Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/00326/2021
& IA/00330/2021

THE IMMIGRATION ACTS

Heard at Field House
And via Teams On 2nd February 2022

Decision & Reasons Promulgated
On 22nd April 2022

Before

UPPER TRIBUNAL JUDGE KEITH

Between

MR AMIN ALIBHAI DINANI (1)
and
MRS NAVILA AMIN DINANI (2)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr A Maqsood, Counsel, instructed by Abbott & Harris Solicitors
For the respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. These are the approved record of the decision and reasons which I gave orally at the end of the hearing on 2nd February 2022.

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2. Both representatives attended the hearing via Teams, while I was present at Field House, which was also open to members of the public. The parties did not object to attending via Teams and I was satisfied that the representatives were able to participate effectively in the hearing.

3. This is an appeal by the appellants against the decision of First-tier Tribunal Judge Hosie (the ‘FtT’) dated 13th July 2021, by which she dismissed the appellant’s appeals against the respondent’s refusals on 14th December 2020 of their applications for leave to remain based on the right to respect for their rights under articles 3 and 8 of the ECHR.

4. In essence, the appellants’ claims involved the following main issue: whether there would be very significant obstacles to integration in India, the appellants’ country of origin. They had entered the UK in 2006, as adults (both in their 30s) with entry clearance on visit visas, valid until 21st of February 2007, but had overstayed. In particular, the second appellant suffered from severe depression, for which the respondent concluded that medical treatment was available in India. Notwithstanding the disapproval of the couple’s relatives as to their marriage, the respondent concluded that they would be able to integrate, and any medical needs did not meet levels of severity so as to engage article 3 ECHR.

The FtT’s decision

5. The FtT analysed various aspects of the appellants’ credibility albeit the essential factual matrix was not in dispute. The FtT did, however, point out at §45 that the marriage contract between the appellants at page [116] Appellant’s Bundle (“AB”) was in fact signed and agreed by both the couple’s fathers, which undermined their claims to have been threatened by family members, as a result of their marriage. However, this was not the sole basis for the FtT’s adverse credibility findings, which also included the first appellant’s evidence lacking consistency (§46) and not supported by GP notes.

6. At §48 of her appeal, the FtT found that the first appellant was generally in good health and of working age and that the second appellant’s depression was said to be mild-to-moderate. The FtT reminded herself of the relevant case law in relation to integration, (§§51 to 55) and concluded that the couple’s support network of friends in the UK would continue to support the appellants upon relocation in India (§57).

7. In relation to the second appellant’s mental health, the FtT analysed this at §§59 to 61 and in particular, what she regarded as the inconsistency between what second appellant told an expert, Dr Sultan, and what she told her GP. At §64, the FtT also noted the limited medical records which further reduced the credibility in relation to the second appellant’s mental health.

8. Following an analysis under R (Razgar) v SSHD [2004] 2 AC 368, and by reference to section 117B of the Nationality, Immigration and Asylum Act 2002, the FtT dismissed the appeal.

The grounds of appeal and grant of permission

9. The appellant lodged grounds of appeal which are fivefold. Ground (1) asserts that the appellants' marriage record was not signed by both fathers. This point was not raised in the refusal letter; nor were the appellants asked about it in oral evidence; nor were submissions made. The FtT had therefore erred in drawing adverse inferences.

10. Ground (2) – while the FtT had noted at §47 that it was for the appellants to prove that they would be destitute on their return to India, the respondent's own summary stated that on 6th August 2020, their claim of destitution in the UK was accepted, which was a relevant factor in assessing evidence of destitution in India. This had not been referred to or considered in the determination.

11. Ground (3) – the FtT had erred in concluding that there were inconsistencies between second appellant's account of her symptoms and Dr Sultan's conclusions. In particular, Dr Sultan had based his report on access to the second appellant's GP records.

12. Ground (4) – the FtT had erred in failing to explain why she regarded the first appellant's oral evidence as evasive, at §46. The FtT had also failed to explain why the appellants' evidence was found to be unsupported by GP notes.

