IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-002500
UI-2024-002501
First-tier Tribunal Nos: HU/01030/2023
HU/01034/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 27 August 2024

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

Pritpal Singh (1)
Raminder Walia Kaur (2)
(NO ANONYMITY ORDER MADE)

Appellants

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms U Sood, Counsel, instructed Direct Access
For the Respondent: Ms S Simbi, Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 16 August 2024

DECISION AND REASONS

1. The appellants are nationals of India. Their appeals against decisions by the respondent dated 25 April 2023 to refuse their applications for leave to remain were dismissed by First-tier Tribunal ("FtT") Judge Richards ("the judge") for reasons set out in a decision promulgated on 11 March 2024.

2. The judge set out at paragraph [3] of his decision the appellants immigration history. They arrived in the United Kingdom on 19 September 2021 on multientry visit visas. They applied for leave to remain on 4 February 2022. It was the refusal of those applications that were the subject of the appeal before the FtT. The issues in the appeal are set out at paragraph [4] of the decision.

3. The judge essentially allowed the appeal for the reasons set out in paragraphs [17] to [23] of the decision. The respondent applied for permission to appeal to the Upper Tribunal and in summary relies upon two grounds. First, the FtT Judge

misdirected himself in law by failing to have regard to the provisions set out in Section 117B of the 2002 Act. The respondent submits that the judge failed to have regard to the public interest considerations that the judge was bound to have regard to. Second, the judge failed to give adequate reasons for the findings made and conclusion reached. The respondent submits that the adult dependent relatives Rules are not met in this case and it is submitted by the respondent that the appropriate course is for the applicants to return to India and made the application in the proper way. Permission to appeal was granted by FtT Judge Bartlett.

4. There is no doubt, in the context of this appeal that the appellants are unable to meet the requirements of the Immigration Rules under the adult dependent route and the judge made a finding to that effect. The appellants' claim was advanced on the basis of their private life and they relied upon paragraph 276ADE(1)(vi) of the Immigration Rules. That is, the appellants have been in the United Kingdom for a period of less than twenty years but there are very significant obstacles to their integration into India. They also relied upon paragraph GEN.3.2 of Appendix FM on the basis that there are exceptional circumstances which would render refusal of the applications a breach of Article 8. The judge set out the legal framework at paragraphs [5] to [7] of the decision and in paragraph [6], the judge noted that under Article 8, the question is whether the refusal breaches the appellants' right to respect for private and family life and that that is a qualified right. The judge said that if Article 8 is engaged, he has to decide whether the interference with that right is justified and proportionate. The judge said that he had taken into account the factors set out in s117B of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") and balanced the public interest considerations against the factors relied upon by the appellants.

5. The judge recorded at paragraphs [8] to [16] of the decision that the appellants were present at the hearing, that they gave evidence with the assistance of a Punjabi interpreter and that the judge also heard evidence from a number of witnesses, including their eldest son, daughter-in-law and their youngest son, all of whom adopted their witness statements. The judge refers at paragraphs [9] to [15] of the decision to the wealth of evidence that was before the FtT.

6. The judge's findings of fact and conclusions are set out at paragraphs [17] to [23] of the decision. I pause to note that at paragraph [23] the judge noted that the adult dependent relative Rule is not met in this case because the application had not been made out of country. The judge was invited by Ms Sood to consider whether an application made in India would be bound to succeed so that it could be said to be entirely disproportionate to expect the appellants to return to India to make an application. To that end, the judge said at paragraph [23] that he had considered whether a valid application could be made in India and whether it would be certain to succeed. The judge concluded that while such an application may well succeed, he was not able to reach that level of certainty. The judge was not therefore prepared to allow the appeal on that basis.

7. In her submissions before me, Ms Simbi adopts the grounds of appeal and submits that apart from the reference to s117B of the 2002 Act in paragraph [6] of the decision, there is no reference at all by the judge to the relevant public interest considerations that are set out in s117B of the 2002 Act. She submits there are several factors set out in s117B that weigh heavily against the appellants and it is an error of law for the judge to fail to consider those factors in the assessment of proportionality.

