carving out time each day to support [the 2nd appellant] emotionally, socially, and religiously and to build opportunities to share special moments with friends and family, and to create positive memories." These assertions are vague and un-particularised. They do not identify the specific emotional needs of 2nd appellant and do not explain how those emotional needs can only effectively be met through living with the sponsor and his partner.

42. There is only fleeting mention of the impact on the 2nd appellant of the death of her son in July 2015, an event which, according to the various statements, precipitated her emotional decline and emotional dependence on her sponsor and his family. At [q] of her report the ISW referred to the psychological consequences of this death, but, as noted in my error of law decision, there is no independent psychological or psychiatric report and no medical diagnosis in respect of any mental health issues. The ISW states that the bereavement "… has had devastating effect on their immune system and cause them to lose more interest in their own care", but there is no medical evidence that either appellants' immune systems have been compromised or otherwise impacted upon by the death of their son.

43. At (d) of her report the ISW states that the 2nd appellant "requires one-to-one support continuously in order to avoid any further deterioration of her health conditions as she is unable to independently carry out her personal care." Whilst a list of personal care tasks followed, including washing, dressing, taking medication, household tasks, shopping, cooking, emotional support and mobility assistance, it is not clear how the ISW reached her conclusion. It is not clear whether the ISW observed the 2nd appellant over the course of the day or whether the ISW relies instead on information provided by the 2nd appellant's family. Whilst the ISW report lists several medical ailments relating to both appellants and makes reference to the GP reports, I again note that the ISW is not medically trained or qualified and therefore cannot medically determine whether either of the appellants actually require continuous one-to-one support and

whether the 2nd appellant is unable to independently ensure her personal care.

44. The ISW report refers to the 2nd appellant suffering swelling and vision problems caused by diabetes and that this results in frequent hospital admissions "and increased institutionalisation", but there was little independent evidence of such frequent hospital admissions and no explanation as to what is meant by "increased institutionalisation." The GP medical notes made occasional reference to the 2nd appellant being seen in an A&E department but no details were provided. As previously noted, there is no detailed independent medical assessment of the nature and quality of any deterioration in the 2nd appellant's eyesight. References made in the ISW report to hearing loss on the part of the second appellant, but no express reference is made by her GP to this in the GP letter of 11 July 2022. The GP medical notes briefly refers to "sensorineural hearing loss" in respect of 11 February 2017 but no details are provided.

45. There are other aspects of the ISW report that are difficult to understand. On the last page of her report the ISW states, "disrupting the established routine can put unacceptable strain on the existing structured care in order to function to their individual's own life." I do not understand what the sentence means. In the next paragraph the ISW states that it is necessary to consider, inter-alia, the appellants' current and previous cultural, psychological, spiritual, genetic and environmental factors, but there was no earlier engagement with or assessment of any cultural, spiritual or genetic factors. I additionally note that the ISW report does not consider the possibility of care being provided by other individuals or professionals in India.

46. In light of my expressed concerns I find I can attach only limited weight to the ISW report.

47. In her written evidence the sponsor's partner maintained that, since the death of their son, the appellants "have not seemed to have recovered since." She claimed that their mental state had been adversely affected and that they formed an attachment with her and the sponsor to the extent that they were now dependent on the sponsor and his partner.

48. In her oral evidence the sponsor's partner claimed that the appellants were more attached to their family in the UK since they entered in 2015. When asked what caused this increase in attachment the sponsor's partner said it was mostly because she (the sponsor's partner) was around the 2nd appellant all the time and that they sat down and talked together.

49. In his written evidence the sponsor claimed that the death of his brother caused the 2nd appellant to lose interest in everything and that she forgot to do things like taking her medication. He claimed

that since she began neglecting herself his partner had to take care of the 2nd appellant. The sponsor claimed in his written evidence that the 2nd appellant mumbled to herself and that she sometimes cried when doing this. No reference is made to this in any of the independent medical letters or notes. As this would appear to be a serious matter it is surprising that little appears to have been done since 2015 to try to support the 2nd appellant such as seeking to get her referred for grief counselling or similar therapy. In his most recent statement the sponsor claimed that no diagnosis in respect of the 2nd appellant's mental state had been sought as they believed that they as a family could overcome the sadness and loneliness. But this matter has been going on for a very significant period of time. I simply do not accept that, faced with what is claimed to be a significant deterioration in the 2nd appellant's mental state, the sponsor and his siblings would not have already sought to obtain medical assistance.

