Upper Tribunal (Immigration and Asylum Chamber)

Appeal Numbers: HU/05140/2020
HU/05141/2020

THE IMMIGRATION ACTS

Heard at Field House
On the 20 September 2022

Decision & Reasons Promulgated
On the 1 November 2022

Before

UPPER TRIBUNAL JUDGE BLUNDELL
and
DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

REMAL SINGH
JANKI BAI
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Emma Daykin, instructed by Makka Solicitors Ltd
For the Respondent: Tony Melvin, Senior Presenting Officer

DECISION AND REASONS

1. The appellants are Indian nationals, husband and wife, born on 6 May 1942 and 5 June 1961 respectively. On 22 February 2022, we issued our first decision in their appeals. We found that the First-tier Tribunal (Judge O'Rourke) had erred in law in allowing their appeals against the respondent's refusal of their human rights claims. We set aside that decision in its entirety and ordered that the decision on the appeals would be remade in the Upper Tribunal.

2. The appeals were listed to be heard on 24 May 2022. That hearing was adjourned in order for the appellants to secure more evidence. The

appeal was then listed to be heard before Judge Blundell, sitting alone, on 21 July 2022. That hearing proceeded for half an hour or so before it was agreed on all sides that it was not fair to continue. The first appellant had been attempting to give evidence in person but with the assistance of a *remote* Pushtu interpreter. Whilst the appellant and the interpreter both did their level best to ensure that this arrangement worked, it was clear that it did not. The first appellant is hard of hearing and much was lost in the process of remote interpretation. The hearing was adjourned in order to ensure that the first appellant could participate fairly in it, by using an interpreter who was physically present in the hearing room.

3. Ms Daykin quite properly began the hearing before us on 20 September 2022 by asking whether we were to start afresh. We expressed the view that we should do so, not least because neither Judge Saini nor Mr Melvin had been present at the hearing in July. Ms Daykin was content to proceed in that way, and we determined to do so.

Background

4. The appellants are currently 80 and 61 years old. They are Indian nationals but they are of Afghan origin. They left Afghanistan in 1992 as a result of the conflict and instability in that country. They settled in New Delhi.

5. The appellants have three adult children. Their son Sawinder Singh works in Russia. Sawinder's wife Mander and their children currently live in India and the appellants previously lived with them there. The appellants' other son, Bobby Manocha, lives in the United Kingdom and they live with him and his family here. Bobby is a British citizen and is the sponsor to the appellants. The appellants also have a daughter, Manjeet Kaur, in the United Kingdom. Manjeet has Indefinite Leave to Remain. She is also married and has children in the UK.

6. The appellants were granted leave to enter the United Kingdom in 2014. They spent two months here in the summer of that year and returned in August 2014. The first appellant entered again in October 2014 and returned in November 2014. The appellants applied for visit visas once again in 2019. Those applications were granted and they entered the UK on 19 October 2019. They have remained since then.

7. On 28 January 2020 (and therefore before the expiry of their visit visas), the appellants made applications for leave to remain on human rights grounds. Two submissions were made. It was submitted, firstly, that the appellants would experience very significant obstacles to their re-integration to India, such that paragraph 276ADE(1)(vi) of the Immigration Rules applied. It was submitted, secondly, that the appellants had a family life with Bobby and his family and that it would be disproportionate under Article 8 ECHR to remove them.

8. The applications were refused on 27 March 2020. The respondent concluded that the appellants would still have ties to India and that they would be able to re-integrate without significant difficulty. She did not accept that there were any exceptional circumstances which

warranted granting leave to remain outside the Immigration Rules with reference to Article 8 EXCHR.

9. The appellants appealed to the First-tier Tribunal. Their appeals were allowed, despite the judge findings aspects of the evidence unsatisfactory, because he was concerned that they were at enhanced risk of contracting Covid-19 in India. In our first decision, we set that decision aside because the judge had overlooked the fact that the appellant had been vaccinated against the coronavirus whilst in the UK.

10. In preparation for the resumed hearing, the appellants' solicitors had filed and served a supplementary bundle of 109 pages. Ms Daykin had settled an updated skeleton argument. She confirmed at the start of the hearing that she also intended to refer to the initial appeal bundle of 87 pages and the respondent's bundle of 81 pages. Mr Melvin stated that he would be referring to the skeleton argument he had settled on 23 May 2022.

