IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000113

First-tier Tribunal No: HU/57861/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 10th of January 2024

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

Manjinder Singh
(NO ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr J. Dhanji, Counsel instructed by ATM Law Solicitors
For the Respondent: Ms S. McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 27 November 2023

DECISION AND REASONS

1. This is an appeal against a decision of the Secretary of State dated 1 December 2020 to refuse a human rights claim brought by the appellant, a citizen of India born on 31 July 1998.

2. The appeal was originally brought before the First-tier Tribunal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). By a decision and reasons dated 23 December 2022, First-tier Tribunal Judge Norris ("the judge") dismissed the appeal. By a decision dated 26 April 2023, I set the decision of the judge aside, with certain findings of fact preserved, and directed that the appeal be remade in the Upper Tribunal, acting under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007. It was in those circumstances that the matter resumed before me at a hearing on 27 November 2023.

3. A copy of the Error of Law decision may be found in the **Annex** to this decision.

Factual background

4. I summarised the factual background in the following terms, at paragraphs 3 and 4 of the Error of Law decision:

> "4. The appellant arrived in the UK in 2009 as a student, with leave until February 2011. He has remained in the UK ever since, unlawfully. Following two unsuccessful applications to the Secretary of State which did not attract a right of appeal in 2016 and 2018, on 14 May 2020 the appellant made further submissions based on his relationship with his British wife, Balwinder Kaur ('the sponsor'). That application was refused, and it was the refusal of that decision that was under appeal before the judge.
>
> 5. The Secretary of State did not dispute the genuineness of the sponsor and appellant's relationship, nor that the sponsor met the financial requirements. However, the appellant's immigration status meant that he could only succeed from within the UK by satisfying paragraph EX.1 of Appendix FM, by reference to whether there would be 'insurmountable obstacles' to the relationship continuing in India. The appellant's case before the judge was that the sponsor's mental health conditions, and her caring responsibilities towards her elderly parents (who live with the appellant and the sponsor in the UK), were such that she could neither cope without the appellant, nor accompany him to India. Both parents have a number of health conditions which, the appellant said, made his support, and that of the sponsor, essential."

5. At para. 23 of the Error of Law decision, I summarised the preserved findings of fact, which represent the position at the date of the hearing before the judge below (on 9 December 2022) insofar as they were not affected by the errors of law I found in the judge's decision. I will not re-list those preserved findings here but will refer to them as necessary in the course of my substantive analysis, below.

Principal controversial issues

6. The central issue for my consideration is whether there would be "insurmountable obstacles" to the appellant and the sponsor continuing their relationship in India.

7. The appellant's case is that the sponsor's mental health conditions are such as to amount to insurmountable obstacles to her relationship with the appellant continuing in India. There was no updating evidence in relation to the preserved findings of fact, other than the oral evidence of the appellant and the sponsor.

The law

8. While it is for the appellant to establish that Article 8(1) is engaged, it is common ground that it is. It is therefore for the Secretary of State to establish that any interference in the appellant's Article 8(1) rights (and those of his sponsor) is justified under Article 8(2); in these proceedings, the means by which the Secretary of State does so is by pointing to the requirements of the Immigration Rules, and to the public interest in the maintenance of effective immigration controls, which is (amongst others) a statutory consideration in

section 117B(1) of the 2002 Act. The standard of proof is the balance of probabilities.

9. The relevant Immigration Rules may be found in para. EX.1(b) of Appendix FM:

> "EX.1. This paragraph applies if
>
> […]
>
> (b) the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, settled in the UK, or in the UK with protection status, in the UK with limited leave under Appendix EU in accordance with paragraph GEN.1.3.(d), or in the UK with limited leave as a worker or business person under Appendix ECAA Extension of Stay in accordance with paragraph GEN.1.3.(e), **and there are <u>insurmountable obstacles</u> to family life with that partner continuing outside the UK**.
>
> EX.2. For the purposes of paragraph EX.1.(b) 'insurmountable obstacles' means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner." (Emphasis added)

10. In relation to the appellant's private life, the relevant rule is para. 276ADE(1)(vi) (very significant obstacles to integration). This rule is no longer in force, but it was in force at the time of the Secretary of State's decision.

The hearing

11. The resumed hearing took place on a face to face basis at Field House. The appellant and sponsor each gave evidence by adopting their statements, answering additional clarificatory questions in chief, and being cross-examined. I will summarise the salient parts of the evidence where necessary in my analysis below.