50. I am additionally surprised that the sponsor did not have any knowledge as to whether the 2nd appellant had been referred to counselling or therapy given his description of the seriousness of her condition. Whilst he explained that his partner handled everything as he worked for long hours it is not credible that the sponsor would nevertheless have no knowledge whatsoever concerning what efforts had been made to deal with the 2nd appellant's grief response if it was as serious as alleged.

51. I have set out above [at 29] the written evidence of the 2nd appellant that the death of her oldest son had "broken" her inside "to the extent that it has become impossible to overcome the tragedy." She maintained that she struggled to sleep and the only consolation she had was her son and his family. It was their presence that allowed her to get through each day. In her oral evidence the 2nd appellant said she had been stressed since the death of her son and that she dreamed of him and had lots of memories. When specifically asked whether her relationship with her other children had changed following the death of her eldest son the 2nd appellant stated:

> "Relationship with my other children has not changed. There are no changes in my relationship with my other children."

52. Whilst the 2nd appellant also said that she would be stressed and that her health would deteriorate if she could no longer live with her adult children, and whilst I take account of the 2nd appellant being treated as a vulnerable witness, I am satisfied that she understood the question and that her answer indicated that the family life relationship she has with her remaining children has not been materially altered by her bereavement.

53. In his oral evidence the 1st appellant stated that the 2nd appellant remembered their late son every day and that she got upset when she looked at her late son's children, but there was no further

description as to how the bereavement affected her ability to look after herself, and no further evidence that her relationship with her sponsor, his partner and their family had materially changed since the bereavement.

54. It is uncontentious that the appellants wish to remain in the UK, and that this wish is shared by the sponsor and his family. There therefore exists an incentive for the appellants and their witnesses to present the appellants' physical and mental health conditions, and their claimed emotional dependency on the sponsor and his family, in a way that best supports their appeal. This has been recognised in 3rd headnote of the Presidential decision of HA (expert evidence; mental health) Sri Lanka [2022] UKUT 00111 (IAC) which includes the following excerpt:

> *"... In the case of human rights and protection appeals, however, it would be naïve to discount the possibility that an individual facing removal from the United Kingdom might wish to fabricate or exaggerate symptoms of mental illness, in order to defeat the respondent's attempts at removal."*

55. I find that the written and oral evidence from the appellants and the sponsor and his partner overstate and exaggerate the nature and seriousness of the appellants' physical, emotional and mental health conditions, and their dependency. I reached this conclusion based on the absence of adequate independent evidence supporting the assertions that have been made by the appellants and their sponsor and his partner. I acknowledge what was said in R v SSHD ex p Zackrocki [1996] EWCA Civ 1326 concerning the weight that could be attached to non-medical evidence concerning a particular individual. I am however entitled to take account of evidence that could reasonably be expected to have been provided but which was not. The appellants have been aware of the need to substantiate their assertions for some time. The skeleton argument produced by Mr Jafar contends that the death of their son led to "the collapse of their wellbeing", and made reference to the appellants "emotional and mental fragility" and referred to their "social isolation" and "depression". It was open to the appellants to have produced reliable and detailed independent medical evidence to support these assertions but they did not. I accept that the death of an adult child will have a significant impact on a parent. It is important not to underestimate the extent of a grief/bereavement response to such a tragic event. The 2nd appellant has described herself as suffering from the tragedy to a very significant extent, so much so that she is "broken inside" and that she has found it "impossible to overcome the tragedy". There is however only limited independent evidence of the emotional impact on her and the continuing emotional and mental health consequences to her of her son's death. There is, for example, no independent evidence that any attempt has been made for her to see, for example, a grief counsellor; there is no independent

evidence that she has been prescribed antidepressant medication to help her deal with her claimed serious bereavement reaction or that this has been sought; and there no independent evidence that she has sought or been referred to a psychologist or psychiatrist. I find the absence of adequate independent evidence relating to the 2nd appellant's alleged serious grief reaction, the degree of her memory impairment, and her mobility, to undermine the description given by her family of the seriousness of her conditions.