11. We heard oral evidence from both appellants and from the sponsor, Bobby Monacha. The first appellant was examined and cross-examined extensively by Mr Melvin. The second appellant, who was frail and said by the interpreter to be illiterate, was only asked to adopt her statements. The sponsor was examined by Ms Daykin and cross-examined at some length by Mr Melvin. We asked our own questions for clarification as and when necessary. We do not propose to rehearse the oral evidence in this decision. It was digitally recorded and we will refer to it insofar as it is necessary to do so to explain our findings of fact.

Submissions

12. Mr Melvin relied on the refusal letter, the respondent's review and his skeleton argument. He noted that the two reports from an independent social worker had been filed and served after the adjourned hearing. Notwithstanding those reports, he submitted that the evidence did not show that the appellants would encounter very significant obstacles when attempting to re-integrate to India.

13. Mr Melvin took issue with some of the evidence which had been given. It was not accepted, in particular, that the appellants had gifted Sawinder and Mander their house. There was notably no suggestion of that in Sawinder's statement and nothing had been done in an attempt to reclaim the house.

14. Mr Melvin noted that there was no evidence about the availability of care homes in India, nor had there been any attempt to enquire into what might be available. The onus was on the appellants to show that they would not receive adequate care. The respondent did not accept that medication or care was unavailable. The first appellant's concern did not appear to be a lack of care, it was a lack of money.

15. Mr Melvin accepted that Mander and the children would 'at some point' relocate to Russia. He accepted that visas had been issued. The evidence was unclear as to the reasons why they had not yet gone, however, and there was no mention in the papers of a rift between the sponsor and his brother. As matters stood, the appellants would not

experience very significant obstacles on return. They were unable to meet the Immigration Rules.

16. The amount of money the appellants owed the NHS was likely to be significant. The sponsor had stated that he owed £3000 for the treatment they had received but it was not clear whether a further £1400 which had been mentioned was to be added to that sum. It was not credible that the sponsor did not know the state of play in this regard. The appellants were not financially independent and they were unable to speak English. Both matters militated against them in the assessment of proportionality.

17. Mr Melvin acknowledged the medical evidence and the psychiatrist's reports in particular. It was apparent that the psychiatrist had had great difficulty in communicating with the second appellant, however, and that the interpretation had been provided by a member of the family. No further tests had been arranged after the report. The questions asked of the ISW were weighted and gave no consideration to the possibility of care being provided by family or others in India. The case was nothing more than an attempt to circumvent the Adult Dependent Relative provisions of the Immigration Rules.

18. For the appellants, Ms Daykin reminded us that paragraph 276ADE had been replaced by Appendix Private Life but that the test under the Immigration Rules remained the same. In assessing the obstacles which the appellants would face to reintegration, there was no proper reason to find that the evidence was untrue. It had not been suggested to the sponsor or the other witnesses that they were not telling the truth. The burden was on the respondent to prove that the evidence was untruthful and she had failed to discharge that burden.

19. The evidence given by the first appellant was limited to what he knew and it was apparent that he simply had no knowledge of many things which the sponsor dealt with. The second appellant added nothing; due to her frailty, she was only able to stand by what he husband had said.

20. There had been a good deal of evidence about the charges for the appellants' treatment but the import of the evidence was clear; there had been charges for the hospital treatment but not for anything else. These questions came to naught in any event because the appellants had paid the Immigration Health Surcharge, which would be retained in order to pay for treatment in the event that the appellants succeeded in their appeals. In any event, the sponsor had stated that he had arranged a payment plan with the NHS and this would suffice to prevent there being a report of unpaid debt under the suitability provisions of the Immigration Rules. Those Rules placed trust in the NHS to ensure that it – and not the Secretary of State for the Home Department – could take a view on whether debts were being repaid adequately or at all.

21. For the past, Ms Daykin submitted, the sponsor had agreed a payment plan to repay what he owed the NHS for the appellants' treatment. For the future, any access to the NHS would be covered by the Immigration Health Surcharge; that was the purpose of that charge.

The payment of the IHS negated the concern expressed in Akhalu [2013] UKUT 00400 (IAC).