Findings of fact: no insurmountable obstacles to the relationship between the appellant and sponsor continuing in India

12. I reached the below findings of fact having considered the entirety of the evidence, in the round, alongside the preserved findings of fact.

13. The appellant continued to rely on the report of Dr Mariam Kashmiri, a consultant general adult psychiatrist, dated 8 December 2022 in relation to the sponsor's mental health conditions. In my judgment, aspects of the report gave the appearance of straying beyond the author's expertise, for example at para. 16.1, under the heading *Summary and opinion*, where she states that the sponsor's elderly parents are "solely dependent" on the appellant and the sponsor for "emotional, psychological and physical support". Later, at para. 16.3, the report opines about the impact on the sponsor of losing access to NHS services upon relocation to India, and that "moving to India is therefore not an option that the couple would even consider". It is not Dr Kashmiri's role to reach findings of fact on those issues. Indeed, in places she misstates the test in para. EX.1(b), referring to an "unsurmountable inconvenience", as opposed to an "insurmountable obstacle".

14. Some parts of Dr Kashmiri's report attract a degree of weight. I accept Dr Kashmiri's conclusions that the sponsor is "stressed" about the prospect of the appellant's removal to India, and that the fertility treatment the sponsor and the

appellant are undergoing will have "taken a toll" on her mental health (para. 16.2). I accept that the sponsor presents some symptoms that fulfil the diagnostic criteria for major depressive disorder (para. 16.5), but, again, the weight which this diagnosis attracts is limited, since much of the pre-amble to Dr Kashmiri's operative analysis appears to be based on the sponsor's perceived difficulties (and Dr Kashmiri's corresponding acceptance of her perception) on matters straying beyond the role of a medical expert. Such reasoning includes an assertion that the sponsor "cannot leave behind her parents who are elderly and suffer from various ailments as mentioned above as they cannot cope on their own" (para. 16.3), and a finding concerning her dependence upon the appellant for "her day to day needs, physical, mental and emotional well being" (para. 16.6).

15. There is no evidence that adequate treatment for the sponsor's health conditions will not be available in India. Since the hearing before the First-tier Tribunal ("FTT") she has been prescribed with Sertraline and is receiving regular doses, and since July 2023 has attended several sessions of talking therapy which she arranged through her work. There will inevitably be a degree of disruption arising from moving country if she chooses to accompany the appellant, but there is no evidence that Sertraline and talking therapy will not be available in India.

16. The appellant and the sponsor are attempting to conceive a child. They have experienced a number of health-related obstacles but continue to attempt to start a family. While I accept that an enforced international move will inevitably cause some interruption to this process, again there is no evidence that fertility treatment will not be available in India, or that their attempts to start a family in that country will be significantly reduced when compared to the current situation once they have settled in the country. One of the preserved findings of fact is that the appellant and sponsor have not looked into whether fertility treatment would be available in India; the position has not changed in the time that has elapsed since the hearing before the FTT. See para. 5.4 of the FTT decision.

17. A significant feature of the appellant's case is the care that he and his wife provide to her parents. The sponsor's mother says in her witness statement that she is forgetful, needs help with lifting things due to pins and needles in her hand and forearm, and that she cannot lift her neck due to an operation. She has bilateral leg pain and needs to walk with a stick. She experiences shoulder pain, and a number of other painful and debilitating conditions. Her father says in his statement that he and his wife have prolapsed discs, and that he experiences dry eyes, and cannot drive for long periods of time.

18. There is a preserved finding of fact that the sponsor's father could provide some care for her mother, if both the sponsor and the appellant were to move to India, through the NHS and private carers. There has been no evidence before me to revisit that conclusion. I accept that the support the appellant provides on a day to day basis is perceived as significant by the family. However, with the greatest of respect to the appellant, the care he provides is routine. As he explained in his oral evidence, he drives his parents-in-law to medical appointments. His evidence as to how often he did so did not suggest that it was an activity which occupied a significant degree of time, and the appellant was at times vague in his recollection, for example not being able to recall when his father-in-law had to attend an eye test and lacked concrete detail concerning the steps he had actually taken in this respect. Under cross-examination, the sponsor said that the appellant helped with jobs around the house, including cooking and gardening. The sponsor assists her mother in the shower. They have not applied for any NHS support or explored other options for carers. Both witnesses said that the

appellant provides emotional support to his parents-in-law; his father-in-law is close to him and treats him as though he were his son.

