

IN THE UPPER TRIBUNAL

R (on the application of Welikumburage) v Secretary of State for the Home Department IJR
[2015] UKUT 00697(IAC)

Field House,

Heard on: 28 October 2015

BEFORE

UPPER TRIBUNAL JUDGE COKER

Between

SURESH RANGANA WIJERATHNE WELIKUMBURAGE

Applicant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Mr B Hawkins, instructed by VMD Solicitors appeared on behalf of the Applicant.

Ms J Smyth, instructed by the G.L.D. appeared on behalf of the Respondent.

EXTEMPORE

JUDGMENT

JUDGE COKER: This is an application by Suresh Rangana Wijerathne Welikumburage challenging a decision of 19 August 2013 which was supplemented by the Secretary of State with a decision dated 23 March 2015. He was refused leave to remain as the spouse of a British citizen, his wife having been in the UK for 31 years but having been born in Sri Lanka.

2. Upper Tribunal Judge Goldstein on 23 February 2015 granted permission on the grounds that there was an arguable failure on the part of the respondent to consider relevant and potentially material factors in assessing whether or not there were insurmountable obstacles given the spouse's history and situation.

3. Mr Welikumbrage arrived in the UK on 2 January 2011 as a Tier 4 student with a visa valid until 5 May 2012. On 2 May 2012 he submitted an application for leave to remain as an unmarried partner which was rejected on 6 September 2012 because of non- submission of biometric data. He was married on 21 June 2012. On 10 October 2012 he requested reconsideration of the original rejection of his application as an unmarried partner. That rejection was maintained because of the non-receipt by the Secretary of State of the biometric data.

4. On 2 July 2013 the applicant made an application for leave to remain as a spouse and that was refused on 19 August 2013 which led to these proceedings. Although a number of grounds were raised the only relevant one before me is, as I have said, the one on which Upper Tribunal Judge Goldstein granted permission, which is the failure to consider relevant and potentially material factors in assessing whether there were insurmountable obstacles.

5. The applicant relies on a very large bundle of documents, which unfortunately did not have the same numbering as Counsel who appeared in front of me. But so far as I know between us we managed to track down which documents were actually being referred to.

6. Mr Hawkins took me in detail to a number of the medical reports, the medical letters and the computerised patient notes. It is clear from this that the applicant's wife suffers from schizophrenia and it appears to have been thought that part of this is contributed to by smoking cannabis. She first sought medical treatment in November 2012 and the assessors at that time observed auditory and visual hallucination, thought insertion, she denied any suicidal or homicidal ideation and that she was disorientated in time and place. She continued to be seen on an almost daily basis for a week and then it reduced to every couple of days and then every three or four days, and then it seems to have reduced to every month and then every couple of months.

7. The letter from Dr Smith dated 17 May 2013 records an outpatient review of 22 May 2013 and gives some of the history of the wife, which appears to include that when she was at Bristol University she began smoking cannabis and continued to do so regularly for about sixteen years. She is recorded in that report as saying that she no longer smokes cannabis. It says that until fairly recently she worked as a publisher for a university but was currently not working. She herself states that she believes her problems began at some point in 2010 following a meditation course.

8. She is recorded as saying that her experiences have faded but have not gone away completely. She still hears a variety of sounds, in particular her meditation tutors' voices. She is recorded as saying that she was back to normal and that she prefers not to take medication but she insisted that she was currently compliant. Dr Smith records that he has some doubts about that since she denied any significant weight gain from appetite increase.

9. In summary, he says that

"This 37 year old lady continues to exhibit symptoms of schizophrenia which she insists are not linked to cannabis use. She has limited insight and fully believes her experiences are real. She accepted my advice to take medication for the foreseeable future but I doubt at this stage that she is actually compliant."

10. He goes on to say that there is a risk of deterioration of her mental state should she use recreational drugs and there is unlikely to be any improvement unless she complies with medication. He says that obviously risk is dynamic and may change. He states that she is reluctant to have involvement with services but has agreed to be reviewed in three months' time. She will continue with her medication and that she is to have some low key contact with her community psychiatric nurse.

11. That report is in essence a summary of the records throughout the period that she was recorded as receiving treatment since her first involvement with mental health services in late 2012. The conditions when she came to the attention of health services have improved but the consistent thread throughout has been her lack of insight, doubt as to whether she is complying with medication and her likely continued use of although, possibly not continuous use of, cannabis.

12. The applicant submits that in the event that he is removed to Sri Lanka then the effect on her treatment would be such as amount to insurmountable obstacles.

13. The submission relies upon the initial seriousness and heavy involvement of mental health services in her treatment and that it is only due to the continued involvement and support both of the applicant

and her mother and the mental health services that she has reached the stage that she is currently at, or at least was at the date that the Secretary of State wrote the letter of 23 March 2015.

14. Also included in that submission is that there is a lack of available facilities for the spouse if she were to go to Sri Lanka, that there is a scarcity of mental health services and that if she were to go the disruption to her care caused by her leaving the UK would be likely to mean that she may have to be admitted to hospital and that there were few hospital spaces available.

15. An additional issue relied upon by the applicant is that he is a full-time carer of his wife and that if he were to be removed to Sri Lanka, finding employment would mean that his wife would be alone and he would no longer be able to care for her on a day-to-day basis or a 24 hour basis and that would itself result in a deterioration of her health which could then result in her having to seek more intensive medical care.

