

RŌPŪ TAKE MANENE, TAKE WHAKAMARU
AOTEAROA

Appellant: SHEIKH, Kamrunnisa Abdul
Latif

Before: S Benson (Member)

Representative for the Appellant: N Dhillon

Date of Decision: 23 July 2021

DEPORTATION (NON-RESIDENT) DECISION

[1] This is a humanitarian appeal by the appellant, a 59-year-old citizen of India, against her liability for deportation which arose when she became unlawfully in New Zealand.

THE ISSUE

[2] The primary issue on the appeal is whether the appellant's connections to New Zealand through her son, daughter-in-law and two grandchildren, the effects of the COVID-19 pandemic in India and her perceived prospects in India are exceptional humanitarian circumstances.

[3] For the reasons which follow, the Tribunal finds that the appellant does not have exceptional humanitarian circumstances and that the appeal must be dismissed accordingly. However, the appellant is granted a visitor visa for three months to get her affairs in order, that is, to make arrangements to leave New Zealand.

BACKGROUND

[4] The appellant is from a city near to Mumbai, India. Her husband died in

October 2012. She has a daughter, born in 1982, who is married and lives in India. In November 2013, her son (born in 1980) came to live in New Zealand with his partner and their children (ages 12 and 7). In 2015, the son and his family were granted residence in New Zealand and, in May 2021, they became citizens of New Zealand. The son and his partner are employed full-time.

[5] On 3 August 2015, the appellant was granted a parent and grandparent multiple entry visitor visa, which enabled her to visit her son, daughter-in-law and grandchildren in New Zealand for up to six months at a time for a maximum of 18 months within a period of three years. Pursuant to this visa, she visited New Zealand from August 2015 to February 2016 (178 days), August 2016 to February 2017 (178 days) and August 2017 to January 2018 (160 days).

[6] In September 2018, the appellant was granted a further parent and grandparent visitor visa, which remained valid to 25 April 2021. She was in New Zealand from October 2018 to April 2019 and then returned in October 2019 and has remained here since then.

Unlawfully in New Zealand

[7] Following the expiry of her visa on 25 April 2021, the appellant has been unlawfully in New Zealand and is liable for deportation. On 30 April 2021, the appellant brought an appeal against deportation on humanitarian grounds under section 154(2) of the Act.

STATUTORY GROUNDS

[8] The grounds for determining a humanitarian appeal are set out in section 207 of the Immigration Act 2009 (the Act):

- (1) The Tribunal must allow an appeal against liability for deportation on humanitarian grounds only where it is satisfied that –
 - (a) there are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the appellant to be deported from New Zealand; and
 - (b) it would not in all the circumstances be contrary to the public interest to allow the appellant to remain in New Zealand.

[9] The Supreme Court stated that three ingredients had to be established in the first limb of section 47(3) of the former Immigration Act 1987, the almost identical predecessor to section 207(1): (i) exceptional circumstances; (ii) of a

humanitarian nature; (iii) that would make it unjust or unduly harsh for the person to be removed from New Zealand. The circumstances “must be well outside the normal run of circumstances” and while they do not need to be unique or very rare, they do have to be “truly an exception rather than the rule”, *Ye v Minister of Immigration* [2009] NZSC 76, [2010] 1 NZLR 104 at [34].

[10] To determine whether it would be unjust or unduly harsh for an appellant to be deported from New Zealand, the Supreme Court in *Ye* stated that an appellant must show a level of harshness more than a “generic concern” and “beyond the level of harshness that must be regarded as acceptable in order to preserve the integrity of New Zealand’s immigration system” (at [35]).

THE APPELLANT’S CASE

[11] The appellant’s case is set out in the appeal form lodged with the Tribunal on 30 April 2021.