19. In my judgment, the care and support provided by the appellant and the sponsor to the sponsor's parents is not such that there would be insurmountable obstacles to the relationship between the appellant and the sponsor continuing in India. I accept that the prospect of an unwelcome international move would be incredibly daunting, especially for the sponsor if she chooses to accompany the appellant. The prospect of doing so has evidently caused her a great deal of stress, since it would entail a degree of upheaval to the life that she currently enjoys. It would be stressful for her parents too. I do not underestimate the impact that will have on her mental well-being, and the overall fabric of the life they enjoy together, with the sponsor's parents, as a multi-generational family. I take that into account when addressing whether there are "insurmountable obstacles" to the relationship between the appellant and the sponsor continuing in India.

20. In my judgment, there will not be such obstacles. The care provided by the appellant for his parents-in-law is, with respect, not of such a depth and quality as to be irreplaceable. Indeed, there was no evidence concerning the lack of alternative provision in the United Kingdom, in the absence of the appellant and the sponsor. There is no evidence that the sponsor's parents could not find alternative methods of transport and other care in his absence.

21. I also find that there is no evidence that the sponsor's health conditions are such that she will not be able to relocate. She is of Indian heritage and has spent time in India without the appellant in the past, having travelled there on holiday in 2016. She speaks Punjabi. The hardship the couple would face would not be "very serious" for the purposes of paragraph EX.2 of Appendix FM.

22. I accept that the preserved findings of fact include the likely difficulties the sponsor would face in securing work in India. The appellant has provided no evidence to update this, despite there being a preserved finding of fact that there was no evidence to support this assertion (see para. 5.5 of the FTT decision). Mere assertions as to the likely difficulties that will be encountered in searching for employment are insufficient, even when taken with the surrounding factors, to merit a finding that there would be insurmountable obstacles. I note that there has been no updating evidence to merit a departure from the preserved findings of fact that the couple would not face insurmountable obstacles on account of the appellant's perceived difficulties in obtaining work (see para. 5.6 of the FTT's decision).

23. I find that there would not be any insurmountable obstacles to the family life enjoyed by the appellant and sponsor continuing in India.

24. As I conclude, I address the position of the appellant personally. There has been no evidence to depart from the preserved finding of fact that the appellant would retain links to India, the country of his nationality, and that there would be no very significant obstacles to his integration in the country.

25. The appeal cannot succeed under Article 8 as articulated by the Immigration Rules.

Article 8 outside the Immigration Rules

26. To address Article 8 outside the rules, I will adopt a balance sheet approach.

27. Factors militating in favour of the appellant's removal include:

a. The public interest in the maintenance of effective immigration controls (section 117B(1), 2002 Act);

b. The appellant cannot meet any of the requirements of the rules; there will be no insurmountable obstacles to his relationship with the sponsor continuing in India, should she choose to accompany him, and he would not face very significant obstacles to his integration. While the move would be challenging in many respects, the couple will not face cultural, societal or linguistic challenges;

c. Family life started at a time when a person's immigration status was unlawful attracts little weight (section 117B(4)(a), 2002 Act). The sponsor's relationship with the appellant commenced in 2014, by which time he had been an overstayer for some time;

d. The appellant's private life attracts little weight since it has, at best, been established during his time as a student, with a precarious immigration status (section 117B(5)), and for most of the time he has been here unlawfully (section 117B(4)(a)).

28. Factors mitigating against the appellant's removal include:

a. The appellant's removal would be very disruptive, primarily for the sponsor, but also her parents;

b. If the sponsor chose to accompany the appellant to India, it would amount to a major upheaval in her life, from the perspective of her health, employment and other ambitions. The stress of the move would be exacerbated by having to leave her parents behind, and the impact on them would be considerable as they would need to take a number of other steps to secure alternative care provision, none of which they have explored thus far;

c. If the sponsor chose to remain in India, the separation could be lengthy, unless the appellant successfully applies for entry clearance from overseas to return to live with his wife lawfully.