13. Ground (5) – the FtT had failed to make an holistic assessment of cumulative factors.

14. First-tier Tribunal Judge Singer granted permission on 20th October 2021. The grant of permission was not limited in its scope.

The hearing before me

15. In terms of discussion and conclusions, I do not recite in sequential narrative the representatives' submissions but instead will deal with each ground in turn, referring to the submissions as necessary.

Discussion and conclusions

Ground (1)

16. I was urged to consider the marriage document at page [119] AB, which was signed by witnesses. At §29, the FtT had recorded the appellants' claim that one of fathers had died before the couple had married. Mr Maqsood submitted that the FtT's finding that both fathers had signed the wedding record was a material procedural error. The finding was relevant not only to the couple's credibility generally but specifically to the

question of estrangement or worse, adverse interest from members of the couple's families. It was implicit in the finding that there was no such estrangement. The error was that neither of the couple had never been challenged on the marriage certificate. Mr Avery responded that the evidence was tendered before the FtT, and he was entitled to make findings in relation to it.

17. Notwithstanding that the marriage record was adduced by the appellants, I accept Mr Maqsood's submission that where at least part of the assessment of the credibility of both appellants was based upon their marriage contract, and their credibility was key to this appeal, it was incumbent for concerns about the marriage record to have been at least raised at the hearing, for them to have been given the opportunity to comment on it. This was particularly important where it was not raised in the refusal letter and there were no submissions by either representative. While I do not make any findings, I do not accept Mr Avery's submission that the marriage record is unarguably clear on its face about whom the witnesses were. The title next to the signature line (page [119] AB) states: "bridegroom's father/representative if present." I further accept Mr Maqsood's submission that as the FtT's assessment of credibility was based on an holistic assessment of the evidence, the flaw in the assessment of the marriage record played a part in that assessment, so the error is material. The appellant's appeal succeeds on ground (1) on its own.

Ground (2)

18. I turn in relation to ground (2) and what was said about the respondent accepting the appellants' claims of destitution in the UK, as recorded in the respondent's immigration history document. On the one hand, Mr Avery points out that the circumstances of acceptance of destitution in the UK may well not translate to a claim of destitution in India. He posited the example that it may have been accepted in circumstances to allow a fee waiver. While the basis on which the claim of destitution was accepted by the respondent is unclear, as Mr Maqsood points out (and he appeared below), the issue was explicitly raised in his skeleton argument and is not referred to by the FtT.

19. On the one hand, I can see the force of Mr Avery's submission that destitution in the UK may not be directly relevant to destitution in India, but on the other, but I cannot exclude the fact that it may be a relevant factor, where the FtT based his conclusions in part on whether the appellants would continue to enjoy support in India from friends and relatives in the UK, at §57. I accept there will be many cases where particular documents or issues are never raised, and a judge cannot be expected to deal with each and every point. Where, however, an issue has been expressly raised and in the judge's view, it is wholly irrelevant or immaterial, it is incumbent for the judge to explain this. I conclude that the failure to do so is also an error of law.

Ground (3)

20. I turn to ground (3) and the assessment of the medical evidence. Once again, I am conscious that I have not had an opportunity to review the medical evidence in the same detail as the FtT. It is, however, important to note what the FtT said in his decision. As Mr Avery points out, the FtT referred, at a number of points, to the medical report, including at §60, which cross-refers to a diagnosis of moderate depression at page [140]AB. There is a further detailed analysis at §61 with no indication of a significant reduction in life expectancy. The focus of the FtT's concern about the medical evidence is at §62, in his discussion of the report of Dr Sultan, a psychiatrist. The FtT describes the report as follows:

> "62. Dr Sultan… states in his report that his opinion is based on what the second appellant has reported. It is inconsistent with the GP records which state that the first time antidepressant medication was prescribed was 23 July 2017 (page 65 AB) and not 2015 as claimed by the appellants….. Their claim that her mental health deteriorated after each refusal is also not borne out by the GP records. What the second appellant is reported to have told Dr Sultan is different from what she told her GP according to her notes. … To the extent that the appellants have embellished the second appellant's mental health the weight which can be attached to Dr Sultan's report is accordingly reduced. …"

21. Mr Maqsood's challenge lies in two areas. First, the reference to page [65] AB must be an error, as the records on this page of the GP records do not relate to 2017. On review of the GP records with Mr Avery, it is not possible on a review of the notes to ascertain how the FtT reached the conclusion that prescription of relevant medication only started in 2017 (the GP notes are dense).