22. Ms Daykin noted that we had been asked to draw an adverse inference from the lack of follow-up treatment after the psychiatrist's report on the second appellant but the problem was not her health, it was her tangential speech. That was in the hands of the GP and investigations were ongoing. Given the various health conditions suffered by both appellants, it was clear that they would be entitled to care in the event that they remained in the UK. It was clear that the second appellant in particular suffered with memories from long ago, and from her time in Afghanistan in particular.

23. As for the provision of care, Ms Daykin submitted that there were cultural factors at play. It was clear that Sawinder and his family had looked after the appellants for some time but the time had come for the sponsor to play his part and he was willing to do so. It was accepted by the respondent that Sawinder's family would move to Russia at some point and the appellants evidently require care every day. There was some evidence in the papers about the availability of private care facilities in India but it was wholly out of the sponsor's reach due to his limited budget. He receives more money in Universal Credit than he earns. There was a clear absence of care in India, whether from family or elsewhere, and the appellants would be in grave difficulty without it.

24. In sum, Ms Daykin submitted, this was a clear case of elderly people encountering very significant obstacles to re-integration to the country of their nationality. In the alternative, it was an equally clear case of the family life enjoyed in this country outweighing the interests of the state in removing the appellants.

25. We reserved our decision at the end of the submissions.

The Immigration Rules

26. We need not consider the transitional arrangements between paragraph 276ADE(1)(vi) and its more recent replacement, as found in paragraph PL 5.1 of the Immigration Rules. Whichever of those provisions we apply, the operative part of the test is the same. An applicant who is over eighteen and has not been in the UK for more than 20 years must satisfy a decision maker that "there would be very significant obstacles to the applicant's integration into the country where they would have to live if required to leave the UK".

27. The Court of Appeal gave guidance on the concept of integration in SSHD v Kamara [2016] EWCA Civ 813; [2016] 4 WLR 152 and subsequently gave additional guidance on the 'very significant obstacles' threshold in Parveen v SSHD [2018] EWCA Civ 932. We do not propose to set out exactly what was said by Sales LJ in the former decision or by Underhill LJ in the latter but we have certainly taken those *dicta* into account in reaching the conclusions which follow.

28. At [8] of her helpful skeleton argument, Ms Daykin quoted from the Secretary of State's Private Life guidance dated 20 June 2022, in which she gives the following description of the test:

> A 'very significant obstacle to integration' means something which would prevent or seriously inhibit the applicant from integrating into the country of return. You are looking for more than the usual obstacles which may arise on relocation (such as the need to learn a new language or obtain employment). They are looking to see whether there are 'very significant' obstacles, which is a high threshold. Very significant obstacles will exist where the applicant demonstrates that they would be unable to establish a private life in the country of return, or where establishing a private life in the country of return would entail very serious hardship for the applicant.

29. The guidance goes on to emphasise the need to consider factors, including mental or physical disabilities, on a cumulative basis.

Analysis

30. The appellants' medical conditions were understandably placed at the forefront of Ms Daykin's submissions. As we have recorded above, it was her submission that they require considerable care as a result of their age and infirmity. The evidence before us clearly shows that to be the case, for the following reasons.

31. The medical records in the original appellants' bundle show that the first appellant has suffered from heart problems, diabetes and associated difficulties since he entered the UK in 2019. The material relating to the second appellant in that bundle shows that she was referred for various investigations as a result of abdominal pain and weight loss in February 2021. Mid sigmoid diverticular disease was diagnosed later that month and investigations continued.

32. The updated material in the supplementary bundle shows that the first appellant suffers from a range of conditions over and above the long-standing ones mentioned above, including urinary tract difficulties. He had a heart attack in 2018.

33. The second appellant suffers from anxiety and severe depression. There is some suggestion of Post Traumatic Stress Disorder and psychosis. She continues to suffer from digestive problems including acid reflux and weight loss. She appeared to be thin and frail when she gave evidence briefly before us.

34. We have read the Independent Social Worker's reports about the appellants. Having reviewed the medical evidence and spoken to the appellants and their son, the ISW (Mr Courtney) concluded that the first appellant required care because he is unable to cook or shop and that he had difficulty with his memory and with managing his regime of diabetes medication. Concerns over incontinence, mobility and washing and dressing were also noted. The ISW opined that the first appellant's level of need was such that he would meet the criteria for local authority care under the Care Act 2014. He thought that he would come to significant harm without proper care.