29. Weighing the factors in favour of the appellant's removal against those mitigating against it, I find that his removal would not be disproportionate. The appellant does not meet the requirements of the Immigration Rules, which is a weighty factor. He commenced his relationship with his wife, and later married her, at a time when he had no immigration status, and could have had no expectation of being able to remain in the UK lawfully. The relationship attracts little weight, as does his private life. His removal would not necessarily amount to a permanent, life-long obstacle to his relationship continuing with the sponsor; the sponsor may choose to relocate to India, or visit him, if she chooses to stay here, or he may attempt to pursue an application for entry clearance from India which, if refused, would carry a right of appeal. The sponsor's parents have not taken any steps to explore alternative care provision in the sponsor's absence, and there are preserved findings of fact that her father would be able to assist with the provision or arrangement of some alternative care in her (and the appellant's) absence. In the circumstances, the appellant's removal would be proportionate under Article 8(2) of the ECHR.

30. The appeal is dismissed.

Notice of Decision

The decision of Judge Norris involved the making of an error of law and is set aside.

I remake the decision, dismissing the appeal.

I make no fee award.

Stephen H Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 December 2023

Annex – Error of Law decision

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000113

First-tier Tribunal No: HU/57861/2021

THE IMMIGRATION ACTS

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Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

Manjinder Singh
(NO ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr J. Plowright, Counsel instructed by ATM Law Solicitors
For the Respondent: Ms S. Rushforth, Senior Home Office Presenting Officer

Heard at Field House on 19 April 2023

DECISION AND REASONS

1. The issue in this case is whether the following analysis of a medical report, which went to the heart of the appellant's case before the First-tier Tribunal, was sufficiently reasoned:

> "I draw the inference that this report was procured – on the eve of the Hearing – in an attempt to bolster the appeal. As such I give it limited weight and in all the circumstances of the case, it is of limited significance in any event."

2. For the reasons set out below, I conclude that, in the circumstances of this case, the above reasoning was insufficient.

3. By a decision and reasons dated 23 December 2022, First-tier Tribunal Judge Norris ("the judge") dismissed an appeal brought by the appellant, a citizen of India born on 31 July 1998, against a decision of the Secretary of State dated 1 December 2020 to refuse his human rights claim. The appeal was brought under section 82(1) of the Nationality, Immigration and Asylum Act 2002. The appellant now appeals against the judge's decision with the permission of First-tier Tribunal Judge Sills.

Factual background

4. The appellant arrived in the UK in 2009 as a student, with leave until February 2011. He has remained in the UK ever since, unlawfully. Following two unsuccessful applications to the Secretary of State which did not attract a right of appeal in 2016 and 2018, on 14 May 2020 the appellant made further submissions based on his relationship with his British wife, Balwinder Kaur ("the sponsor"). That application was refused, and it was the refusal of that decision that was under appeal before the judge.

5. The Secretary of State did not dispute the genuineness of the sponsor and appellant's relationship, nor that the sponsor met the financial requirements. However, the appellant's immigration status meant that he could only succeed from within the UK by satisfying paragraph EX.1 of Appendix FM, by reference to whether there would be "insurmountable obstacles" to the relationship continuing in India. The appellant's case before the judge was that the sponsor's mental health conditions, and her caring responsibilities towards her elderly parents (who live with the appellant and the sponsor in the UK), were such that she could neither cope without the appellant, nor accompany him to India. Both parents have a number of health conditions which, the appellant said, made his support, and that of the sponsor, essential.

6. The appellant relied on a psychiatric report from Dr Mariam Kashmiri, a consultant psychiatrist, dated 8 December 2022 concerning the sponsor's mental health, and the impact upon her of the uncertainty surrounding his immigration status, and the prospect of losing him ("the Kashmiri report"). The report concluded that the sponsor bore the symptoms of a major depressive disorder, which was linked, at least in part, to the appellant's immigration status, and the uncertainty hanging over the family. Those factors, the appellant maintained, meant that he and the sponsor faced "insurmountable obstacles" to their relationship continuing in India, for the purposes of paragraph EX.1(b) of Appendix FM.

The decision of the First-tier Tribunal

7. The judge heard the appeal on 9 December 2022. In her decision, the judge found that the appellant would not face very significant obstacles to his own integration in India, for the purposes of paragraph 276ADE(1)(vi) of the Immigration Rules. There was no evidence that the sponsor could not live with the appellant in India; they both spoke the languages of the country and were familiar with the customs and culture. The appellant's family in India could provide assistance, at least initially. The judge dealt with the Kashmiri report in the terms set out at para. 1, above. The sponsor's health conditions could be treated in India if necessary. The largest potential barrier they would face as a couple would be the sponsor's ability to find work, but, aside from unsubstantiated assertions in the appeal skeleton argument, there was no evidence on that issue. If the sponsor chose to accompany the appellant to India to apply for entry clearance, the sponsor's father would be able to care for her

mother temporarily, with assistance from the NHS or private carers as necessary. The parents had travelled to India on their own previously, without the assistance of the appellant or the sponsor, and could cope without them again. There were no exceptional circumstances outside the rules.