22. Second, when the FtT compared what he regarded as being in the GP notes with Dr Sultan's report and attached less weight to Dr Sultans report because it was based on what he had been told by the appellants, the latter conclusion was not factually correct. As Mr Maqsood points out, Dr Sultan was very clear in his report, at pages [160] AB:

> "In preparation of this report I had access to her [the second appellant's] GP records. Therefore my report is entirely based on the following:
>
> - Interview with Mrs Dinani on 10th October…..
> - I have also consulted her provided GP record for review.
> - No previous hospital records …were provided for my attention and review"

23. Where, as here, the report is by a consultant psychiatrist who has seen the medical records and based his assessment on both his interview and the records, I conclude that the FtT did err in attaching less weight to Dr Sultan's report based on an incorrect analysis as to what evidence Dr

Sultan had seen in providing his report. The FtT's analysis of the medical evidence is not adequately reasoned or explained. The appellant's appeal also succeeds on ground (3).

Ground (4)

24. In relation to ground (4), Mr Maqsood says that the FtT's conclusion that the first appellant was evasive in his evidence is not anchored to an explanation or reasons. The same criticism is made of the FtT's conclusion at §46 that "Claims were made which were not supported by the GP notes and I find his evidence to lack consistency with the evidence in the round." Mr Avery points to the context of the FtT's reference to the first appellant's evidence in cross-examination, between §§27 and 40 and in particular, a suggestion put to the first appellant that he was being vague.

25. The practical difficulty with Mr Avery's submission is that even when considered in context, how the FtT reached his conclusion remains unclear. Where the FtT referred to vagueness or the first appellant's lack of consistency it was incumbent to refer back to specific examples. I accept Mr Avery's point that the FtT's reasons have to be read as a whole and that at various stages in the cross-examination it was put to the first appellant that elements of his narrative were inconsistent and that he was vague. However, the FtT does not return to these points of cross-examination in reaching his conclusion. The FtT's conclusion at §46 followed the FtT's findings of adverse credibility at §§41 to 45 in relation to the marriage record. That analysis was flawed, as discussed in relation to ground (1). In summary, I conclude that even when read in the round, it is unclear why the FtT reached the conclusions he did. Ground (4) also discloses an error of law.

Ground (5)

26. Without any discourtesy to Mr Maqsood, this ground does not, in my view, add anything more than to say that the FtT had failed to consider the evidence holistically in the round. I conclude that the FtT did carry out a detailed proportionality assessment at §§69 to 75 and attempted to do so holistically. The FtT's errors, as set out in grounds (1) to (4), were in the way he carried out the underlying assessment of the appellants' credibility. These in turn undermined the proportionality assessment, but ground (5) does not disclose any further error.

27. In summary, for the above reasons, I conclude that there were material errors of law such that the First-tier Tribunal's decision is unsafe and cannot stand.

Decision on error of law

28. In my view there are material errors here and I must set the FtT's decision aside.

Disposal

29. With reference to paragraph 7.2 of the Senior President's Practice Statement and the necessary fact-finding, this is clearly a case that has to be remitted to the First-tier Tribunal for a complete rehearing, as the errors in relation to the assessment of credibility ran through the entirety of the findings. Both representatives were agreed on this course of action should I find there to be material errors of law.

30. The remittal shall involve a complete rehearing of the appeal. All aspects of the claims must be addressed.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and I set it aside.

I remit this appeal to the First-tier Tribunal for a complete rehearing.

Directions to the First-tier Tribunal

This appeal is remitted to the First-tier Tribunal for a complete rehearing with no preserved findings of fact.

The remitted appeal shall not be heard by First-tier Tribunal Judge Hosie.

No anonymity direction is made.

Signed J Keith Date: 9th February 2022

Upper Tribunal Judge Keith