



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

Appeal Number: IA/27601/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 23rd January 2015**

**Decision & Reasons
Promulgated
On 3rd February 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MS PRIYA RAMJI BHANDERI
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Turner, Counsel

For the Respondent: Mr S Kandola, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of the Seychelles born on 6th June 1985. The Appellant entered the United Kingdom on 18th July 2004 with a valid student visa and it is not contested that since that date she has remained lawfully in the United Kingdom. The Appellant was last granted leave to remain in the United Kingdom as a Tier 1 (Entrepreneur) Migrant prior to expiry of her PSW visa and she was granted leave to remain in the United Kingdom on 1st April 2014 which was to remain valid until 1st April 2017. The Appellant has established a marketing and management consultancy

business. On 13th June 2014 the Appellant travelled to the Seychelles for a holiday. She returned to the United Kingdom on 2nd July and was interviewed on arrival and it is contended that she admitted to having worked full-time purportedly in breach of her visa although I understand that the interview record has never been disclosed to the Appellant's solicitors. The Appellant found herself served and faced with removal directions due to be implemented on 18th July 2014.

2. The Appellant appealed, it being submitted that the Secretary of State's decision to refuse her leave to enter was unlawful on the basis firstly that she met all the requirements for a grant of leave to remain under the Immigration Rules and secondly that her removal would breach her protected rights under Article 8 of the European Convention of Human Rights.
3. The appeal came before Judge of the First-tier Tribunal Ferguson sitting at Birmingham on 19th September 2014. In a determination promulgated on 8th October 2014 the Appellant's appeal was dismissed.
4. The Appellant appealed on 30th October 2014 to the Upper Tribunal. On 22nd December 2014 Upper Tribunal Judge Deans granted permission to appeal. Judge Deans noted that the application for permission to appeal contended that the judge was wrong to dismiss the appeal under the long residence provisions in paragraph 276B of the Immigration Rules because the Appellant's case fell under the general Grounds of Refusal. Her leave was curtailed under paragraph 321A because of a change of circumstances and this did not fall within the Respondent's guidance on general Grounds of Refusal. It was further submitted that Article 8 was not properly considered. Judge Deans noted that there did not appear to have been any finding made of deception on the part of the Appellant although the judge had stated that the evidence suggested that the Appellant knew she should no longer be in employment. He concluded that in the absence of a specific finding of deception it was arguable that the general Grounds of Refusal did not apply.
5. On 2nd January 2015 the Secretary of State responded to the Grounds of Appeal under Rule 24. Those grounds contended that the judge had made a clearly explained finding at paragraph 15 regarding the Appellant's refusal under paragraph 321A and that it was clear that the judge believed the Appellant would have been aware of the conditions of her leave and knew that she should not be in paid employment. Further, the Secretary of State submitted that the judge's Article 8 assessments were adequate and that the judge had observed in paragraph 19 that there were no particulars given in the written Article 8 grounds and that the Appellant had not attempted to show that she could succeed under Appendix FM or paragraph 276ADE and that therefore it would be necessary for the Appellant to demonstrate arguably good grounds for consideration outside the Rules.

6. It is on that basis that the appeal comes before me for consideration as to whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by Mr Paul Turner of Counsel. Mr Turner is familiar with this matter, being the author of the Grounds of Appeal to the Upper Tribunal. The Secretary of State appears by her Home Office Presenting Officer Mr Kandola.

Submissions/Discussions

7. I am very gratefully assisted in this matter by a series of concessions made by Mr Kandola on behalf of the Secretary of State, all of which constitute material errors of law. The issues are set out hereinafter but they are all conceded by the Secretary of State and acknowledged by Mr Turner. Mr Turner points out that it is important to note (and to be noted by any further First-tier Tribunal Judge on rehearing) that the Immigration Officer did not find the Appellant dishonest, just that there had been a change of circumstances relating to her employment. He also submits that no adverse findings should be made against the Appellant pursuant to Section 117B of the Nationality, Immigration and Asylum Act 2002 which came into force on 28th July 2014. He points out that the Appellant meets the maintenance requirements of the statute, that she speaks perfect English and that she has always abided by the terms of her visa despite the concerns raised by the Immigration Officer on her detention on re-entry from holiday in the Seychelles. He agrees that the correct approach is to remit the matter back to the First-tier Tribunal for rehearing.

The Law

8. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial consideration, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
9. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of

evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Material Error of Law

10. Having heard the submissions I am satisfied that there are material errors of law in the decision of the First-tier Tribunal for all the reasons set out in the questions posed and raised hereinafter. I address it in this manner on the basis that those questions and answers are ones that the advocates will concentrate their minds upon when the matter comes back before the First-tier Tribunal and it is best to recite them as points to be considered on the rehearing rather than to recite them both within the submissions and the findings.

Facts and Questions to be Considered Going Forward

11. (1) Did the Appellant's leave continue after it had been cancelled by the Immigration Officer on her return from holiday in the Seychelles?
 - (2) Did the Appellant have lawful leave in the United Kingdom for in excess of ten years applying Section 3C to her case by way of the fact that it is accepted that she had been in the UK for nine years, eleven months and two weeks without the 3C period being included.
 - (3) Is a breach of condition under paragraph 320 a bar to the Appellant succeeding under paragraph 276B of the Immigration Rules?
 - (4) To what extent, if any, bearing in the mind the finding that there is a material error of law in the judge's application of paragraph 321A of the Immigration Rules, can the Secretary of State rely on paragraph 321A bearing in mind that the general Grounds for Refusal that the Immigration Rules refer to are to be found and contained within paragraph 320 of the Immigration Rules?
 - (5) Is a breach of the condition of that nature/finding of deception a public interest bar to the Appellant succeeding under the ten year Rule?
12. I emphasised to the parties that whilst I was not determining this issue and that that was a matter for further consideration by a freshly constituted court in the First-tier Tribunal, my initial thoughts were that a positive direction should be given with regard to including the time within the 3C period but that it would remain to be argued before the First-tier Tribunal as to whether that could properly be included. Further, it occurred to me that by the time this matter is reheard the Appellant will without doubt or argument have met the requirements of the Immigration Rules albeit that I acknowledge that the only way in which she could currently reapply would be to withdraw the appeal and make a fresh application which bearing in mind her current immigration status and the position regarding the current appeal might constitute difficulties. What however does need to be considered is firstly a properly made decision under the Immigration Rules

and in the alternative a properly made and reasoned decision under Article 8.

Notice of Decision and Directions

The decision of the First-tier Tribunal contains material errors of law and is set aside. None of the findings of fact are to stand albeit that concessions can be made by either party. The matter is to be reheard at Taylor House on 3rd July 2015 with an ELH of two hours. No interpreter is required. Leave is given to either party to file at the Tribunal and to exchange up-to-date evidence upon which they seek to rely including skeleton arguments and authorities at least seven days pre-hearing.

The First-tier Tribunal did not make an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. No application is made to vary that order and none is made.

Signed

Date **23rd January 2015**

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT **FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date **23rd January 2015**

Deputy Upper Tribunal Judge D N Harris