Issues on appeal to the Upper Tribunal

8. There are three grounds of appeal; the first two are linked and lie at the heart of Mr Plowright's submissions.

9. Grounds 1 and 2 contend that the judge failed adequately to consider the Kashmiri report, and provided insufficient or "unsustainable" reasons for attaching little weight to it.

10. Ground 3, which Mr Plowright touched but did not dwell upon, contends that the judge failed to address whether the sponsor's responsibilities towards her parents was *itself* and insurmountable obstacle to the appellant and sponsor's relationship continuing in India.

11. There was no rule 24 notice. Ms Rushforth resisted the appeal on the basis that, properly understood, the judge adequately dealt with the sponsor's mental health conditions because, at para. 4.4, she referred to the sponsor having "very recently" seen a psychiatrist, noting that she had been prescribed with sertraline. There was no evidence that appropriate medication would not be available in India. The judge's functional analysis accepted the Kashmiri report's diagnosis of the sponsor's mental health conditions but found that adequate treatment would be available in India, in the event the sponsor chose to accompany the appellant temporarily while he applied for entry clearance. The judge gave sufficient reasons for her findings.

Judge gave insufficient reasons for dismissing the Kashmiri report

12. The judge was not bound to accept the conclusions of the Kashmiri report. But it was necessary for her to engage with its key points, which she failed to do. The reasons she gave for ascribing no weight to it were not, in isolation, sufficient for rejecting it.

13. Of course, the First-tier Tribunal is an expert tribunal, and this appellate tribunal must approach findings of fact reached by any first instance trial judge with an appropriate degree of restraint and deference. However, as held in *English v Emery Reimbold & Strick Ltd* [2002] EWCA Civ 605 at para. 19:

> "…if the appellate process is to work satisfactorily, the judgment must enable the appellate court to understand why the judge reached his decision."

14. I accept that the judge may well have been attempting to keep her decision short. In many ways, at five pages, it is admirably brief. However, as held in *Simetra v Ikon* [2019] EWCA Civ 1413 at para. 46:

> "…succinctness is as desirable in a judgment as it is in counsel's submissions, but short judgments must be careful judgments."

15. I consider that simply stating that the Kashmiri report was obtained to "bolster" the appeal on the eve of the hearing was an insufficiently reasoned basis to ascribe no weight to it.

16. By definition, the parties to litigation obtain evidence to support their case. In these proceedings, the appellant secured the Kashmiri report in order to attempt

discharge the burden of proof which he faced. It is nothing to the point, therefore, that the appellant secured an expert report in order to support the submissions and other evidence he relied upon at the hearing. The implication in the judge's use of the term "bolster", coupled with drawing an "inference" against the appellant, is that the appellant sought to give some level of fictious or otherwise unmerited support to a weak case, perhaps dishonestly. Yet the judge had not, for example, found that the appellant, the sponsor, or the sponsor's mother lacked credibility or had otherwise sought to exaggerate their evidence.

17. The only operative analysis in the judge's reasoning appears to have focussed on the timing of the report, drawing an (adverse) "inference" from the fact the report was procured "on the eve of the hearing." In fact, the appellant had commissioned the report over a month previously, on 5 November 2022, but it had not been finalised until the day before the hearing. Any "procuring" by the appellant, therefore, took place well before the judge incorrectly said that it did. The judge made a mistake of fact. Alternatively, she did not express her findings concerning the timing of the report with sufficient clarity if, in fact, she sought to criticise the instruction of Dr Kashmiri on 5 November, if that is what she meant.

18. The judge did not expressly engage with the expertise of Dr Kashmiri or engage with any of her reasoning in the course of the substantive analysis in the decision. The report concluded that the sponsor displays the symptoms for major depressive disorder, with fleeting suicidal ideations, which would be at risk in the event of the appellant's removal: see para. 16.5. The author opined that the sponsor had developed an emotional dependency upon the appellant and suggested that she may struggle to access appropriate healthcare in India due to her mental health conditions (see paras 17.1 onwards). I accept that the judge addressed some of the sponsor's health conditions at para. 4.4, where she referred to the fact that she had "recently seen a psychiatrist", and there noted that the sponsor had not been to see her GP about those same conditions. At para. 5.4, the judge found that sertraline would be available in India. However, in light of the judge's cursory analysis of the Kashmiri report in the terms outlined at para. 1, above, such references are an insufficient basis to impute reasoning and analysis to the judge's decision which it otherwise lacks.