[12] The appellant’s representative submits, in summary, that the appellant has exceptional circumstances of a humanitarian nature, as follows:

- (a) While living in New Zealand, she has developed a close bond with her grandchildren and has taught them about family values and their Indian culture and traditions. Her care of the grandchildren has enabled her son and daughter-in-law to work full-time.
- (b) It would be difficult for the appellant to return to India: she has no family there; she sold her house to pay her son’s debts in New Zealand; she would therefore have to share rented accommodation, which would be “extremely difficult” for her as an “elderly woman”; she would be dependent on her son for financial support; she is vulnerable to the COVID-19 pandemic in India; and, in India, she would suffer from discrimination, as a Muslim.
- (c) She is “generally healthy”, with no “active health threats” and is a person of good character, with no convictions.
- (d) Her son is willing to support her in New Zealand and can pay for health insurance so that she is not a burden on the health system.

[13] In addition to documents already held on Immigration New Zealand's files, the representative provides the following documents in support of the appeal:

- (a) A statement from the appellant (13 May 2021) that she has no family support in India and is dependent on her son for financial support; she is deeply attached to her grandchildren; she has diabetes, which is controlled by medication and exercise; she is vulnerable to COVID-19 in India; she fears that the Indian government will make her stateless and put her in a detention camp because she is a Muslim; and her son will struggle financially to support his household in New Zealand and her in India.
- (b) A statement from the appellant's son (13 May 2021) that the appellant has no family support in India and depends on him financially; in 2019, she sold her home in India to help him pay his business debts in New Zealand and she now has nowhere to live in India; she is a Muslim targeted by the discriminatory Citizenship Amendment Act 2019; she would be vulnerable to the COVID-19 pandemic in India, but safe in New Zealand; she is healthy (except for diabetes which is controlled by medication) and is not a burden to the New Zealand health system; and that, if she remains in New Zealand, she could contribute to his family as a role model, caring for the grandchildren (including teaching language and traditions to them) and enabling him and his partner to work full-time.
- (c) A statement from the appellant's daughter-in-law (13 May 2021) that she is employed full-time at a supermarket; and that the appellant cares for the grandchildren and teaches them about their Indian culture, values and traditions.
- (d) Handwritten statements from the grandchildren (13 May 2021).
- (e) A statement from a friend (9 May 2021) that the appellant is a person of good character.
- (f) The appellant's birth certificate, stating that she was born in Mumbai, India.
- (g) A statement from a doctor (10 May 2021) that the appellant is a "known diabetic", who is receiving treatment for her condition.

- (h) Evidence of funds sent by the appellant's son to her in India.
- (i) Evidence of the appellant's flights between India and New Zealand.
- (j) An agreement for the appellant to sell land in India to a third party (27 September 2019) for R1.9m.
- (k) A certificate of the appellant's husband's death.
- (l) Certificates of citizenship of New Zealand for the son, daughter-in-law and grandchildren.
- (m) Evidence of the employment of the son and daughter-in-law.
- (n) Copies of an agreement for the son and daughter-in-law to buy a residential property in Auckland for \$585,000 (August 2018) and a certificate of title recording them as the registered proprietors of the property.
- (o) Articles relating to the Citizenship Amendment Act 2019 in India: T Hussain "How is it Human?": India's Largest Detention Centre Almost Ready" *Al Jazeera* (2 January 2020); M Ali "Another US City Passes Resolution Against India's Citizenship Law" *Al Jazeera* (12 February 2020); "25 People Were Killed During Anti-CAA Protests: Here Are Their Names" *India Today* (25 December 2019); P Churvis "Artists Who Painted at Delhi's Shaheen Bagh Join Protest Near Mumbai" *NDTV* (2 February 2020); "Revolution Through Art at Mumbai Bagh and Mumbra Bagh Protests" *Sabrang India* (4 February 2020); A Jha "Why is India's Right Wing Defaming the Women Protestors of Shaheen Bagh" *The Diplomat* (23 January 2020); P K Datta "Shaheen Bagh: A New Kind of 'Satyagraha' with a Fresh Grammar of Protest" *Business Standard* (16 January 2020); "Indian-Australians Hold Protest Against CAA and NRC" *Counter Currents* (29 December 2019); R Hashmi "CAA: UN Sec Gen Censures India, shows Concern for Indian Muslims" *The Siasat Daily* (19 February 2020); "'May Create Largest Statelessness Crisis', Says Draft Resolution on CAA in EU" *Hindustan Times* (26 January 2020); R Khan "UK: Labour MPs Discuss Concerns Against CAA and NRC, May Table Motion" *The Wire* (21 January 2020); "Oxford Against CAA, NRC and NPR!" *Daily Info* (26 January 2020); S Shahid "An Ugly Islamophobia Has Surfaced in New Zealand,