16. There was a submission by Mr Hawkins that although there is no record at all that she posed a risk of self-harm or harm to others, he said that it is possible that because of her bizarre behaviour then she may well come to the adverse attention of people who might cause her harm and he refers to one incident when she had gone to her ex-guru's house on 11 November 2012 which had led to her arrest. It appears no further action was taken in connection with that arrest.

17. He submits that the combination of all of these factors are such that combined with having to leave the UK amounts to insurmountable obstacles such that the applicant should himself not be removed. He submits that there has been inadequate consideration by the Secretary of State as to the effect of the removal on his wife and that for that reason, given all the background information, the application should be granted.

18. The Secretary of State accepts that there is a genuine and subsisting relationship and that the fundamental question to be considered is whether there are insurmountable obstacles which could prevent the relationship with his wife continuing in Sri Lanka. The Secretary of State considers the letter from Dr Smith dated 17 May 2013. The Secretary of State accepts that the applicant's wife suffers from schizophrenia and that it is a serious mental health condition.

20. The Secretary of State also considers the medical documentation provided and states that it has been considered fully in carrying out the exercise of the impact on her. The Secretary of State specifically says that in assessing the extent to which that condition i.e. her schizophrenia, would present an insurmountable obstacle to her joining the applicant in Sri Lanka, the evidence has been examined in the round to assess her presentation and the impact which the condition has upon her daily life. It is not correct for the applicant to submit that the Secretary of State has failed to have adequate regard of the potential impact on the wife if she were to go to Sri Lanka.

21. It is not the case that merely because she suffers from schizophrenia that that amounts to an insurmountable obstacle and Mr Hawkins is not so far as I know submitting that. He is submitting that the consequences of her having suffered from schizophrenia including her bizarre behaviour etc. and the matters that I have mentioned earlier, that those combined would cause such difficulty for her as amount to insurmountable obstacles.

22. The medical evidence before the Secretary of State does not however reach that level of difficulty for the wife. It is plain from that evidence that after some intensive work with her during the initial presentation to the mental health services, during which time incidentally there is no mention in the patient notes of him being present, only her mother being present, that after some intensive work she

reaches a relatively stable position such that she can be treated as an outpatient with three monthly reviews.

23. There is in that last month or so of reviews reference to the presence of the applicant but at no point is there any reference to her requiring full-time 24 hour constant daily care. There is no reference to her receiving any kind of benefits that would in effect pay for such care which presumably, even though the applicant himself would not be entitled to that, the wife's mother would have been entitled. But there is just nothing in the papers that has been provided to the Secretary of State that indicates that full-time daily or hourly care is required.

24. As such there is nothing to indicate that on return to Sri Lanka the applicant would not in fact be able to obtain employment of some sort and there is nothing to indicate that him finding employment would result in her having a serious or significant relapse.

25. Although Mr Hawkins refers to the limited hospital facilities available, at no point has the wife been admitted to hospital. There are references in the patient notes to a threat to admit her to hospital if she does not take her medication but that is as far as it goes, and as a result of that in any event she says that she will comply and it appears that she does comply.

26. On that basis I am satisfied that the Secretary of State has considered the impact on the applicant's wife of his removal to Sri Lanka and that the Secretary of State has taken into account all of the information that was before her on the date when she made not only her initial decision but also the March 2015 decision.

27. It is notable that the March 2015 decision was taken at a time when no further medical evidence updating the letter from Dr Smith had been sent which was 17 May 2013. It was perfectly reasonable for the Secretary of State in reaching her decision to conclude that there had been absolutely no deterioration in her presentation since that date and that therefore she had, by that time, been stable for yet a further twenty or so months.

28. Insofar as the facilities that are available in Sri Lanka, which is in a sense the second limb of the consideration that the Secretary of State has to undertake, although the facilities in Sri Lanka are not as extensive as they are in the UK, and although it does appear that the number of inpatient units are limited, this lady is not a lady who has required inpatient treatment even at the time when she was first diagnosed or first came into contact with medical services. Her treatment has been under control with the support of her mother and husband and that would continue on his return to Sri Lanka.

29. One of the issues that was raised was the extent to which she would obtain employment which would assist the family's status. The Secretary of State does make a comment that the applicant's wife has remained economically active. It does appear from Dr Smith's report that that in fact is not correct and she does appear to be receiving ESA, a benefit which indicates that she has limited capability to work. However, in my view that is not relevant in terms of this decision given that there is, as I have said, nothing to indicate that the applicant is not able to obtain full-time work and there is nothing to indicate that his wife requires 24 hour care.

30. For that reason the application fails and I refuse the application.

31. The applicant to pay the respondent's reasonable costs. In default of agreement costs to be subject to detailed assessment by a Costs Judge.

32. The applicant sought permission to appeal to the Court of Appeal on the grounds that as a British Citizen, the applicant's spouse was entitled to receive free medical treatment through the NHS and if she were to travel to Sri Lanka with the applicant she would be deprived of that right. Permission had not been sought on this ground and nor had it been raised during the course of proceedings before me. The case before me had been argued solely on the core issue of there being insurmountable obstacles to the family life between the applicant and his wife continuing if he were to be removed to Sri Lanka. Permission to appeal on that ground was not sought. Permission to appeal to the Court of Appeal is refused. ~~~~0~~~~