19. Of course, it would have been open to a judge to reject the findings of the Kashmiri report, or the reasoning relied upon by Dr Kashmiri in the course of reaching her conclusions. Nothing in this decision should be taken as an endorsement (or otherwise) of the Kashmiri report or its contents. But it was necessary for the judge to have engaged with the reasoning of the report, if only briefly, to provide a reasoned analysis of its conclusions.

20. I therefore find that grounds 1 and 2 are made out.

Judge's analysis of the appellant and sponsor's caring responsibilities was sufficient

21. I reject Mr Plowright's submissions that the judge misapplied paragraph EX.1(b) of Appendix FM of the Immigration Rules. The essential criterion in this paragraph is that:

> "…there are insurmountable obstacles to family life with that partner continuing outside the UK."

22. The criticism of the judge's analysis is that she failed expressly to address whether the sponsor's caring responsibilities towards her parents, and their claimed dependence upon her, amounted to an insurmountable obstacle to her

leaving the UK with the sponsor. This ground is without merit. At para. 5.8, the judge conducted precisely the analysis which the grounds of appeal contend that she failed to address. The judge found that the sponsor's father, Mr Attwal, could look after her mother, as he had done in the past, including through a visit to India (without the sponsor) conducted when her mother already had the medical conditions from which she now suffers. The judge found that NHS or private carers could be engaged to provide some assistance while the appellant left the country and applied for leave to re-enter, on an expressly temporary basis. The grounds of appeal do not challenge any of those findings of fact There is therefore no merit to this ground of appeal, and Mr Plowright was right not to press it with any vigour.

Setting aside the decision

23. The success of grounds 1 and 2 means that the decision must be set aside. The judge made a number of findings and observations that have not been challenged in this tribunal and which I therefore preserve. Those findings include:

a. para. 4.4, concerning the sponsor's medical conditions,

b. para. 5.1, the appellant and sponsor are familiar with India, speak one of its main languages, follow the same religion, and would be unlikely to encounter hardship or inconvenience on a cultural, societal or linguistic level,

c. para. 5.2, there is no evidence that the sponsor would be unable to secure a visa to accompany the appellant to India,

d. para. 5.3, it is extremely unlikely that the appellant would have lost all connection to or knowledge of the lifestyle in India, and there would be no very significant obstacles to his integration in the country,

e. para. 5.4, the appellant and sponsor had not looked into whether fertility treatment would be available in India, and the sponsor had not started to take sertraline, there being no evidence that it would not be available in India,

f. para. 5.5, the largest potential barrier to the appellant and sponsor living in India would lie in the sponsor finding work; there was no evidence to support the assertion in the appeal skeleton argument that she would be unable to continue with her career, and the appellant and sponsor had not researched the jobs market,

g. para. 5.6, there was no reason why the appellant could not seek work to support himself and the sponsor in India, and there was no evidence that he could not return to work in the construction industry, and the fact it may be "hard" did not render the prospect an "insurmountable obstacle",

h. para. 5.7, the sponsor would not be required to leave the UK if the appellant was,

i. para. 5.8, Mr Attwal could provide some care for his wife in the absence of the sponsor and the appellant, if the sponsor chose to accompany the appellant, through the NHS and private carers, if necessary, for the reasons there given, and

j. para. 5.9, the sponsor's preference to remain with her parents was not an insurmountable obstacle to the appellant returning to India, with or without her.

24. I do not expressly preserve the proportionality assessment at paras 5.10 and 5.11 because that assessment will have to be conducted afresh when the decision is remade. Most (if not all) of the considerations listed in those paragraphs are likely to be relevant when the decision is remade.

25. In light of the preserved findings of fact, the decision will be remade in the Upper Tribunal, acting under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and is set aside, subject to the savings at para. 23, above.

The appeal will be remade in the Upper Tribunal with a time estimate of two hours.

If the appellant or any witness requires an interpreter, he must inform the Upper Tribunal as soon as possible.

If the appellant wishes to rely on any additional evidence, he must file and serve that evidence, along with an application to rely on it, within **28 days** of being sent this decision.

Upper Tribunal Judge Stephen Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 April 2023