From India” *The Spinoff* (23 February 2020); P Changoiwala “India’s Muslims Are Terrified of Being Deported” *Foreign Policy* (21 February 2020); “Know the Difference Between NRC and CAA Bill” *The Economic Times* (26 December 2019); “Understanding NRC: What it is and if it can be Implemented Across the Country” *The Economic Times* (23 December 2019); and R Tripathi “Citizenship Amendment Act 2019: What it Holds for India” *The Economic Times* (23 December 2019).

- (p) Articles concerning COVID-19, such as: G Rao “COVID-19 Crisis in India: Record Number of Cases and Deaths – But Are Mass Gatherings to Blame for COVID-19 Surge?” *Sky News* (29 April 2021); V Pandey and S Nazmi “COVID-19 in India: Why Second Coronavirus Wave is Devastating” *BBC News* (21 April 2021); V Pandey and S Nazmi “India COVID-19: Deadly Second Wave Spreads From Cities to Small Towns” *BBC News* (29 April 2021); T Nandurdikar “The Guilt of Living Safely in NZ as COVID-19 Ravages India” *Stuff* (23 April 2021); A Ghosal and K Pathi “COVID-19: Why India is Shattering Global Infection Records” *Stuff* (23 April 2021); D Pierson “COVID-19: Funeral Pyres Burn, Gravediggers Toil as India’s Nightmare Only Worsens” *Stuff* (29 April 2021); “Mumbai in Lockdown as India Reports Record 200,000 Cases of COVID-19 in One Day” *Radio New Zealand* (15 April 2021); “New ‘Very High Risk’ Category for Countries With High COVID-19 Numbers” *Radio New Zealand* (23 April 2021); “India Sees World’s Highest-Ever Daily COVID-19 cases” *Radio New Zealand* (23 April 2021); R Morelle “Why India’s COVID Crisis Matters to the Whole World” *Radio New Zealand* (28 April 2021); R Smith “COVID-19 Coronavirus: India’s Crematoriums Burning Bodies ‘Day and Night’ as COVID-19 Death Toll Rises Again” *New Zealand Herald* (22 April 2021); D Cheng “COVID-10 Coronavirus: Govt to Move to Risk-Based Approach for Handling Flights From COVID-ravaged Countries” *New Zealand Herald* (23 April 2021); A Blair COVID-19 Coronavirus: Indian Government Criticised for Praising Political Rallies Midway Through COVID-19 Second Wave” *New Zealand Herald* (29 April 2021); “Maharashtra Govt Fears Spike in ‘Active Cases’ of COVID-19” *Business Standard* (21 April 2021); “India Records World’s Highest Daily COVID-19 Case Numbers Since Pandemic Began” *Newshub* (22 April 2021);

“Fresh COVID-19 Restrictions Come Into Force in Maharashtra” *The Times of India* (22 April 2021); and J Young, M Suri and S Gupta “As Bodies Pile Up, India’s Leaders Face Rising Public Anger Over Second COVID-19 Wave” *CNN* (23 April 2021).

- (q) The South Asia Collective *South Asia State of Minorities Report 2020* (7 December 2020).

ASSESSMENT

[14] The Tribunal has considered all the submissions and documents provided by the appellant. It has also considered the appellant’s Immigration New Zealand file in relation to the appellant’s son’s application for residence.