56. In reaching this conclusion I have also taken into account the credibility issues identified above in respect of the sponsor. When assessment the evidence from the witnesses I note some further discrepancies. In his most recent statement the sponsor said he had a brother living in Canada. According to a 'statement of truth' at the bottom of the statement the sponsor confirmed that the contents were true and accurate to the best of his knowledge and belief. In his oral evidence the 1st appellant however said that the family member living in India was the sponsor's cousin. Whilst I appreciate that the term 'cousin brother' is used to describe a male cousin, this is not the term used by the sponsor. In her oral evidence the sponsor's partner initially said that the family member living in Canada was the sponsor's full sibling, but she changed her evidence and stated that the person living in Canada was her cousin. The sponsor's partner confirmed that she was not related to the sponsor's family. In oral evidence however the sponsor claimed that the individual living in Canada was his cousin, not that of his partner.

57. I have additional credibility concerns with the evidence relating to whether the appellants, and in particular the 2nd appellant, could receive adequate care and support form non-family members in India.

58. In their statements prepared for the First-tier Tribunal hearing the appellants and their sponsor maintained that there was nobody in India who could look after them. The appellants would consequently have no access to necessary medical treatment and other support.

59. There was however inconsistent evidenced from the witnesses concerning whether any inquiries had been made as to the possibility of hiring someone to assist or care for the appellants in India. In his oral evidence the 1st appellant claimed that his son-in-law made one telephone call to a friend in India regarding the possibility of such care. The 1st appellant also claimed that his sponsor had not undertaken any research into the possibility of hiring care in India. The sponsor however claimed that he did undertake online research in respect of this issue, although he had no evidence of the online research he claimed to have conducted.

60. Further, contrary to the 1st appellant's evidence, the sponsor said no-one made any telephone call to India to ascertain if care was available for his parents. When asked whether he would know if

someone made a phone call to India concerning care for his parents, the sponsor stated, “of course, yes.” The sponsor also said he would know if a telephone call to India was made as he and the appellants lived together and because they were his parents. Given that the appellants have been living in the sponsor’s home, and given the closeness of their relationship, and in light of the importance of the issue, I do not find it reasonably likely that the sponsor would be unaware that his brother-in-law made a telephone call to India inquiring as to the possibility of hiring someone to assist or care for the appellants in India. I find this inconsistency undermines the general credibility of the 1st appellant and the sponsor.

61. In her oral evidence the 2nd appellant was asked why she and the 1st appellant would not use strangers to take care of them. She explained that no one would regularly help them and she described practical concerns such as cooking, cleaning, washing and bathing. Neither in her statement nor in her oral evidence did she raise any intimacy concerns regarding bathing.

62. In her oral evidence the sponsor’s partner claimed the 2nd appellant would not feel “comfortable” with a stranger looking after her. She claimed the appellants would be “more comfortable” if their family was around. When Mr Jafar sought clarification in respect of the word “comfortable” the sponsor’s partner stated that the appellants were “quite attached” to their family in the UK, that they had health issues, and that they could not easily adapt given their ages. I have already considered the health issues relating to the appellants. I have found that the appellants and their sponsor and his partner have exaggerated the seriousness of each of the appellant’s state of health.

