IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001328
HU/55147/2023
LH/05090/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 27 June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE KELLY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KUNTI KAUR
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:

For the Appellant: Ms A Everett, Senior Home Office Presenting Officer
For the Respondent: Ms E Harris, Counsel instructed by Whitefield Solicitors

Heard at Field House on 29 May 2024

The appellant is not granted anonymity pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Moffat to allow the appeal of Ms Kunti Kaur against a decision, dated the 27th March 2023, to refuse her human rights claim.

2. For ease of exposition, I shall refer to the parties according to their status before the First-tier Tribunal; that is to say, Ms Kaur as 'the appellant' and the Secretary of State as 'the respondent'.

3. I do not make an anonymity order. No such order was made by the First-tier Tribunal, and it would thus serve no useful purpose to make an anonymity order at this stage. I am not in any event satisfied that there is an applicable exception to the general rule requiring 'open justice'.

Background

4. The appellant is a citizen of India who was born on the 13th January 1969. She and her husband entered the UK as visitors on the 11th November 2021. Sadly, her husband died on the 22nd December 2021 whilst in the UK. It will be recalled that it is not possible under the Immigration Rules to seek further leave to remain as an 'adult dependent relative' unless this was also the basis upon which the applicant entered the UK. The appellant therefore applied for further leave to remain on the basis that her forced departure from the UK would contravene Article 3 (ill-health) and Article 8 (private and family life) of the European Convention of Human Rights and Fundamental Freedoms. That application was made on the 15th March 2022 and was refused on the 27th March 2023. In giving reasons for the refusal, the respondent noted that the appellant did not have a partner, parent or dependent child in the UK, and did not therefore consider the application under Appendix FM (family members) of the Immigration Rules. So far as the appellant's 'private life' was concerned, the respondent did not accept that the appellant met the requirement (under paragraph 276ADE(1)(vi)) for there to be "insurmountable obstacles" to the appellant's integration on return to India, and neither did they accept that there were "exceptional circumstances" such as to render the consequences of refusal a breach of Articles 3 and/or Article 8 of the Human Rights Convention. The appellant appealed to the First-tier Tribunal against that decision, and it is the First-tier Tribunal's decision to allow that appeal that now brings the matter before me.

The decision of the First-tier Tribunal

5. In giving reasons for their decision, the judge accepted that the appellant owned a property in India, that she had funds upon which she could rely were she to return [11, 23], that she had been able to access appropriate medical health care for her pre-existing physical ailments when in India, and that she would be financially able to do so again were she to return [24, 25]. The judge then continued as follows:

> 25. What is different now is the appellant's mental health and her understandable grief. The appellant's case is that her mental health has declined to such a degree following the death of her husband, coupled with her chronic back pain, meaning that she is now dependent upon her family in the UK for her care, physical and emotional needs.

6. The judge then reviewed the evidence that potentially supported this conclusion. That evidence included the fact that the appellant had registered with a General Medical Practitioner some two weeks prior to the date of her application for leave to remain in the UK, that she was at that time, "signposted for counselling and was being prescribed antidepressant

medication", and that the sponsor had told the GP that the appellant had not been eating, drinking or sleeping shortly after her husband died. The judge also noted that there was a letter, apparently written by Dr Thamina Seddique, in which it was stated that the appellant had prediabetes, osteoarthritis of the knee, and depression. This letter also noted that, "it is obvious that the immigration application has taken its toll on the appellant and [that she] will end her life if she is sent back to India" [29]. However, the judge attached "only ... limited weight" to the contents of this letter [29] due to it not having been signed, and because it, "appears to be a template letter without the blanks having been completed" [28].

7. The judge also noted that the appellant's medical records made, "no reference to any chronic back pain in either the active or past medical conditions", and that the appellant's depression was noted as being, "a past condition, ending on 28 May 2022". The appellant's active conditions were identified as, "prediabetes and osteoarthritis of the knee". The notes also referred to the appellant having been referred for upper gastrointestinal cancer in December 2023. However, the appellant had not made any mention of this during her oral evidence at the hearing. Finally, the notes refer to the appellant having suicidal thoughts, which were tempered by the fact that she was currently living with her family in the UK [33].