Whether there are Exceptional Circumstances of a Humanitarian Nature

[15] The High Court has held that there is a stringent statutory test of “exceptional circumstances of a humanitarian nature”, which cannot be equated with “compassionate factors” or circumstances that are more than simply “routine”, or “genuinely concerning circumstances” in the context of deportation. The High Court has also noted “the high threshold for a finding of exceptional circumstances of a humanitarian nature”: *Minister of Immigration v Jooste* [2014] NZHC 2882, [2015] 2 NZLR 765 at [45].

The appellant’s settlement in New Zealand and best interests of New Zealand-citizen grandchildren

[16] Since October 2015, the appellant has lived in New Zealand for four periods of about six months each and then for about 21 months since October 2019. She has lived with her son, daughter-in-law and two grandchildren (aged 12 and 7) and wishes to live here permanently so she can support her son and daughter-in-law in their full-time employment and by providing care for her grandchildren, including teaching them about values and their Indian culture and traditions.

[17] Under Article 3.1 of the 1989 *Convention on the Rights of the Child*, in all actions concerning children, the best interests of the child shall be a primary consideration – see also *Puli’uvea v Removal Review Authority* (1996) 14 FRNZ 322 (CA). The High Court has stated that the best interests of the child are neither paramount nor the primary consideration, but they are to be given important and

genuine assessment – see *O'Brien v Immigration and Protection Tribunal* [2012] NZHC 2599 at [32].

[18] The Tribunal accepts that the appellant's deportation from New Zealand will affect her grandchildren. They are likely to feel sorrow at her leaving and concern for her in India. However, they have parents who appear to be capable of providing for their day-to-day needs and to support them with managing their concerns for the appellant. They attend school where they are likely to have friends. The Tribunal acknowledges that the grandchildren are likely to miss the appellant, but their best interests do not require that the appellant is granted residence.

The appellant's health

[19] The Tribunal notes from Immigration New Zealand's file that, notwithstanding her diagnosis as a diabetic, the appellant was of an acceptable standard of health for the purposes of a visitor visa. The appellant's representative states that the appellant's son is willing to financially support the appellant and to take out health insurance for her. However, in terms of the statutory test, the appellant's acceptable standard of health for the purposes of temporary entry to New Zealand and her son's willingness to meet her expenses, are not exceptional circumstances of a humanitarian nature. Such features are not uncommon in the circumstances of many temporary migrants, where family members provide support to one another in settling in a new country.

The appellant's prospects on return to India

[20] The appellant states that, if she returns to India, she has no accommodation to return to because, in 2019, she sold her property to help her son with his debts in New Zealand. However, for several years, the appellant's son has financially supported her, while she has not held employment. It therefore seems likely that he could continue to provide financial support to her if she returned to India. The son and daughter-in-law are both employed full-time. They jointly own a house in Auckland with a mortgage and the son is described by the appellant's representative as living there "comfortably". While the appellant has helped them with care of their children, they are unlikely to face any significant increase in their overall expenses due to her absence, for example, by having to pay substantial amounts for after-school or holiday care for the children.

[21] The Tribunal also notes that the appellant has lived in India for most of her life. Her daughter, two siblings and many extended family members live in India and may be able to offer some emotional support and a social setting into which the appellant could return and re-integrate. They could also advise her on appropriate accommodation arrangements.

The COVID-19 pandemic in India

[22] The appellant's representative submits that, as at 30 April 2021, there are exceptional circumstances of a humanitarian nature arising from the COVID-19 pandemic in India. It is submitted that the appellant, as a 59-year-old, is at risk if she returns to India because she is in the "most vulnerable group" affected by the pandemic, the pandemic has been poorly managed by the government and the health system is overburdened. The appellant and her family fear for her safety if she returns to India.

[23] In support, the appellant has provided a large number of articles from various news organisations, mostly from late April 2021, which concern a surge in COVID-19 cases in India, extreme pressures on the Indian health system, the likely under-reporting of COVID-19 in the Indian government's official statistics and border restrictions imposed by the New Zealand government in respect of certain countries, including India.