35. Mr Courtney stated that the second appellant was frail and slight. He noted that even small movements seemed to require great effort. He saw and reviewed the same medical evidence as we have described

above. He expressed concern about the second appellant's mental health (although we note that he is not qualified to do so) and that she required 'full assistance' from her family with all aspects of her personal care, including toileting and washing. She had to be prompted to drink and to eat and continued to experience pain from her digestive conditions. She was unable to manage her own medications. She was 'completely reliant' on her family and Mr Courtney thought that she too met the criteria for care provision from the local authority. He did not think that the appellants would be able to manage on their own.

36. In respect of the second appellant, there is also a psychiatric report from a Consultant Psychiatrist named Dr Amir Bashir, of the London Psychiatric Clinic in Harley Street. Dr Bashir described the range of physical and health problems suffered by the second appellant, including visual and auditory hallucinations, insomnia, and weight loss. He noted that she was vague and imprecise in her speech, which he described as 'tangential'. He did not consider her to have any cognitive defects at a gross level but he did conclude that she suffered from severe depression with psychotic symptoms. He thought that her physical symptoms were likely to be psychogenic. It was very unlikely, he thought, that she would be feigning these problems. He recommended further assessment with the help of a professional interpreter (a member of the family had translated on this occasion.) He did opine, however, that the second appellant would be unable to survive without considerable support.

37. We are conscious of the limitations of these expert reports, including the fact that the ISW arguably trespassed into medical matters and the absence of an official interpreter in either of the consultations. Nevertheless, we consider that the opinions which we have summarised above chime with the other evidence in this case, including the NHS records which we have before us. Although the precise extent of the appellants' inability to survive without support might be in issue, there can be no real doubt that both appellants have reached the stage in their lives at which they are unable to manage without care and support. We accept the submission made at [19] of Ms Daykin's skeleton argument that the appellants 'are at a stage in life where due to age and ill health they need assistance with mobilising, taking medication, personal care, cooking and cleaning and attending medical appointments.' We accept the expert analysis that the appellants would be in serious difficulty if they were without any support at all, and that this situation would expose them to significant risk.

38. We accept that the necessary care has previously been provided by Sawinder's wife Mander and that it has latterly been provided by Bobby and his family. The question which arises under the Immigration Rules is whether the appellants would encounter very significant difficulty to their re-integration to India as a result of their infirmity and their inability to care for themselves. It was not in issue between the parties that it is necessary, when resolving that question, to consider what care and support will be available for the appellants upon return to India. It was not submitted, in other words, that the availability of such support was immaterial and that the appellants' ability to fend for

themselves was the only consideration. Had that submission been made, we would have rejected it. A holistic assessment is required, taking into account not only the difficulties which might be encountered but also the steps which might be taken to ameliorate those difficulties.

39. Ms Daykin submitted that the respondent bore the burden of showing that the evidence we had heard was untruthful. We do not consider that submission to be correct. The appellants bear the burden of showing that they meet the requirements of the Immigration Rules and the standard of proof is the ordinary civil standard. The respondent has not invoked the General Grounds of Refusal in Part 9 of the Immigration Rules, the effect of which would be to place the burden upon her. It is for the appellants to establish that they would encounter very significant obstacles to their reintegration to India and it is for them to establish that their evidence is more likely than not to be true. (Paragraph 19.92 of the current edition of Macdonald's *Immigration Law and Practice* refers).

40. We considered there to be multi-faceted difficulties with the evidence we heard about the circumstances which are said to await the appellants upon return to India.

41. There is a statement in the supplementary bundle from Mander Devi, who states that she has looked after the appellants for twenty years; that she is leaving for Russia; and that she considers it to be the turn of the sponsor and his family in the UK to look after them. Mander concludes her statement by stating that the appellants have her love and respect but that she needs to focus on her own family. The statements made by the sponsor and the appellants adopt a similar tone; Mander has played her part and it is now time for the sponsor to play his. There is no sense of malice or impropriety on anyone's part. The concern of the family was said to be that the appellants would be 'returning to an empty home' in India, as was said in the original letter which accompanied the application for leave to remain

42. In the first appellant's statement before the First-tier Tribunal, however, it was said that the appellants' family home had been transferred to Mander, at her suggestion, before the appellants came to the UK. We note that the judge in the First-tier Tribunal was concerned that this might indicate a lack of intention to return to India but we consider there to be a more fundamental point. This transfer had not been mentioned before the statement was made in the FtT, despite the fact that it pre-dated the appellant's arrival in the United Kingdom. It was a matter of concern to us that it was not mentioned in the detailed letter which was expertly prepared in support of the applications for leave to remain, or in the statements which accompanied that letter, or, for that matter, in the detailed grounds of appeal to the First-tier Tribunal.

