



IAC-FH-AR-V1

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

Appeal Number: IA/47004/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 4<sup>th</sup> December 2015**

**Decision & Reasons Promulgated  
On 5<sup>th</sup> January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ZUCKER**

**Between**

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

Appellant

**and**

**MARIE ELODIE ARIELLE LEGRAS (NEE COTTE)  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Miss A Everett, Senior Home Office Presenting Officer  
For the Respondent: Miss V Mania, Raj Law Solicitors

**DECISION AND REASONS**

1. Ms Legras is a citizen of Mauritius whose date of birth is recorded as 27<sup>th</sup> March 1991. She came to the United Kingdom on 31<sup>st</sup> March 2005 using her own passport. She came as visitor though she was then just 14 years of age. She came with her parents. She was dependent on her mother's subsequent unsuccessful application for leave to remain in the United Kingdom. These applications were made in 2005 and again in 2006.
2. In December 2011 Ms Legras made application for leave to remain on the basis of family life. That was refused. On 24<sup>th</sup> March 2012 Ms Legras

married. Application was made on the basis of that marriage eventually resulting in the decision of 12<sup>th</sup> November 2014 giving rise to a right of appeal. In the refusal the Secretary of State made reference to Appendix FM, paragraph 276ADE, and the wider application of Article 8 ECHR but concluded that the applicant, as she then was, was not entitled to the status which was being sought. She appealed. On 22<sup>nd</sup> May 2015 the matter came before Judge of the First-tier Tribunal levins sitting at Taylor House. He allowed the appeal under paragraph EX1 of Appendix FM and under Article 8 without specifically making reference to paragraph 276ADE.

3. Not content with that decision, by Notice dated 10<sup>th</sup> June 2015 the Secretary of State made application for permission to appeal to the Upper Tribunal and on 3<sup>rd</sup> September 2015, First-tier Tribunal Judge Simpson granted permission.
4. The grounds make reference to the exceptions to Appendix FM, notably EX.1(b) whilst ground 2 challenges the finding of the judge in allowing the appeal outside the Rules.
5. At the commencement of proceedings before me there was some discussion about whether in fact, although not specifically raised in the grounds, the judge had erred in purporting to allow the appeal under the exception to Appendix FM when given the guidance in the case of **Sabir (Appendix FM - EX.1 not freestanding) [2014] UKUT 63**, the Exception is not freestanding and the suitability requirements had not been met.
6. By consent the Secretary of State amended the grounds specifically to make reference to that point and quite properly Miss Mania accepted that there was an error on the part of the judge although she did not accept that such error was material.
7. There are difficulties in following the way in which the judge has approached this appeal because he was right to have regard to Appendix FM; the Secretary of State had done so. It was also right to have regard to 276ADE and clearly looking at paragraphs 6 and 7 the judge aware that the matter was before him. What he then seems to have done, looking at paragraph 30 of the notice of decision, was to have allowed the appeal on human rights grounds under Article 8 without regard to 276ADE save what follows. It is perfectly clear, and Miss Everett accepts this, that when one reads the decision as a whole, the judge has made sufficient findings so that whether the error is said to be immaterial or whether I remake it on the basis of a material error of law with regard to those findings, the decision of the First-tier Tribunal is to be maintained.
8. Paragraph 276ADE(vi) provides for the situation in which an applicant is 18 years or above, has lived continuously in the United Kingdom for less than 20 years (discounting any period of imprisonment), but there would be very significant obstacles to the applicant's integration into the country to

which [she] would have to go if required to leave the United Kingdom. Quite apart from the judge clearly placing significant weight on the fact that Ms Legras was minor when she first came to the United Kingdom and therefore innocent insofar as she was an overstayer he has made findings. He says at paragraph 24, although appearing to consider EX.1 this:

“... the Appellant’s own lack of continuing ties to Mauritius, and the fact that she found herself an overstayer through no fault of her own in my judgment do amount to insurmountable obstacles to family life with the Appellant’s partner continuing outside the United Kingdom.”

9. Whilst he is referring to insurmountable obstacles they also speak to the significant obstacles to the applicant’s integration.
10. The judge also had regard to the fact that her parents had already managed to obtain some status although she had not.
11. The issue of materiality also arises because if, as I find, it was open to the judge to allow the appeal pursuant to 276ADE with sufficient findings having been made, then the wider application of Article 8 necessarily would lead to a finding that the Appellant in the First-tier Tribunal was also entitled to succeed because considerable weight would have to be given to the fact that she met the Immigration Rule. It seems to me that what weighed with the judge was a material consideration and one to which he was entitled to have regard, namely that people simply cannot be expected to put their lives on hold and this Appellant in the First-tier Tribunal, young as she was, innocent of the failures to comply with the Immigration Rules, could not be expected to simply sit back and wait to see what happened to her.
12. In all the circumstances I find that the findings of the judge were open to him and essentially this is a case which turned on the findings of fact. In those circumstances, although there are errors of law they are not material and the appeal of the Secretary of State is dismissed.
13. I should say that Miss Everett very fairly accepted that the grounds did not in fact address 276ADE which left her in some difficulty in advancing the Respondent's case. Had the grounds been drafted differently it may be that she could have put different points to me. As it was, her hands were rather tied but she was right to make that observation and that concession.

### **Notice of Decision**

14. The appeal to the Upper Tribunal is dismissed.
15. No anonymity direction is made.

**Signed**

**Date**

**Deputy Upper Tribunal Judge Zucker**