[24] The Tribunal acknowledges that the appellant has diabetes. It appears that persons with certain underlying health conditions, such as diabetes, have a higher risk of developing severe outcomes from COVID-19. The appellant will therefore be concerned at the risk of an adverse outcome if she contracts COVID-19. The United States Centre for Disease Control "Underlying Medical Conditions Associated with High Risk for Severe COVID-19: Information for Healthcare Providers" (13 May 2021) reports, in respect of the United States of America, that there is a 20 per cent increase in the risk of in-hospital mortality for persons with diabetes, but also observes that COVID-19 poses the greatest risk to elderly persons:

Age is the strongest risk factor for severe COVID-19 outcomes. Approximately 54.1 million people aged 65 years or older reside in the United States; this age group accounts for more than 80% of U.S. COVID-19 related deaths. Residents of long-term care facilities make up less than 1% of the U.S. population but account for more than 35% of all COVID-19 deaths. Additionally, adults of any age with certain underlying medical conditions are at increased risk for severe illness from COVID-19. [footnotes omitted]

[25] As a broad international perspective, the abstract for a meta-analysis, published in December 2020 in the *European Journal of Epidemiology* (AT Levin et al “Assessing the Age Specificity of Infection Fatality Rates for COVID-19: Systematic Review, Meta-Analysis, and Public Policy Implications” (2020) 35(12) *European Journal of Epidemiology* 1123), identifies the following groups and associated risks:

The systematic review encompassed 113 studies, of which 27 studies (covering 34 geographical locations) satisfied the inclusion criteria and were included in the meta-analysis. ... Our analysis finds [an] exponential relationship between age and [infection fatality rate] for COVID-19. The estimated age-specific [infection fatality rate] is very low for children and younger adults (e.g., 0.002% at age 10 and 0.01% at age 25) but increases progressively to 0.4% at age 55, 1.4% at age 65, 4.6% at age 75, and 15% at age 85. Moreover, our results indicate that about 90% of the variation in population [infection fatality rate] across geographical locations reflects differences in the age composition of the population and the extent to which relatively vulnerable age groups were exposed to the virus. These results indicate that COVID-19 is hazardous not only for the elderly but also for middle-aged adults, for whom the infection fatality rate is two orders of magnitude greater than the annualized risk of a fatal automobile accident and far more dangerous than seasonal influenza.

[26] According to these sources, the appellant’s risk of fatality from COVID-19, if infected with the virus, might be slightly elevated above a range of 0.4 and 1.4 per cent. The Tribunal acknowledges that these studies are based on the experience of first-world countries, with generally good health systems. The appellant’s risk of fatality in India is arguably higher or, at least, different given a lower life expectancy and the health systems there. The Tribunal also acknowledges that there is no doubt considerable suffering for many persons who are infected with, but survive, COVID-19. However, in a general sense, the appellant’s risk of fatality or other adverse outcomes, if infected, while concerning for the appellant, is small, more so now because there are highly effective vaccinations.

[27] The Tribunal notes that the appellant’s address in India was in Thane, a city and district near to Mumbai. It appears that Mumbai (which has a population of over 20 million people) has suffered considerably from the COVID-19 pandemic where, as at 29 June 2021, there were 721,516 reported cases, 14,976 active cases and 15,426 deaths (Wikipedia *COVID-19 pandemic in Maharashtra*) from an estimated metropolitan population of over 20m. The number of daily COVID-19 cases in India rose sharply in April 2021 to a peak of 414,433 on 6 May 2021 (shortly before the decision of the Tribunal in Singh [2021] NZIPT 505217 on 24 May 2021). However, since then, there has been a sharp fall in daily cases with, for example, 40,215 daily cases on 13 July 2021 (Worldometer *Coronavirus Update (Live)* at www.worldometers.info). The appellant is naturally concerned

that she would be entering a country where there is such community transmission – unlike in New Zealand. However, as the Tribunal will be ordering the grant of a visitor visa, for three months, for the purpose of her getting her affairs in order, she will have sufficient time to make arrangements for her safe travel into India and living arrangements there.

