IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001882

First-tier Tribunal Nos: HU/58397/2023
LH/00731/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 16 October 2024

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

Channajamma Puttaswamachari

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr M West, Counsel instructed by Allied Law Chambers
For the Respondent: Ms A Nolan, Senior Home Office Presenting Officer

Heard at Field House on 16 September 2024

DECISION AND REASONS

1. By a decision issued on 15 July 2024, the Upper Tribunal set aside the decision of the First-tier Tribunal. I now remake that decision.

Introduction

2. The appellant is a citizen of India, born in August 1956, who came to the UK in December 2021 on a visit visa valid until 17 May 2022, in order to visit her son ("the sponsor") and his family. On 10 May 2022 the appellant applied for leave to remain. The application was refused by the respondent on 23 June 2023. The appellant is now appealing against this decision pursuant to Section 82(1)(b) of the Nationality, Immigration and Asylum Act 2002 on the ground that the decision is unlawful under Section 6 of the Human Rights Act 1998 because it violates Article 8 ECHR.

The Hearing and Credibility of the Evidence

3. The appellant and sponsor attended the hearing with a view to giving oral evidence. Unfortunately, the interpreter booked by the Upper Tribunal did not speak the same language as the appellant. Ms Nolan and Mr West agreed to proceed without the appellant giving oral evidence.

4. I heard oral evidence from the sponsor. I found the sponsor to be an entirely credible witness who sought to assist the Tribunal by giving honest and clear answers. I have decided the appeal on the basis that the appellant and sponsor have given truthful accounts.

Findings of Fact

5. Based on the evidence before me, I make the following findings of fact:

(a) The appellant came to the UK in December 2021 as a visitor with the intention to return to India before her visa expired. However, due to her poor health (both mental and physical) she and the sponsor decided that she would apply to remain in the UK in order for the sponsor and his family to be able to continue supporting her. Her application was made while she still had leave.

(b) The appellant has multiple medical problems. These are summarised in the sponsor's most recent witness statement as follows:

> I would like to briefly describing my mother's ailments, she recently had a total knee replacement, which is a major surgery and was expected to be discharged either the same day or the next day, but unusually, it took her 10 days to get discharged from the hospital. From what I understand, her fragile body could not withstand a major surgery and was treated for a few medical issues while she was in the hospital. To complicate things further, her left arm is weak and blood pressure in that arm is significantly less compared to the other arm, she has a confirmed occlusion or stricture of blood vessels close to her heart and the vascular specialists have advised against surgery because of the risk involved. My mother's anxiety and memory decline has become more obvious in the recent years. She has had a CT scan of her brain and is under the care of the Oxford memory clinic. It has caused a great distress for myself and my wife with the ongoing health issues and we are hoping she will come out with a better prognosis.
>
> In January 2024, she all of a sudden deteriorated and became unwell. After my persistent efforts, she underwent further investigations and found to have a large pneumonia and was treated with antibiotics drips and tablets. Had I not been concerned and obtained medical assistance in time, she could have gone into a septic shock.

(c) The sponsor is a consultant working in the NHS who, through his professional role, makes an important contribution to UK society.

(d) The sponsor had not seen the appellant for a lengthy period prior to her arrival in the UK in December 2021 due to the COVID pandemic. However, prior to the pandemic he would visit her two or three times a year.

(e) The sponsor supported the appellant, both financially and emotionally, when she lived in India. This included providing a property in which she lived and helping her (in particular through his contacts) with medical issues. The sponsor has friends from medical school who he is able to contact in respect of the appellant.

(f) The appellant has developed a very close relationship with her three grandchildren (aged 6, 8 and 14) since starting to live with them in December 2021. The oldest child provides her with some practical assistance.

(g) The appellant has a son and grandchildren in India (living in the same region she lived in before coming to the UK). She has a strained relationship with them, due to difficulties with her daughter-in-law, and she did not see her son (and his family) regularly when she lived in India. She was unable to rely on them for practical support.

(h) The appellant does not have other family in India who would be in a position to assist her.

(i) The appellant and his wife both have demanding careers and work most of the week. They seek to arrange their work schedules so that one of them is at the home to support the appellant. However, there are periods (of up to a maximum of eight hours at a time) where the appellant is alone in the house.

(j) Privately funded care support was arranged for the appellant by the sponsor following an operation but otherwise the sponsor has not needed to engage carers and has managed with his family to support the appellant.

(k) In the event that the appellant is required to return to India, the sponsor would support her financially and emotionally. He would visit her regularly, as he did prior to the COVID pandemic. However, he is deeply concerned about the circumstances the appellant will face living alone in India. In particular, he is concerned that any carers he engages would not have adequate qualifications and regulatory supervision and could not be trusted; that his brother would not provide assistance; that his mother would be alone and without someone to call on to provide support: and that she will not have the benefit of his medical expertise in order to identify problems and ensure timely treatment.

Analysis

Very Significant Obstacles to Integration in India

6. The First-tier Tribunal found that the appellant would not face very significant obstacles integrating in India and therefore could not succeed under paragraph 276ADE(1)(vi) of the Immigration Rules. At the error of law hearing, Mr West acknowledged that this finding had not been challenged and could be preserved. The issue is therefore not before me. However, I will nonetheless explain why I am satisfied that the appellant would not face very significant obstacles integrating in India, as this is relevant to the proportionality assessment under Article 8 ECHR.