43. Mr Melvin cross-examined the first appellant and the sponsor about the claim that ownership of the house had been transferred to Mander. The sponsor suggested that the first appellant had been deceived into transferring the property to Mander. He said that his father is a 'simple man' who had 'believed what he saw in front of him'. He suggested that the injustice could not be resolved without instructing a lawyer. He felt that that would be a difficult step, given the physical distance

involved. This suggestion of impropriety on Mander's part was wholly new. It had not featured in the written evidence or in any of the representations made previously. The earlier account was of the appellants willingly transferring their property to Mander for safekeeping. The later account was that Mander had swindled the appellants out of the family home and that some consideration had been given to the possibility of restoring the house to the appellants, whether by recourse to law or otherwise.

44. When he was cross-examined about this, the first appellant stated that the property had been transferred not to Mander but to his son in Russia. He was asked by Mr Melvin to confirm that it was his son who owns the property now. "It is his house", he responded, thereby contradicting what he had said in his statement about the property being transferred to Mander. We note that his evidence about the current ownership of the house was also at odds with what was said by the sponsor. We do not lose sight of the fact that the first appellant is an elderly and vulnerable gentleman but we do not consider this difficulty to be attributable to his forgetfulness. His answers on this subject were clear and definite and he was absolutely clear that the property was in the name of his son in Moscow.

45. We also note that inconsistent evidence has been given about Mander moving to Moscow. The starting point for our assessment of that inconsistency is necessarily that Mander and the children have been issued with Russian visas. Copies of those visas appear in the papers before us and it was accepted by Mr Melvin that they intended to move to Moscow 'at some point'. We do note, however, that the judge in the First-tier Tribunal was told by the first appellant that Mander had already moved to Moscow at the date of that hearing. There is an attempt in the later statements to attribute this to the first appellant's age and confusion. The medical evidence before us does not support that claim, however. The first appellant stated in his first statement that Mander is 'like a daughter to us' and we do not accept that this was merely a mistake.

46. The evidence was also inconsistent about the reason that Mander has not yet moved to Moscow. The move was said to be imminent when the applications for leave to remain were made in early 2020, hence the suggestion that the appellants would be returning to an 'empty home'. We obviously accept that there would probably have been delays thereafter as a result of the pandemic but the Russian visas were issued in June this year and Mander is still in India. She said in her statement that she was waiting for exit visas to be issued. The oral evidence before us, however, was that Mander was waiting for her eldest daughter to finish school. The imminence which was emphasised at the earliest stages of this case has simply not materialised.

47. We were also not satisfied that the sponsor had given truthful evidence about the extent of his debt to the NHS for the medical treatment received by the appellants. He is a man of modest means, who told us that he earns around £800 per month and receives an additional £1900 per month in Universal Credit. It is clear from the papers before us that bills have in the past been presented to the

sponsor in connection with medical treatment received by his parents. He said that he had set up a payment plan with the NHS in order to repay that debt but he was unable to state the level of the debt. He seemed to accept that it had continued to accrue beyond the initial £3000 or so but he maintained that he had no idea of the current sum, and that he had made no enquiries in that regard. We were unable to accept that the NHS would not have made the sponsor aware of the level of the debt, or that he would not have taken steps to ensure that he was aware of it. We formed the clear view that he was reluctant to disclose the sum lest it prejudiced his parents' prospects of succeeding in this appeal.