63. When asked what care and support a family member could provide to the appellants that a non-family member live-in carer could not the sponsor’s partner merely stated that they need family around them. When asked how the 2nd appellant uses the toilet the sponsor’s partner said she took her to the toilet and left her there. The sponsor’s partner would be “just around” and would wait until the 2nd appellant finished. The sponsor’s partner also said that the 2nd appellant cleaned herself but that the partner rubbed the 2nd appellant’s back in the shower. The sponsor’s partner said the 2nd appellant could wash the front of her body but she could not do her back because of mobility problems. The GP’s letter of 11 July 2022 does not however expressly refer to any mobility problems affecting the 2nd appellant (reference is made to her memory problems, diabetes, high blood pressure and deteriorating eyesight), and there is no express reference to any particular mobility problems in the section of the ISW report outlining the 2nd appellant’s medical conditions.

64. When asked why a stranger could not clean the 2nd appellant's back the sponsor's partner said that the 2nd appellant would not be "comfortable with a stranger" because she won't be relaxed. The sponsor claimed that the 2nd appellant will not allow an outsider to do things such as combing her hair, administering medication, and clean her, and that this was unthinkable in their culture. There was no independent or expert evidence before me that this would be unthinkable, but I draw upon my experience in this jurisdiction to find that there is, in a general sense, an expectation within the Indian Sikh community that sons will take care of their parents and grandparents. There is nevertheless an absence of evidence that the hiring of a maid/carer who could assist the 2nd appellant with her ablutions is 'unthinkable'. There is, in any event, insufficient evidence that the 1st appellant would be unable to assist the 2nd appellant with her ablutions.

65. In he oral evidence the sponsor's partner claimed that the appellants would not be comfortable if food was cooked by a carer rather than a family member. I note however that there is no independent medical evidence that the 2nd appellant is incapable of cooking, or indeed that the 1st appellant is incapable of cooking. I do not, in any event, accept that there is any good reason why the appellants would be unable to consume food cooked by a carer. The carer would presumably be informed both by the appellants themselves and by their family in the UK what food they want and how they want it cooked.

66. The sponsor's partner said that old people have maids in India but that it was not safe for the appellants because one didn't know how the maids would treat the appellants and there was no family member around to keep an eye on the maids. I am not however satisfied that either of the appellants are so vulnerable that they would be unable to respond to any improper treatment from an employed carer or assistant. The 1st appellant is 69 years old and, although he has some mobility issues, there is little in the independent medical evidence before me to suggest that he would unable to ensure his own welfare and safety and that of the 2nd appellant if there was any indication of mistreatment. Nor is there any cogent information in the 1st appellant's medical evidence that he would be open to exploitation by an unscrupulous carer.

Application of the law to the facts

Paragraph 276ADE(1)(vi)

67. Paragraph 276ADE(1) of the Immigration Rules sets out the requirements for indefinite leave to remain on the grounds of private life in the UK. The only relevant provision for the appellant is paragraph 276ADE(1)(vi). This reads:

> 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) ... 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.

68. In SSHD v Kamara [2016] EWCA Civ 813 ("Kamara") and AS v SSHD [2017] EWCA Civ 1284 ("AS") the Court of Appeal considered the concept of "integration" for the purposes of s.117C(4)(c). In Kamara Sales LJ, with whom Moore-Bick LJ agreed, stated at [14]:

> "In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

69. At [58] and [59] of AS Moylan LJ rejected a submission that so-called 'generic' factors, such as intelligence, health, employability and general robustness of character, were irrelevant when assessing a person's ability to integrate and held that such factors can be relevant to whether there are "very significant obstacles to integration" as they form part of the "broad evaluative judgment". The Court of Appeal rejected a submission that whether someone is "enough of an insider" is to be determined by reference to their ties to the country of proposed removal.

70. In assessing whether there are 'very significant obstacles' to the appellants integration in India I take into account the fact that they were both born in India, and that they spent the formative years of their lives in India. Whilst they have lived in this country since 2015 there was no suggestion that they were not familiar with the language, the culture, and the way of life in India.

