



**Upper Tribunal  
(Immigration and Asylum Chamber)  
HU/20860/2018**

**Appeal Numbers:**

**HU/20863/2018**

**HU/20865/2018**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated**

**On 22 August 2019**

**On 10 September 2019**

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**MRS I KAUR (FIRST APPELLANT)  
MR SINGH R (SECOND APPELLANT)  
MS K KAUR (THIRD APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr T Richardson, Counsel, instructed by LP Legal Services  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. This is a challenge by the three Appellants against the decision of First-tier Tribunal Judge Hatton (“the judge”), promulgated on 22 May 2019, in which he dismissed their appeals against the Respondent’s decision of 4 October 2018, which in turn had refused their respective human rights

claims. These claims were based on Article 8 and asserted that the three Appellants, together with Mr J Singh, the husband of the first Appellant and father of the other two, maintained family life in the United Kingdom and that at least in respect of the second and third Appellants, they also enjoyed private lives here. The second Appellant was born on 22 October 1997, and the third on 25 December 1996. Both were adults at the time of the human rights claims.

2. In refusing the claims, the Respondent accepted the familial relationships as between the Appellants themselves and with Mr Singh. The Respondent concluded that there would be no insurmountable obstacles to Mr Singh going to live in India with his wife and two adult children. It was also concluded that there were no exceptional circumstances.

### **The judge's decision**

3. The judge accepted that there was a family life as between the members of the family unit. He accepted that the second and third Appellants also enjoyed private lives in the United Kingdom.
4. In summary, the judge concluded that family life could be maintained if the Appellants were to return to India and notwithstanding the fact that Mr Singh may decide to remain in this country. This conclusion was essentially based on the family unit's history. Whilst they had in the past lived together in India, Mr Singh had chosen to come to the United Kingdom and he eventually obtained indefinite leave to remain here. The Appellants had also resided in this country from an unknown date until 2011, when they returned to India. They then re-entered the United Kingdom lawfully in June of 2015 and had remained here ever since. During the periods of separation, Mr Singh made regular visits to his family and provided financial support. It was the judge's view that the previous arrangements during the periods of separation between the Appellants and Mr Singh could be re-established.
5. The judge considered the situation of the second and third Appellants, concluding that there were no factors that would lead to a breach of Article 8 rights. In respect of the third Appellant, there was an acknowledgement that she suffered from specific cognitive difficulties ("mild to moderate" learning difficulties). The judge noted various aspects of the medical evidence and the high threshold applicable to a claim involving assertions that a removal from the United Kingdom would breach Article 8 due to a lack of appropriate treatment in the country of origin.
6. In referring to the third Appellant's depression, the judge formed the view that she was, at least at the date of the hearing, "happy" and that as a result she had no form of depressive illness.
7. The appeals were duly dismissed.

### **The grounds of appeal and grant of permission**

8. Three grounds of appeal have been put forward: first, that the judge failed to undertake any consideration of Mr Singh's rights; second that the consideration of the Article 8 claims in more general terms is flawed because the judge failed to address the issue of separation adequately or at all; third, that the judge was simply wrong to have concluded that the third Appellant did not suffer from any mental health conditions.
9. Permission to appeal was granted by First-tier Tribunal Judge Bird on 3 July 2019.

### **The hearing**

10. For the Appellants, Mr Richardson relied on the grounds. He emphasised the significance of Mr Singh having to make a choice as to whether he remained in the United Kingdom or went to India with the other family members. Given that Mr Singh was settled in this country, the issue of choice represented a severe interference with his rights and the judge has simply failed to factor this into his overall assessment. The issue of separation, submitted Mr Richardson, was crucial in this case. It remained a material factor notwithstanding the previous periods of separation. It was the case that they had all been together since 2015 and matters had developed since then.
11. In respect of the third Appellant's depression, the judge was clearly wrong to have concluded as he did.
12. Mr Richardson submitted that it was a cumulation of the three errors which rendered the judge's decision materially flawed.
13. Ms Everett submitted that there were no errors, or at least no material errors. She emphasised the brevity of Mr Singh's evidence in respect of his situation and any difficulties that may be caused by him choosing to leave this country. She submitted that the family unit's previous arrangements were properly accounted for by the judge when considering the situation as at the date of hearing. She submitted that whilst there may be an interference with family life, this would not, on the evidence in these cases, be disproportionate.
14. In reply, Mr Richardson essentially emphasised a number of the submissions previously made.