7. The appellant has lived nearly all of her life in India, where she is familiar with the culture, language and society. She will not face any financial hardship due to the support she will receive from the sponsor. Although the appellant will not have the benefit of the sponsor being physically present, he will be able to support her in accessing medical treatment in India, through his contacts, as well as his own knowledge of how the medical system operates in India. I have no doubt that the appellant will feel distressed at no longer being able to live with the sponsor and his family, and that her quality of life will be substantially

reduced as a consequence; however, this does not mean that she will not be integrated into society in India, in the sense that she will be an insider who understands, and is able to participate in, life in India.

Article 8(1) Engagement of Article 8

8. Ms Nolan accepted that family life is engaged. She was correct to do so. The appellant has a very close relationship with the sponsor (and his family), who support her both financially and emotionally. I have no hesitation in finding that Article 8 is engaged by her family life in the UK.

9. I do not accept that the appellant has a private life (outside of her relationship with her family) in the UK that engages Article 8. There is no evidence of any meaningful involvement or engagement with UK society (apart from attending medical appointments) and her life in the UK appears to be almost entirely centred on her relationship with the sponsor and his family.

Article 8(2) Proportionality

10. This case turns on whether removal of the appellant would be a disproportionate interference with her family life in the UK.

11. In order to evaluate whether removal would be disproportionate, it is necessary to balance the factors weighing for and against the appellant in order to determine whether refusing her leave to remain would result in unjustifiably harsh consequences for her and/or her family in the UK. In conducting this analysis I am required to have regard to the factors set out in Part 5A of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act").

12. Weighing against the appellant is that the maintenance of effective immigration controls is in the public interest: see Section 117B(1) of the 2002 Act. I attach significant weight to this public interest for two reasons. First, the appellant does not meet the requirements of the Immigration Rules and the public interest in effective immigration controls is undermined if people who do not meet the Rules are granted leave despite this. Second, the appellant entered the UK as a visitor and allowing her to remain on the basis that she is dependent on her son circumvents the system of immigration control, which requires individuals seeking to enter the UK as dependent relatives to apply from outside the UK. That said, there are two considerations which mean that I attach less weight to this public interest than might otherwise have been the case. These are that: (a) the appellant entered the UK as a genuine visitor with the intention of abiding by the requirements of a visit visa and it is only because of her poor health that she, with the sponsor, subsequently decided to remain; and (b) she applied for leave whilst still a visitor, and therefore she has not, at any stage, overstayed and been in the UK unlawfully.

13. Sections 117B(2) and (3) of the 2002 Act require consideration to be given to the public interest in individuals speaking English and being financially independent. These factors cannot weigh in the appellant's favour but can weigh against her. The sponsor is in a position to support the appellant, and therefore the public interest in financial independence does not weigh against her. There was no evidence before me that the appellant speaks English. However, I have not treated this factor as weighing against her because the rationale given in section 117B(2) for it being in the public interest for a person to speak English is that they will be less of a burden on the taxpayer and better integrated into society. Given the financial and other support the appellant would receive from

her son and his family in the UK, I do not consider that her lack of English ability will cause any significant impediment and I have decided to attach no weight to this consideration.

14. I now turn to the factors weighing in the appellant's favour.

15. It is in the best interests of her grandchildren that she remains in the UK. This is because they have formed a close relationship with her which will be negatively affected by her living in a different country and being unable to see them regularly. I attach some, but only limited, weight to this consideration in the proportionality assessment. This is because, although it is in the best interests of the grandchildren to be in the same country as the appellant, the appellant's removal will not give rise to a welfare concern as the grandchildren will continue to live with their parents who are their primary carers. Moreover, the grandchildren will not suffer a financial impact and the emotional impact will be relatively limited because of the continued support of both parents.

16. The appellant will have greater challenges in accessing care and medical support in India than she does in the UK. This is because the sponsor, who takes an extremely active role in supporting her, will not be present and therefore will not be able to identify her needs or keep a close watch on anyone who is engaged to provide medical and care services for her. However, the appellant will still be able to access medical treatment, and her son will be able to engage private carers as and when needed. The appellant will be in a considerably worse position in India than she is in the UK, due to the lack of support, but she will still be in a position where she can access medical care and where private care can be brought in to support her. I attach some weight to the reduction in the quality of medical and care support available to the appellant as a consequence of living away from the sponsor.

17. The appellant's family life with her son and his family will be significantly disrupted: instead of seeing him (and her grandchildren) every day, she will only see her son, at most, two or three times a year and her grandchildren, at most, once a year. This will significantly impact the quality of her life and I attach some weight to this consideration.

18. Mr West highlighted the contribution that the sponsor makes to UK society as an NHS Consultant. However, it is not the appellant's case that the sponsor would leave the UK, or cease working in the NHS, if the appellant is not permitted to stay in the UK. As the sponsor's contribution to UK society will remain the same whether or not the appellant is granted leave, I do not attach weight to this as a factor in the Article 8 balance.

19. In my view, the balancing exercise under article 8 ECHR falls firmly in favour of the respondent. Whilst there are significant factors weighing in the appellant's favour, they are outweighed, to a significant degree, by the public interest in the maintenance of effective immigration controls and I am not satisfied that refusing the appellant leave to remain will result in unjustifiably harsh consequences for her, the sponsor, or her grandchildren.

Notice of decision

The appeal is dismissed.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

14.10.2024