IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Extempore

Case No: UI-2022-006304

First-tier Tribunal Nos: HU/51052/2022
IA/01628/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 5 June 2023

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

LATIKA DEY
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Collins, instructed by OTS Solicitors
For the Respondent: Mr W Kain, Senior Home Office Presenting Officer

Heard at Field House on 19 April 2023

DECISION AND REASONS

1. The appellant is a citizen of India who has lived there for a number of years. She is widowed, and has a number of health complaints. She is supported by her daughter and the details of all of this are set out in Judge O'Keeffe's decision in the First-tier Tribunal in some detail. I do not see any purpose in repeating those. What the judge concluded was that the appellant did not meet the requirements of the Immigration Rules to be granted entry clearance as an elderly dependent relative. The judge also concluded that refusal of entry clearance was proportionate in terms of not being a disproportionate breach of her Article 8 rights.

2. The grounds of appeal, as Mr Collins confirmed, do not challenge the finding that the onerous and strict requirements of the Immigration Rules were not met but rather they challenge the judge's finding that the decision was proportionate.

3. The appellant advances three grounds of appeal:

(i) the judge had wrongly treated the powerful factor that the requirements of the Rules were not met, not simply as a factor but as in effect a trump card;

(ii) the judge had failed to give adequate reasons particularly at paragraph 71 as to why in the light of the findings made (as set out in the grounds at (i) to (vii)) a that the decision was proportionate; and,

(iii) the judge had failed properly to apply a balance sheet approach to proportionality setting out the positive factors and the negative factors.

4. I heard submissions from both Mr Collins and Mr Kain on behalf of the Secretary of State. Mr Collins fairly accepted, as I have already said, that the Immigration Rules were not met.

5. I now address the grounds first in their entirety, observing that the decision must be looked at as a whole. The judge did find that Article 8 was engaged and made a number of positive findings and findings set out from paragraph 60 onwards. The judge concludes her analysis of the Immigration Rules at paragraph 56 of her decision. Although she does not say so it is clear at that paragraph that she has made a finding that the appellant does not meet the requirements of the Immigration Rules. She then addresses the task which is then to assess whether there is a breach of Article 8, confining herself to the issue of proportionality, having assessed that Article 8 was engaged. She directed herself [58] that she needed to take into account the factors set out in Section 117B of the Nationality, Immigration and Asylum Act 2002 and over paragraphs [59] to [69] she sets out in significant detail the findings and the factors, both positive and negative, that is in favour of the appellant and against her. What is set out at paragraphs 70 and 71 is really a summary of what the judge had concluded and cannot fairly be divorced from what the judge has already written and the findings that she made; her conclusions have to be seen in that context.

6. Turning to the individual grounds I consider that there is no proper basis for saying that the judge has treated the failure to meet the Immigration Rules as a trump card. She does not say so, and she devotes a significant amount of her decision in analysing the factors in favour of the appellant. What is written in the first two sentences of paragraph 70 is really nothing more than the fact that the Rules are rigorous is a neutral factor in any balancing exercise. That is a fair statement of the law. I therefore find that ground 1 is not made out.

7. Turning to ground 2, I consider that in this case the reasons are adequate. It is clear that the judge had looked at all the evidence in the round and has reached conclusions and attached weight to various different factors and given reasons for doing so. In my view there is no fault in her analysis of the facts, she made findings positively in favour of the appellant, she made other findings such as, for example, the final sentence at paragraph 69 which were less favourable. She also took into account Section 117B which she was required to do. Reading this decision as a whole I conclude that the reasons are adequate and sustainable and

the appellant could not have been left with any doubt as to why it was that the judge found that the decision of the Secretary of State was proportionate.

8. Finally I turn to ground 3. I accept that it is often sensible to set out a balance sheet expressly but that is perhaps often desirable, but where, as here, the factors are more nuanced, that is perhaps not of such great importance. Whilst a balance sheet does of course indicate that a balancing exercise was undertaken and that the judge had identified factors as negative or positive, that is precisely what this judge did even if they are not set out in a balance sheet. The judge considered the positive factors and the negative factors recognising that, of course, some had more weight than others and other factors are more nuanced and reached a decision which, in my view, is adequately reasoned and sustainable.

9. Accordingly I conclude that the decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Signed Date: 2 May 2023

Jeremy K H Rintoul
Judge of the Upper Tribunal
Immigration and Asylum Chamber