### **Decision on error of law**

15. Cases such as these are always highly fact-specific. In light of this truism and bearing in mind the need to show that any errors are material, I conclude that the judge's decision should not be set aside.
16. It is right that the judge does not make reference to Beoku-Betts [2008] 3 WLR 166, or deal explicitly with Mr Singh's specific circumstances in the United Kingdom. However, it is clearly the case that he was well aware of Mr Singh's status in this country and the family unit's history, which in my

view was a relevant factor that the judge was entitled to take into account of. Mr Singh had chosen to come to the United Kingdom initially and then to remain in this country when the other members of his family had returned to India in 2011. Between that point and when the family came back to the United Kingdom in 2015, he had made regular trips back to India. In addition, having looked at Mr Singh's witness statement, I agree with Ms Everett that it is, to say the least, brief and lacking in detail as regards any specific reasons as to why a choice (albeit quite possibly a difficult one) by him to relocate back to India would even arguably represent a "severe" interference with his own rights, as contended by Mr Richardson.

17. In this regard I also note the fact that in refusing the human rights claims, the Respondent had stated in terms that there were no insurmountable obstacles to the family unit returning to India together. Whilst the judge does not make specific reference to this, it was nonetheless an underlying issue that the Respondent had raised, and it is the case that the simple fact of having settled status in this country did not, in and of itself, represent a factor so strong that it would necessarily be disproportionate for that individual to make a difficult choice to leave together with the other members of his family.
18. Mr Richardson relied on paras. 19-20 of AB (Jamaica) [2008] 1 WLR 1893. It is of course right that the "choice" of a person with settled status in the United Kingdom between leaving with family members or remaining here and being separated from them can be very difficult. Having said that, the Court itself recognised that much, if not all, will depend on the particular facts of the case. Here, the underlying facts included previous separation by choice, regular direct contact through visits, and, on the evidence, very little indeed to indicate precisely why a choice would be particularly hard.
19. In light of the above, there is no error as to ground 1. Even if it could be said that the judge did err by failing to set out an explicit consideration of Mr Singh's rights, in my view this was not material to the outcome, having regard to the discretion under section 12(1)(a) of the Tribunals, Courts and Enforcement Act 2007. In other words, I do not accept that it could have made a material difference to the result, even if taken together with other matters complained of.
20. In respect of the separation point, which in a sense is linked to the first ground of challenge, the judge was, as I have said previously, entitled to take account of the family unit's previous arrangements: there had been a choice in the past as to separation. It was open to the judge to find that family life had been maintained during the periods of separation. This was based on more than financial support because Mr Singh had made regular visits back to see his wife and children. I appreciate Mr Richardson's point that the family unit had then come back together again in this country as of 2015, but, at least on the evidence before the judge, it is very difficult to see what material changes there were in the family unit's

circumstances during the course of the period together such as to render another separation disproportionate.

21. It may well be that another separation would amount to an interference in the family life, but it does not follow that this course of action would be disproportionate. It is well-settled as a matter of law that in relation to spouses, there is no right to choose where a couple resides. There was no evidence before the judge to suggest that Mr Singh could not continue to make the regular visits that he had done in the past. In any event, I come back to the point about the absence of insurmountable obstacles: on the evidence before the judge there was nothing to undermine the Respondent's conclusion that Mr Singh could accompany his family members back to India, thereby avoiding the need for any separation at all.
22. Returning to the third Appellant, it is clear that the judge was wrong to have concluded that she was not suffering from any mental health illness. The evidence showed that she was in remission. That means of course that the underlying condition may return at some stage.
23. In my view this error is not material. There was no evidence before the judge to indicate that relevant treatment for depressive illness was unavailable in India. It is also the case that there was no evidence to suggest that she was not appropriately cared for her when the family were separated, and there was no evidence to suggest that the first Appellant and/or Mr Singh would not be able to provide appropriate care for her following a return to India. In saying this, I do not in any way seek to diminish the third Appellant's condition and the importance of the support she needs.
24. In conclusion, having considered the judge's decision holistically and done the same in respect of the grounds of challenge, I conclude that the core conclusions reached are sustainable, and in respect of any errors identified previously, these were not material such as to require the decision to be set aside.
25. For these reasons the Appellants' appeals to the Upper Tribunal are dismissed.

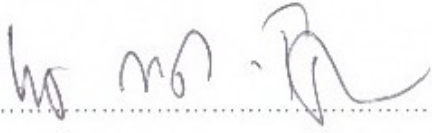
### **Notice of Decision**

**The decision of the First-tier Tribunal does not contain errors of law requiring it to be set aside.**

**The decision of the First-tier Tribunal therefore stands.**

**The Appellants' appeals to the Upper Tribunal are dismissed.**

**No anonymity direction is made.**

A handwritten signature in black ink, appearing to read 'by Mr. Norton-Taylor', written over a horizontal dotted line.

Signed

Date: 3 September 2019

Upper Tribunal Judge Norton-Taylor