8. The judge made factual findings as follows. The evidence demonstrated that the appellant enjoys family life in general, and with her adult daughter, "in particular" [34, 38]. The appellant's children in the UK collectively provide her, "with committed, effective physical and emotional support at a time when she is still coming to terms with her grief" [38]. Nevertheless, and despite the genuinely held fears of family members to the contrary, the evidence did not demonstrate that the appellant is in fact suicidal [36, 37].

9. Finally, the judge conducted the traditional 'balance-sheet exercise' prior to reaching their overall conclusions [39 to 42]. I set this part of the decision out in full.

> 39. I find that the factors pointing to there not being very significant obstacles to integration are:
>
> i. The accepted position that the appellant has the financial means to return to India and has property to return to.
>
> ii. The appellant has lived in India all her life with her in-laws initially and then, more latterly, with her husband in their own house.
>
> iii. The appellant speaks Punjabi and is familiar with the customs in India.
>
> iv. Whilst the appellant states that she has no friends in India, I do not accept that evidence given the length of time she has lived in her village. The appellant's evidence was that, before her husband died, she and he had a very nice life there. I do not accept that any friendships the appellant had would have dissipated completely and find that she would have a social network to return to.

> 40. I find that the factors on the side of the appellant pointing to there being very significant obstacles are:
>
> i. The appellant's current mental health presents an obstacle to integration. At present, the evidence indicates that the appellant had a very close relationship with her husband. His death was sudden and occurred in a foreign country. It would have been shocking.
>
> ii. The appellant has not been back to India since his death. She is struggling to come to terms with his death even when she is surrounded by her children.
>
> iii. The appellant has not been attending all of her medical appointments even in a situation where there are no barriers to her attendance as she would be taken to her appointments by one of her children.
>
> iv. Even with all of her family around, her the appellant is still suffering with depression two years and more after her husband's death.
>
> v. The medical notes intimate that the appellant's mental health would worsen if she returned. In my judgement, this is significant because it suggests that the appellant would withdraw even further than she has already.
>
> 41. Weighing the evidence in this case and the above factors, and mindful that it is a stringent and high test, I find that, at the date of hearing, the obstacles to integration into India are sufficiently significant to deny the appellant the capacity to meaningfully participate in society.
>
> 42. Consequently, I find that the appellant, at the date of the hearing, can meet the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules albeit that position may change once the appellant has had further grief counselling

The grounds

10. The respondent raises a single ground of appeal against the Tribunal's decision, namely, that its conclusion (inaccurately described as a "finding" in the grounds) that there would be very significant obstacles to the appellant's reintegration within India is, "not factually sound and [is] therefore inadequately reasoned" [1(a)]. This is particularised as follows:

(1) The finding that the appellant continued to suffer from depression some 2 years after the death of her husband in the UK was contrary to the evidence of her GP, which was to the effect that this was a "past condition" [1(b)]
(2) There was no evidence from, "a qualified expert", to support the finding that the appellant's mental health would deteriorate on return to India and that, "she would not obtain treatment because of this" [1(c)]
(3) The Tribunal was wrong to accept the appellant's claim that she had fallen out with family members remaining India without "documentary evidence" to support it.

The hearing

11. Ms Everett relied on each of the above particulars in submitting that the evidence did not support the judge's findings, and Ms Harris relied on her notice under Rule 24 of the Procedure Rules in reply.

12. I reserved my decision at the conclusion of the hearing, which I now explain (below).

Analysis

13. The respondent does not suggest that the Tribunal's evaluative judgement that the obstacles to integration on return would be, "very significant", was of itself perverse. Rather, the respondent argues that the factual findings underpinning that judgement were either unsupported by or were contrary to the evidence. This is a very high bar. Anything less would simply be a quarrel with the Tribunal's evidence-based findings. By asking, "where was the evidence?" in respect of each of the particularised grounds, Ms Everett implicitly acknowledged that this was the hurdle that the Secretary of State would need to surmount to succeed in their appeal. Ms Evans responded to this by referring to the evidence cited in her Rule 24 Notice to which I now turn.

