



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number: EA/04163/2019 (V)**

**THE IMMIGRATION ACTS**

**Heard at : Field House  
On : 13 April 2021**

**Decision & Reasons Promulgated  
On 15 April 2021**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**INDERJIT SHARMA**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M West, instructed by FR Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This has been a remote hearing to which there has been no objection by the parties. The form of remote hearing was skype for business. A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.

2. The appellant, a national of India born on 12 September 1967, appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse to issue him with a derivative residence card under the Immigration (European Economic Area)

Regulations 2016 (“the EEA Regulations”), as the primary carer of a British citizen.

3. The appellant claims to have entered the UK on 8 July 2003 clandestinely. From 31 October 2008 he made a number of unsuccessful applications for leave to remain on the basis of his family and private life, some of which were based upon his relationship with his wife, Usha Rani, whom he met in March 2009 and married on 17 January 2017. On 22 May 2019 he made an application for a derivative residence card under the EEA Regulations, as the primary carer of his wife, in accordance with the *Zambrano* principles. The appellant relied upon a letter from Jubilee Gardens Medical Centre stating that his wife suffered from chronic depression and needed his help on a daily basis and also relied upon a letter from West London Mental Health Trust.

4. The respondent refused the application on 30 July 2019 on the basis that the appellant had not provided sufficient evidence to show that he was the primary carer of Usha Rani, as he had provided insufficient evidence to show that his wife was unable to meet her own daily care needs and had provided insufficient evidence to show that her care needs could not be met through an alternative source such as another relative, the NHS or the local authority. The requirements of Regulation 16(5) were therefore not met. With regard to Article 8, the respondent noted that the appellant had not sought to regularise his stay through a relevant application.

5. The appellant’s appeal against that decision was heard by First-tier Tribunal Judge Bennett on 4 September 2020. The Secretary of State was unrepresented at the appeal. The judge heard oral evidence from the appellant who stated that his wife, an Indian national at the time, had travelled to South Africa after suffering domestic violence from her former husband in India, and had come to the UK in 2008 as a domestic worker with the family for whom she had worked in South Africa. They had met in 2009 and his wife had subsequently become a British citizen. She suffered from chronic depression and also suffered from leg problems and he was her primary carer. He could not leave her. The appellant’s wife also gave evidence before the judge and she explained about the violence she suffered in India at the hands of her ex-husband. She had two children living in India. She started suffering depression when the appellant’s application was refused and she feared being separated from him. She required his assistance for all her daily needs and could not undertake simple activities without his assistance. There was no-one else who could provide the same level of support for her. The judge also heard oral evidence from two of the appellant’s friends and had before him a statement from the appellant’s wife’s daughter in India, a psychiatric report and GP’s report for his wife referring to her history of attempting suicide and further medical evidence relating to the appellant’s wife’s mental health issues and documents relating to her divorce in India.

6. The judge did not accept the claim that the appellant’s wife had attempted suicide and did not accept that she had given a truthful account to the medical professionals in that regard. He found the appellant and his wife to be unreliable witnesses. Nevertheless, the judge accepted that the appellant’s

wife suffered from depression and anxiety, attributable to concerns about the appellant's immigration status and potential removal, and that she suffered from physical ailments and was therefore a vulnerable adult. He accepted that there was a significant, genuine dependence upon the appellant and that the appellant was properly categorised as his wife's primary carer, but he also believed that there was an element of exaggeration about her condition and dependence upon the appellant and concluded that the dependence was not sufficient to meet the requirements in Regulation 16(5). He dismissed the appeal.

7. Permission to appeal that decision was sought on three grounds, namely: that the judge's decision was arguably unclear, incoherent and incomprehensible; that there was an arguable failure by the judge to apply the guidance for vulnerable adults; and that there was an arguable failure by the judge to provide clear and adequate reasons for his findings on the documentary evidence.

8. The First-tier Tribunal refused to admit the application for permission as it had been made out of time. The grounds were renewed before the Upper Tribunal and it was asserted that the application to the First-tier Tribunal had been made in time.

9. Permission was granted by the Upper Tribunal on 22 January 2021 on the basis that there was a failure to make clear findings on central issues, such as the extent to which the appellant's wife's mental health condition and her dependency upon the appellant was accepted or rejected, which in turn affected the findings on her vulnerability and the appellant's wife's access to alternative care in his absence. I note that the grant of permission did not include any decision on the timeliness of the application to the First-tier Tribunal and accordingly, for the sake of completeness and formality, I accept the explanation given and admit the application.

10. The matter then came before me. Ms Everett conceded that she was unable to defend the judge's decision and she was content for the decision to be set aside and the matter to be remitted to the First-tier Tribunal to be heard afresh by another judge.

11. In light of that helpful concession, and given the merit in the challenges made in the grounds upon which permission was granted, in particular in relation to the judge's unclear findings on the extent of the sponsor's mental health condition and her level of dependency upon the appellant, I set aside Judge Bennett's decision in its entirety. Despite the length of the decision and the detail within the decision, it does not seem to me that any of the findings can be preserved, given the lack of clarity in the judge's reasoning as a whole. The decision will need to be re-made *de novo* by a different judge in the First-tier Tribunal.

## **DECISION**

12. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(a), before any judge aside from Judge Bennett.

Signed: S Kebede  
Upper Tribunal Judge Kebede  
2021

Dated: 13 April