48. We were also concerned by the absence of relevant material. As we have mentioned, the sponsor is in receipt of significant Universal Credit. No payments of this (or any other) type of benefit is to be found in the single bank statement which appears in the respondent's bundle. The sponsor confirmed in his oral evidence before us that he has another bank account into which the benefits are paid. That has not been mentioned before and no statements were adduced before us. In a case in which the availability and affordability of care in India is to the fore, that is a surprising omission. We clearly do not have the full picture of the sponsor's financial circumstances. His HSBC account received just under £58,000 in the period 30 December 2019 to 29 January 2020 and it appears to be the case that he has access to rather more than the £800 per month he is said to earn.

49. Equally, we have no information about the financial standing of Sawinder in Russia. Again, given that this appeal concerns the ability of the family to ensure that the appellants receive adequate care in India, that is a surprising omission. It is not clear what Sawinder does in Russia. Evidence was given in the FtT that he was working as a handyman in Russia, occasionally visiting the family in India, before the appellants came to the UK. The translated document at pp108-109 of the supplementary bundle states that Sawinder was appointed Chief Executive Officer of a Limited Liability Company called RITU in May 2009, and that 'the duties of the chief director should be assigned' to him. It is a reasonable inference from these documents that Sawinder is a man of means in a senior position and it is a matter of concern that there is nothing before us about his ability to contribute to the care of his parents in India. It is clearly not the case that he is unwilling to provide evidence. Were that so, we would not have the passport copies, the statement from Mander or Sawinder's appointment letter from RITU.

50. Ms Daykin submitted that matters which were said by Mr Melvin to be of concern had not been put to the first appellant or the sponsor, and that it would be unfair to hold such points against them. We do not accept the premise of that submission. Having re-read the record of the questions asked of the first appellant and the sponsor, it is correct to observe that Mr Melvin did not expressly put to the first appellant or the sponsor that what they were saying was untrue. There could be no doubt, however, that issues of concern were being explored with the first appellant and the sponsor and that they were given a proper opportunity to respond to those concerns. It is the substance rather than the form of such questioning which matters, and we are satisfied

that the appellants had a fair opportunity to put their own case and to respond on all material matters: Wagner (advocates' conduct – fair hearing) [2015] UKUT 655 (IAC) refers, at [11].

51. Drawing these threads together, we do not consider that we have been given a truthful account of what awaits the appellants in India. The accounts have differed over the transfer of the house from the appellants to Sawinder or Mander. The evidence about Mander moving to Moscow has also been inconsistent. Evidence has been withheld from us regarding the sponsor's financial circumstances and those of his brother in Moscow. There has been a conscious decision on the part of the sponsor and the appellants to present their circumstances in India in the worst possible light, and to present those in the UK in the best possible light.

52. It is in those circumstances that we do not accept what we have been told about Mander's willingness to care for the appellants. She is still in New Delhi and she is still in the family home. We do not accept that she is unwilling to care for the appellants in their own home. We accept – as did Mr Melvin – that her intention is to relocate to Russia at some point. She clearly formed that intention after the appellants left India, however, and she will doubtless revisit it in the event that she is required to resume her care of the appellants. However, the evidence we have heard and accept is that Mander, their former caregiver, remains in India for the foreseeable future. Faced with their return, we do not consider it at all likely that she will refuse to care for them in the same way as she did in the preceding years. She might prefer not to do so but that is not the point; what we must consider is the reality of what will happen in the event that the appellants are returned to India at the date of the hearing. The reality, we find, is that they will be able to return to their own home and to be cared for by a woman they know and love, and who has experience of their needs. She has three children, aged 19, 16 and 9 and we do not consider there to be any reason why she would be any less able to care for the appellants than the sponsor.

53. It was not suggested by Ms Daykin that the appellants would be unable to receive the healthcare they require in India. We take judicial notice of the fact that India has an advanced healthcare system; that it produces many of the finest doctors in the world; and that it is responsible for the production of a significant proportion of the world's medication. The appellants have not established that adequate healthcare would be unavailable in India or that they would be unable to afford what was required. As we have already noted, the appellants have presented only a partial picture of the family's finances and they are unable to discharge the burden of showing that healthcare would be out of their financial reach as a result.

54. The appellants therefore fail by some margin to discharge the burden of proving that there will be very significant obstacles to their integration to India. It is a country with which they are obviously familiar and they speak a language spoken there. In our judgment, they will be able to resume the life they lived there before 2019, and that will not entail any significant obstacles. The appellants cannot succeed in their human rights appeal on the basis contemplated at [34]

of TZ (Pakistan) & Anor v SSHD [2018] EWCA Civ 1109; [2018] Imm AR 1301, therefore.

