



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/46868/2013

THE IMMIGRATION ACTS

**Heard at Centre City Tower
Birmingham
On 10th April 2015**

**Decision & Reasons
Promulgated
On 20th April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MISS GITA DEVI RANA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr N Smart, (Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge R. Caswell promulgated on 27th January 2014, following a hearing at Bradford on 23rd January 2014 “on the papers”, whereby the judge dismissed the appeal of Miss Gita Devi Rana, who subsequently applied for, and was

granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female national of Nepal who was born on 19th May 1986. She came to the UK as an overseas domestic worker in a private household on 11th March 2013. She had leave to enter until 23rd July 2013. On 12th June 2013, she applied for leave to remain in the UK again and this was refused on 23rd October 2013. A decision to remove her was also made under Section 47 of the IANA 2006.

The Appellant's Claim

3. The Appellant's claim is that she is employed by a British citizen, Mrs Sekhri, as a domestic worker. She has been working for her for the last thirteen years, since she was 16 years old, mainly at the employer's address in India, but also travelling with her when required. Her employer has a number of medical conditions (described as "probable sarcoidosis, latent TB infection, severe vitamin D deficiency, Hashimoto's thyrotoxicosis and dilated cardiomyopathy" in the medical notes), and has "anorexia nervosa with heart failure" by Mrs Sekhri herself. The basis of the claim is that the employer, Mrs Sekhri, needs personal care and help with medication and food preparation which the Appellant, as a fellow Hindu, provides. She cannot move or walk much.

The Judge's Findings

4. The judge considered the evidence before him in what was a hearing on the papers, without the benefit of oral evidence. She concluded that it had not been disputed that the Appellant had already been granted leave to enter for six months. What was being said by the Appellant herself, and by the employer on her behalf, was that she had previously been granted a visa for twelve months, but the judge held that, "even if this were the case, it does not give the Appellant the right to have a similar period of leave on a subsequent application". The fact, moreover, that "she was unable to use the earlier visa is not relevant either". As for the employer having special needs, the judge concluded that,

"Despite a great deal of medical information being before me, it is not consistent, and does not suggest that Mrs Sekhri needs help from the Appellant or anyone else. There seems to be some doubt as to the correct diagnosis of Mrs Sekhri's ailments, and there is some suggestion that she is over anxious and stressed because she has experienced too much medical investigation".

Furthermore, there was no suggestion that she was currently undergoing critical or arduous treatment for any condition. Clearly, therefore, the Appellant had failed to show that there were any exceptional

circumstances, in the event of her being unable to meet with the Immigration Rules, that required her to remain in the UK (paragraph 6).

5. The appeal was dismissed.

Grounds of Application

6. The grounds of application state that the Appellant's employer suffers from sarcoidosis, respiratory infection, heart failure, DVT (deep vein thrombosis) and epilepsy. These matters are all written in typescript. What is also added, however, in handwritten bold letters is that, with respect to "respiratory infection", it is said that this "requires constant supervision". With respect to heart failure, it is said that "oxygen level does not reach brain". With respect to epilepsy, it is said that "therefore somebody should always need to be with her".
7. On 8th April 2014, permission to appeal was granted by the Tribunal.
8. On 30th April 2014, a Rule 24 response was entered by the Respondent Secretary of State, where it was said that the suggestion that the judge had misunderstood the medical evidence was not borne out. The judge did consider the appeal outside the Rules as well and concluded that there was no basis for doing so.

Submissions

9. At the hearing before me, the Appellant was not in attendance, and neither was there anyone else in attendance on her behalf. Mr Smart, appearing on behalf of the Respondent Secretary of State, submitted that whatever it was that was being said by the Appellant in the Grounds of Appeal, to the effect that her employer required constant care and close supervision, was simply not borne out by the medical evidence. The medical evidence was ambiguous. Nowhere did it say that this degree of care was needed of the employer. The judge therefore was not incorrect in the conclusions that she reached. There were two letters now presented. One from the employer and the other from the employee, the Appellant herself. The medical evidence does not come up to the level that is being alleged in the letters. Therefore, the Appellant did not meet the Immigration Rules. Consideration was given to her situation outside the Immigration Rules, and she did not demonstrate anything "exceptional" in this regard either. The decision was sustainable.

No Error of Law

10. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. For the Appellant to be able to succeed, she has to show that the judge's evaluation of the evidence before her was incorrect. The judge makes specific reference to the precise range of illnesses that are being relied upon and had been diagnosed. She is clear that there is some doubt as to exactly what it is

that she is suffering from. She is clear that the employer is likely to have been in a state of over anxiety because of being subjected to increased number of medical procedures. However, there is still no evidence that she is currently under any treatment. Still less, is there evidence that whatever treatment she has requires the degree and level of close attendance by the employee that is being maintained in the Grounds of Appeal.

11. Accordingly, the Appellant fails to discharge the burden of proof that is upon her. The judge's conclusions with respect to Article 8 are equally well-founded in that the Appellant has not been able to demonstrate anything additional that requires the appeal to be allowed under Article 8. There is a public interest in the maintenance of immigration controls and this is directly relevant to a consideration of Article 8 rights.

Notice of Decision

12. There is no material error of law in the original judge's decision. The determination shall stand.
13. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

16th April 2015