71. For the reasons given above I do not accept that appellants are, either individually or considered as a couple, unable to access available

healthcare or look after themselves and each other. There has been no suggestion that the 1st appellant suffers from any cognitive impairment and there is little in the way of adequate independent medical evidence that the 2nd appellant's memory problems are as serious as asserted. I reject the assertions that the appellants are insufficiently mobile to care for themselves or each other. As I have found that the evidence relating to the 2nd appellant's bereavement reaction and memory impairment is exaggerated I reject the assertion that she is particularly vulnerable. There is, in any event, no adequate evidence before me that the sponsor and the appellants' remaining children in this country would be unable to afford to hire a carer for one or both of the appellants. There is insufficient evidence before me to support the assertion that any carer employed would not be likely to act in a professional manner or exploit the appellants. There is insufficient independent medical evidence that the appellants health conditions prevent them from having the capacity to participate in society and establishing meaningful relationships.

72. Having regard to these factors cumulatively, I am not persuaded that the there exist 'very significant obstacles' to the integration of either appellant in India.

Article 8 ECHR

73. The First-tier Tribunal accepted that Article 8 ECHR family life existed between the appellants and their sponsor and his family in the UK. There is no reason for me to depart from this finding. I proceed on the basis that Article 8 ECHR family life does exist between the appellants and their family members in the UK. It was not argued that the respondent's decisions were not in accordance with the law or not made in pursuant of a legitimate aim. The issue I have to determine is whether the decisions constitute a disproportionate interference with Article 8 ECHR rights.

74. S.117B of the 2002 Act lists certain public interest considerations to which a Court or Tribunal must have regard in all such cases. These include the considerations that:

> (1) The maintenance of effective immigrations controls is in the public interest.
>
> (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
>
> (a) are less of a burden on taxpayers, and
>
> (b) are better able to integrate into society.

> (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
>
> (a) are not a burden on taxpayers, and
>
> (b) are better able to integrate into society.
>
> (4) Little weight should be given to –
>
> (a) a private life, or
>
> (b) a relationship formed with a qualifying partner,
>
> that is established by a person at a time when the person is in the United Kingdom unlawfully.
>
> (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
>
> …

75. s.117B(1) is a public interest factor I must take into account as the appellants do not meet the requirements for leave to remain under the Immigration Rules. There was no evidence before me that either appellant could speak English (s.117B(2)). The appellants are living with their sponsor and I am prepared to find that they are financially independent. This however is a neutral factor. Mr Jafar did not make separate submissions in respect of any private life established by the appellants in the UK. In any event, under s.117B(4) and s.117B(5) I must accord little weight to any private life that the appellants have established in the UK since they became overstayers.

76. In undertaking the proportionality assessment I acknowledge that the ADR provisions of Appendix FM do not give full coverage to Article 8 ECHR family life considerations. For the reasons given above at [11] the question whether the appellants would meet the ADR provisions is nevertheless a relevant factor that must be weighed in the proportionality assessment, and relevant to s.117B(1) of the 2002 Act. In assessing the respondent's decisions are disproportionate I rely on my factual assessment above at [20] to [66]. I will not repeat my factual findings. By way of summary I concluded that the description advanced of the appellants medical conditions and their dependency on the sponsor and his family have been exaggerated. The appellants have not shown that, as a result of age, illness or disability either of them requires long-term personal care in order to perform everyday tasks, and they have not shown that the appellants are unable, even with the practical and financial help of their sponsor, to obtain the required level of care in India either because it is not available (and

there is no person in India who can reasonably provide it) or because it is not affordable.

77. Mr Jafar submitted that the death of the appellants' son triggered a material change in the relationship between them and their family in the UK, particularly with respect to the 2nd appellant, and that the emotional bonds forged from this tragic event render the decisions to refuse their applications disproportionate. I am not however satisfied that the relationship between the 2nd appellant and her family in the UK has materially changed (see my assessment at [51] and [52] above). Whilst I am prepared to accept that the 2nd appellant has developed a stronger relationship with the sponsor's partner, I find that this has been established because they have spent a significant amount of time together over a period of approximately 7 years. As a result of the absence of independent evidence of the 2nd appellant's mental health state I do not accept that her memory issues are as serious as suggested, or that her bereavement response is at serious as stated. The oral evidence of both the 2nd appellant and the sponsor's partner suggested that they both feel comfortable in each others presence. I fully accept that the 2nd appellant would prefer to have a close family member assisting her with her daily chores and everyday tasks. I additionally take into account in the appellants favour the cultural expectation that the eldest son looks after his parents. I am not however persuaded that the possibility of getting a paid carer to assist the appellants would have a disproportionate impact on the 'comfort' of being assisted by a family member. In my judgment this is a matter of preference and not because of any change or enhancement in the Article 8 ECHR family life relationships between the appellants and their family in the UK, or because of any strong cultural imperative.