[28] The Tribunal acknowledges that doubt has been cast on the official COVID-19 statistics from India – see, for example, R Smith “COVID-19 Coronavirus: India’s Crematoriums Burning Bodies ‘Day and Night’ as COVID-19 Death Toll Rises Again” *New Zealand Herald* (22 April 2021). Further, India’s health system struggled to cope with the surge of cases, with widespread reports of shortages of hospital beds and oxygen for patients – see, for example, “Mumbai in Lockdown as India Reports Record 200,000 Cases of COVID-19 in One Day” *Radio New Zealand* (15 April 2021).

[29] As at 14 July 2021, India has the second highest number of cases of any country (30,986,803) and the third highest number of deaths (412,019) (*Worldometer Coronavirus Update (Live)* at www.worldometers.info). However, India also has the second highest population in the world (approximately 1.39 billion people) and, as at 14 July 2021, despite the recent surge of cases in April 2021, ranks as the 111th highest country in the world for cases per million (22,229, slightly below the world average 24,261) and 107th for deaths per million (296, also below the world average 522.6) (*Worldometer Coronavirus Update (Live)* — *Tot Cases/1M Pop, Deaths/1M Pop* at www.worldometers.info).

[30] The Tribunal acknowledges the appellant’s concern that she has a much higher risk of contracting COVID-19 in India than in New Zealand and an elevated risk of adverse outcomes from COVID-19 because of her age and diabetes. However, in context, effective vaccines are now available and the recent surge of cases in India has abated. The risks to the appellant at this time are small, even given her age and health. Further, she will have time to make personal and living arrangements upon her arrival to help mitigate any risks.

Citizenship Amendment Act 2019

[31] The appellant submits that, as a Muslim, she is at risk of discrimination in India because of the enactment of the Citizenship Amendment Act 2019. It appears that the Act concerns undocumented foreigners in India – see “Citizenship Amendment Bill: India’s New ‘Anti-Muslim’ Law Explained” *BBC News* (11 December 2019), commenting on the Bill before it was enacted:

The [Citizenship Amendment Bill] amends the 64-year-old Indian Citizenship law, which currently prohibits illegal migrants from becoming Indian citizens.

It defines illegal immigrants as foreigners who enter India without a valid passport or travel documents, or stay beyond the permitted time. Illegal immigrants can be deported or jailed.

The new bill also amends a provision which says a person must have lived in India or worked for the federal government for at least 11 years before they can apply for citizenship.

[32] The article explains that the Act provides for citizenship of India for certain undocumented foreigners from certain religions, but not for Muslims:

Now there will be an exception for members of six religious minority communities - Hindu, Sikh, Buddhist, Jain, Parsi and Christian – if they can prove that they are from Pakistan, Afghanistan or Bangladesh. They will only have to live or work in India for six years to be eligible for citizenship by naturalisation, the process by which a non-citizen acquires the citizenship or nationality of that country.

...

Delhi-based lawyer Gautam Bhatia says that by dividing alleged migrants into Muslims and non-Muslims, the bill "explicitly and blatantly seeks to enshrine religious discrimination into law, contrary to our long-standing, secular constitutional ethos".

...

Critics say that if it is genuinely aimed at protecting minorities, the bill should have included Muslim religious minorities who have faced persecution in their own countries – Ahmadis in Pakistan and Rohingyas in Myanmar, for example.

[33] However, the Act would not apply to the appellant, who is not an undocumented or illegal immigrant, but is a citizen of India with an Indian birth certificate and passport.

Conclusion on exceptional circumstances of a humanitarian nature

[34] The Tribunal acknowledges the appellant has a family connection to New Zealand through her son, daughter-in-law and grandchildren, now all citizens of New Zealand. She wishes to live in New Zealand so that she can care for her grandchildren and to support her son and daughter-in-law. The appellant's ability to do so will be significantly reduced, if her appeal is dismissed and she is not entitled to remain in New Zealand.