8. In reply, Ms Sood adopts the Rule 24 response dated 20 June 2024 that she has settled on behalf of the appellants. She submits that at paragraph [19] of the decision, the judge made a very clear finding. That is, as a matter of fact, the appellants' health would further deteriorate on their return to India in large part due to their absence from the love and support of their children and grandchildren. The judge said that having heard and seen the appellants as well as considering the medical evidence, the judge did not consider that they are sufficiently able to look after each other anymore at this time. External help and support will therefore be required. Ms Sood referred me to the covering letter in support of the application dated 4 February. That, as I indicated when Ms Sood was making her submissions before me, is a very detailed letter and I have absolutely no doubt that there was a wealth of evidence provided in support of the applications.

9. Ultimately, I must consider whether the decision of the First-tier Tribunal Judge is vitiated by a material error of law and I am satisfied that the answer to that question is that there is a material error of law such that the decision must be set aside. I accept as the respondent submits that the Tribunal is mandated, as Ms Sood put it, under Section 117A of the 2002 Act to have regard to the matters set out in Section 117B of the 2002 Act. Although I accept that in paragraph [6] of the decision, the judge said that he has had regard to s117B of the 2002 Act, nowhere in the analysis of the evidence or the findings and conclusions that are set out at paragraphs [17] to [23] is there any reference whatsoever to the relevant factors. If the judge did have regard to the public interest considerations in s117B the judge does not explain the weight he attached to those factors in his analysis of whether the decision to refuse leave to remain is proportionate. They are factors that a court or Tribunal must have regard to in all cases where there is an issue as to whether a decision breaches a person's right to respect for private and family life under Article 8.

10. At paragraph [19] the judge said that having heard and seen the appellants as well as considering the medical evidence, the judge did not consider that they are sufficiently able to look after each other anymore at this time. The judge found, at [20], that there would be very significant obstacles to their integration in India. The judge accepted that the availability of care homes has been examined and that while the appellant's are able to afford it, the standard of care is substantially less than is readily available from their children and grandchildren. The question is not whether the care and support available to the appellants is of a better quality than that available in India but whether there are very significant obstacles to the appellants integration in India. The focus must be on the obstacles to integration and their significance to the appellants. The test is not subjective, in the sense of being limited to the appellants' own perception of the obstacles to reintegration but extends to all aspects of the appellants likely situation on return including objective evidence and requires consideration of any reasonable step that could be taken to avoid or mitigate the obstacles. Article 8 cannot be used as a general dispensing power.

11. Although the care available in India is a factor to be taken into account, the 'adult dependent relative' route under Appendix FM of the Immigration Rules requires an applicant to establish that they are unable, even with the practical and financial help of the sponsor, to obtain the required level of care because it is not available and there is no person in that country who can reasonably provide it, or it is not affordable. Here, the judge appears to accept that care homes are available in India and the appellants are able to afford the care. The judge

accepted the requirements of the adult dependent relative route cannot be met and he was not entirely confident that an application under the 'adult dependent relative' route made in India was bound to succeed.

12. It is now well established that the reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal controversial issues", disclosing how any issue of law or fact was resolved. Standing back and reading the decision as a whole, it is impossible to discern from the decision, whether the judge had any regard to the public interest considerations set out in s117B and the weight he attached to the matters set out. I am satisfied that the decision of the FtT is vitiated by a material error of law and must be set aside. I do not, in the circumstances, need to say anymore in relation to the second ground of appeal.

13. As to disposal, I am conscious of the Court of Appeal's decision in *AEB v SSHD* [2022] EWCA Civ 1512, *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC) and §7.2 of the Senior President's Practice Statements. Sub-paragraph (a) deals with where the effect of the error has been to deprive a party before the Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the FtT, whereas sub-paragraph (b) directs me to consider whether I am satisfied that the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal. In the interests of fairness, given the nature of the error of law and the brevity of the findings that are set out at paragraphs [17] to [23] of the decision, I am satisfied, as the parties invite, that the appropriate course is for this appeal to be remitted to the First-tier Tribunal for the appeal to be heard afresh with no findings preserved.

14. The appeal by the respondent is allowed. I set aside the decision of the FtT and remit the appeals to the FtT for hearing afresh with no findings preserved.

Notice of Decision

15. The appeal to the Upper Tribunal is allowed.

16. The decision of First-tier Tribunal Judge Richards promulgated on 11 March 2024 is set aside.

17. The appeal is remitted to the First-tier Tribunal for hearing afresh with no findings preserved.

18. The parties will be advised of a hearing date in due course.

V. Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber
16 August 2024