78. In assessing the issue of proportionalty I take into account the best interests of the appellants' grandchildren. Although there is limited evidence from the grandchildren themselves I am prepared to find that it is in their best interests for the appellants to remain in the UK given that they have all lived tougher in the same household for approximately 7 years. The best interests of the children are a primary consideration in my proportionality assessment. The appellants maintained that they have established an "inseparable attachment" with their grandchildren (primarily the sponsor's children), but there is relatively little independent evidence in support of this assertion. The oldest of the appellants' grandchildren was almost 15 years old at the date of the hearing but there was no evidence from him in respect of the quality and nature of the relationship he has with the appellants. The youngest grandchild with whom the appellants live was nine years old at the date of the remaking hearing but again no further evidence concerning her relationship with the appellants was provided other than the limited evidence in the statements and the oral evidence. In the most recent statements the appellants describe playing board games and

watching TV with their grandchildren, and teaching them about their religion and culture. Other than the ISW report there is no other independent evidence assessing the impact on these particular children if the appellants were required to return to India. In her most recent statement the 2nd appellant claims that she and her grandchildren share "a mutual dependency." There is little independent evidence that the grandchildren are dependent on the appellants, or that the appellants are dependent on the presence of their grandchildren.

79. The 1st appellant stated that neither of his sponsor's two children has any physical or mental health problems and neither was otherwise vulnerable. He also confirmed that the sponsor and his partner would be able to look after the children and ensure their safety and welfare. The 1st appellant was not sure about the ages of the sponsor's children. He said that his grandchildren were 13 and 8, when in fact the oldest grandchild was almost 15 and the other was 9 years old. Whilst I would not expect him to necessarily know their dates of birth, as he has been living in the same house as them for the past 7 years or so, I would expect him to know their ages if his relationship was 'inseparable' as claimed.

80. The ISW asserted that the appellants' grandchildren "play a substantial role in their grandparents wellbeing." The sponsor however initially said in oral evidence that the only individuals present when the ISW attended the house on 6 occasions were the appellants and the sponsor's partner. Whilst he subsequently stated that he was at work and did not know whether the children were present, I find in incredible, given the importance of the issues involved, that he would not have discussed the visits of the ISW with his partner and the appellants and that he was unaware whether the ISW spoke to or observed his children. Whilst the ISW stated that she observed "increased/strengthened emotional bonding and intergenerational solidarity", it remains unclear whether she made any such observations herself. But assuming that she did, the ISW does not adequately describe or give any cogent details of how the intergenerational solidarity was manifested. As such her assertion carries only limited weight.

81. In my judgment the 2nd appellant has overstated the impact that the removal of her and the 1st appellant will have on their grandchildren with whom they live. The 2nd appellant said that they grandchildren are so used to living with them that they won't be able to live without the appellants. There is simply insufficient evidence that this is the case. The 2nd appellant also said they she and the 1st appellant can't live without the same grandchildren, but when pressed by Mr Jafar to explain why this was the case she could only say that she saw the grandchildren regularly, that they don't have anyone in India and that if she didn't live with them there would be "more tension on my brain." Whilst I accept that the 2nd appellant will naturally feel

saddened to be separated from her grandchildren there was insufficient medical evidence as to the nature and degree of the impact of such separation on her mental health.

82. For the reasons given above I do not find that the decisions under appeal constitute a disproportionate interference with the family life relationships between the appellants and their family members in the UK.

Notice of Decision

The human rights appeals are dismissed

D.Blum — 25 October 2022

Signed — Date

Upper Tribunal Judge Blum