14. Ms Evans accepts that the respondent is correct in asserting that the Tribunal's finding of the appellant's continued depression is one that conflicts with the entry in her medical records describing this as, "a past condition ending in May 2022". However, as Ms Evans also points out, the judge noted that the medical records subsequently refer to the appellant having suicidal thoughts and that in April 2023 the family were provided with a 'mental health crisis number'. Moreover, there are further entries in the medical records, not referred to by the judge, capable of supporting this finding. On the 22nd November 2023, the appellant's GP recorded that the appellant (a) was suffering from "low mood" and was being prescribed mirtazapine, (b) did not want to live without her family, and (c) had said that she would commit suicide, "if she is sent to India to be alone". The GP advised on that occasion that she should seek urgent medical attention in the event of, "worsening mood/ active thoughts of suicide/self harm". On the 4th August 2023, the appellant reported to her GP she that she had, "suicidal thoughts but never attempted as living with family and they are a protective factor". An entry in the medical records of the 5th April 2023 records that the patient was diagnosed "with depression", wanted to discuss personal matters with her doctor, and that she was still taking mirtazapine. This entry continues by advising that the prescription for mirtazapine be continued, that there was "a moderate risk" (presumably of suicide), and that the appellant's daughter would ensure that she was, "not left alone". Finally, so far as her medical records are concerned, a pharmacist noted a follow-up on mirtazapine, which had just been switched from sertraline. Furthermore, the notes from 'Redbridge Talking Therapies

(IAPT) Service' note that the appellant's mental health had been assessed as recently as the 27th October 2023 (less than 4 months before the hearing) at which she was noted to be "very depressed" without her husband, that she felt the world was empty without him, and that life was not worthwhile. I accordingly accept Ms Evans' submission that, albeit some of the evidence in the medical records is conflicting, it was reasonably open for the judge to conclude that the preponderance of the evidence, when viewed as a whole, established on a balance of probabilities that the appellant continued to suffer from symptoms of depression.

15. The respondent argues that the judge's finding that the appellant's mental health condition was likely to deteriorate on return, resulting in her not seeking the necessary help for that condition, had not been supported by "a qualified expert". However, it was unnecessary in my judgement for there to be such evidence given the unchallenged evidence contained within the appellant's medical notes. These are littered with references to the appellant being constantly supervised by family members in the UK as a "protective factor" against the risk of suicide. Some of those references can be found in the previous paragraph (above). Moreover, the appellant's mental health assessment by 'Redbridge' on the 27th October 2023, notes that there were several times a week when the appellant felt life was, "not worth living", following the death of her husband. In what they describe as "a crisis plan", the author suggests that the appellant speak to her children whenever she feels this way. It was thus more than reasonably open to the judge to conclude that the withdrawal of such support on return to India would likely lead to a deterioration in the appellant's mental health, without this needing to be confirmed by, "a qualified expert". This aspect of the evidence was also relevant to another criticism that is made of the judge's findings in this regard, namely, their failure to take account of the fact that the appellant had not always engaged with professional counselling services available in the UK. However, as Ms Harris points out, the reason for this appears to have been the appellant's distressed mental and emotional state at the time of the appointment. Thus, on the 12th May 2023, the appellant was unable to continue with her triage telephone appointment with Andie Ashdown of 'Redbridge' because she was crying throughout the call; uncontrollably at one point. It is also plain from the medical notes that when the appellant did attend her appointments, this was with the support and encouragement of close family members; encouragement and support that would not be available to anything like the same extent were she to return to India.

16. The final criticism of the judge's factual findings concerns their acceptance of the appellant's claim that she had 'fallen out' with family members in India, without there being, "documentary evidence to substantiate these claims e.g. records of conversations/calls between them". However, this was not the type of case where one would necessarily have expected a person of the appellant's age and cultural background to communicate in a manner that would leave a record of the contents of their conversation, such as communicating by text message for example. Had the appellant produced telephone records to support her claim, it would

doubtless have been argued that these were equally consistent with amicable rather than hostile communication. Indeed, the very fact that the appellant claimed not to have spoken to the family of her late husband since his death in December 2021 meant that it would have been impossible for her to provide documentary evidence to support her claim [see paragraph 10 of the judge's decision]. Moreover, as Ms Evans pointed out, the respondent does not appear to have disputed the appellant's oral evidence at the hearing, either in cross-examination or in closing submission.

17. I am thus satisfied that, whilst other judges may have reached different factual conclusions, it was reasonably open to the judge to make the findings that they did on the evidence that was before them.

Notice of Decision

The appeal is dismissed.

David Kelly
Deputy Judge of the Upper Tribunal
(Immigration and Asylum Chamber) 26th June 2024