[35] However, the appellant's contact with her family in New Zealand has been interrupted by long periods of time in India. Her separation from her family in New Zealand is a common and foreseeable consequence where an adult child migrates to this country. The appellant has provided care for her grandchildren in New Zealand, but there is nothing to say that the best interests of those children

requires the grant of residence to her. It is not uncommon for a parent, as she gets older, to wish to join her family here. Further, if the appellant returns to India, it is likely that she could maintain her relationship with her family in New Zealand by social media, email and Skype and, in time, visits to New Zealand or India.

[36] The appellant states that she has no home in India because she sold her home to pay her son's debts in New Zealand. However, it appears likely that she can be supported by financial assistance from her son, as he has done for many years, including since she sold her home in 2019. The appellant has lived almost all her life in India, including after the death of her husband in 2012, and is therefore very familiar with the way of life there. She may also be able to obtain some support from her daughter, two siblings and other family in India.

[37] It appears that the appellant has an elevated risk of adverse outcomes from COVID-19 because of her age and diabetes. However, in context, the recent surge of cases in India has abated and the risk to her of becoming infected with coronavirus has diminished significantly because of the availability of effective vaccines. The chance of an adverse outcome for the appellant from COVID-19 at this time is therefore small, even given her age and underlying health condition.

[38] The Tribunal is not persuaded that the appellant will be materially affected by the Citizenship Amendment Act 2019. As an Indian citizen, with a birth certificate and passport from India, she is unlikely to be deemed to be an illegal immigrant.

[39] Assessing all of the circumstances, on a cumulative basis, the Tribunal is not satisfied for the reasons stated above that the appellant has met the high threshold required for exceptional circumstances of a humanitarian nature.

DETERMINATION

[40] The Tribunal finds that the appellant does not have exceptional circumstances of a humanitarian nature in terms of the statutory test.

[41] An appeal must fail if there are no exceptional circumstances of a humanitarian nature. The Tribunal's finding that there are none in this case makes it unnecessary to consider either the "unjust or unduly harsh" or "public interest" stages of the inquiry under the statutory test.

[42] The appellant has failed to meet the requirements of section 207(1) of the Act and her appeal is declined.

Discretion to Delay Deportation or Grant a Temporary Visa

[43] On dismissal of an appeal, the Tribunal has a discretion to delay deportation (section 216(1)(a) of the Act) or to order the grant of a temporary visa to the appellant (section 216(1)(b)) if the Tribunal considers it necessary to enable the appellant to remain in New Zealand for the purposes of getting his or her affairs in order. There is no further right of appeal if a visa is granted (section 216(2)).

[44] An order for an appellant to remain in New Zealand under section 216 must be necessary, not just desirable, for “getting his or her affairs in order”. In *Chief Executive of MBIE v Singh* [2018] NZHC 272, [2018] NZAR 434 at [20], the High Court found that the phrase meant:

[O]rganising those personal, legal or financial matters that, by reason of personal need or obligation (legal or moral) must be attended to so that deportation will not leave the individual concerned, or those associated with him or her, disadvantaged.

[45] This is a fact-specific question, which depends on the circumstances of each appellant. For example, the judge stated in *Singh*, at [19]:

A person who has been living in New Zealand for many years may have complex needs in terms of ordering his or her affairs, including the sale of a house, the winding up of a business or making new arrangements for family members.

[46] An example of getting affairs in order, cited in *Singh* (at [22]), is the time required to make arrangements to leave New Zealand (*AI (Cameroon)* [2016] NZIPT 502361). The situation in the appellant’s home state in India, and with recent lockdowns, is uncertain. It appears that the appellant may require time to make arrangements to leave New Zealand, particularly for her arrival in India, including for her immediate accommodation and other basic household needs. Further, a delay will allow her to make enquiries about vaccination against coronavirus.

[47] Although the appeal is declined, pursuant to section 216(1)(b) of the Act, the Tribunal therefore orders that the appellant be granted a visitor visa for three months, commencing on the date of this decision.

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