55. It remains to consider whether the appellants' removal would nevertheless amount to a breach of Article 8 ECHR. We accept, as did Mr Melvin, that the appellants currently enjoy a family life with Bobby and his family. We are satisfied, in other words, that the relationship between the appellants and the sponsor which is characterised by 'real, committed or effective support'. The care that is provided by the sponsor and his family suffices to cross that threshold. We are also satisfied that the relationship between the sponsor and the appellants cannot reasonably be expected to continue in that form in India. Mr Melvin did not make that submission and was wise not to do so.

56. The real question, therefore, is whether it is proportionate to interfere with the family life between the appellants and the sponsor. In considering that question, we weigh the pros in favour of the appellants remaining in the UK against the cons of them being removed, in a balance sheet assessment of the kind recommended in Hesham Ali v SSHD [2016] UKSC 60; [2016] 1 WLR 4799 and other cases.

57. In favour of the appellants remaining is the maintenance of their close and supportive relationship with Bobby and his family. We also take account of the appellants' health conditions, which militate to an extent in favour of them remaining in the familiar environment they have become accustomed over the last three years. We take account of the best interests of Bobby's children, although we do not consider that to be a significant consideration, given that the children will remain with their parents, in the same schools, and in the country of their nationality. Like their parents, the children will doubtless be upset by the departure of the appellants but there is no suggestion here that there will be any serious impact on their best interests by that course.

58. We also take particular account of the severity of the consequences of removal for the appellants. In doing so, we focus again on what we consider to be the reality of the situation, which is that the appellants will be able to return to their own home and to receive care from a woman they see as a daughter, who has cared for them for many years. They will be upset and unsettled by returning to India but that will be short-lived, given the obvious adequacy of the care which awaits them in New Delhi.

59. We balance those matters against the points which militate in favour of removal. We attach significance to the appellants' inability to meet the requirements of the Immigration Rules and to the public interest in the maintenance of effective immigration controls. They are unable to establish that they would face very significant obstacles to their reintegration to India. They are unable to secure leave to remain as Adult Dependent Relatives, since entry to that route is only available from abroad, and because the appellants can receive adequate care in India. Those are significant considerations (see [67]-[70] and [78] of Mobeen v SSHD [2021] EWCA Civ 886) and are amply sufficient, in our judgment, to outweigh the limited hardship which will arise in the event of the appellants' removal.

60. We should record that we heard fairly extensive argument as to whether the appellant's past and likely future recourse to the NHS was a matter which should weigh against them in the assessment of proportionality, either with reference to s117B(3) of the Nationality, Immigration and Asylum Act 2002 or with reference to what was said in Akhalu. As presently advised, we consider Ms Daykin to be correct in the impressive submissions she advanced and we decline to attach any weight to that consideration. Given the conclusion we have reached immediately above, we propose to say very little on the point, which will clearly need to be considered in detail on a future occasion.

61. In summary, however, we accept Ms Daykin's submission that the past treatment is immaterial given the sponsor's agreement to pay that debt in instalments and any future recourse is immaterial as a result of the appellants' payment of the Immigration Health Surcharge. We were assisted to reach that conclusion by Ms Daykin's citation of the Immigration (Health Charge) Order 2015 and by the accompanying Explanatory Memorandum. It is clear from paragraphs 7.3 and 7.5 of the Memorandum that the charge is designed to ensure that those who pay it are able to access the NHS in the same way as a permanent resident *and* that it was understood that the charge was intentionally set well below the average per capita cost of treating temporary migrants. We very much doubt, in those circumstances, that what was said in Akhalu (that the cost of NHS treatment speaks cogently in support of the public interest in removal) can be said to apply to those, such as the appellants, who have paid the IHS.

62. Be that as it may, we consider that the matters which uncontroversially weigh in favour of removal, as set out at [59] above, suffice to demonstrate that the removal of the appellants to India is a proportionate course. The appeals are consequently dismissed on Article 8 ECHR grounds.

Notice of Decision

The decision of the FtT having been set aside, we remake the decision on the appeals by dismissing both appeals.

No anonymity direction is made.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 October 2022