



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

**Appeal Number: HU/06747/2016**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14 March 2018**

**Decision & Reasons Promulgated  
On 20 March 2018**

**Before**

**UPPER TRIBUNAL JUDGE FINCH**

**Between**

**MUSHIRAH SUMAIYAH ELAHEE-DOOMUN**

**Appellant**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Mr. S. Karim of counsel, instructed by SG Law  
For the Respondent: Mr. N. Bramble, Home Office Presenting Officer

**DECISION AND REASONS**

**BACKGROUND TO THE APPEAL**

1. The Appellant, who was born on 9 October 1994, is a national of Mauritius. She arrived in the United Kingdom on 17 December 2005 at the age of 11. On 14 December 2015 she applied for leave to remain in the United Kingdom under paragraph 276ADE(vi) of the Immigration Rules and also made a human rights claim outside the Immigration Rules.

2. Her application was refused on 5 March 2016 and she appealed against this decision. First-tier Tribunal Judge Lawrence dismissed her appeal in a decision, promulgated on 21 June 2017.
3. The Appellant appealed on 7 July 2017 and First-tier Tribunal Judge Alis granted her permission to appeal on 19 December 2017 on the basis of her final ground of appeal.

### **ERROR OF LAW HEARING**

4. Both the Home Office Presenting Officer and counsel for the Respondent made oral submissions and I have referred to the content of these submissions, where relevant, in my decision below.

### **ERROR OF LAW DECISION**

5. Paragraph 276ADE(iv) of the Immigration Rules states that leave will be granted if an individual:

“is aged 18 years or above and under 25 and has spent at least half of his life in the UK...”.

6. However, the opening sentence of this paragraph makes it clear that this requirement must be met at the date of the application as opposed to any appeal hearing and at the date of the hearing the Applicant had not been in the United Kingdom for the necessary ten years and seven months.
7. The First-tier Tribunal Judge also gave detailed and cogent consideration as to whether there were very significant obstacles to her resuming a family and private life in Mauritius and, therefore, was entitled to leave under paragraph 276ADE(vi) of the Immigration Rules. When doing so the Judge relied on the wide definition adopted by the Court of Appeal in *Secretary of State for the Home Department v Kamara* [2016] EWCA Civ 813. First-tier Tribunal Judge Alis did not grant permission to appeal in relation to any entitlement on the part of the Appellant to leave under the Immigration Rules.
8. The Appellant based her application for leave to remain outside the Immigration Rules on the family life which she enjoys with her brother, who had been granted limited leave to remain

in the United Kingdom under paragraph 276ADE(v) of the Immigration Rules. She also asserted that he relied on her to fill in forms for his business but the First-tier Tribunal Judge found that there was not a sufficient situation of dependency to give rise to a family life for the purposes of Article 8(1) of the ECHR. This finding has not been challenged by the Appellant.

9. However, the First-tier Tribunal Judge also had to consider whether there were any compelling circumstances which also gave rise to a right to remain following *SS (Congo) and others v Secretary of State for the Home Department* [2015] EWCA Civ 387. I have assumed that in paragraph 19 of the decision the First-tier Tribunal Judge was referred to the Appellant's private life rights, as in the previous paragraph the Judge had found that no family life rights arose.
10. The First-tier Tribunal Judge did not go on to review what private life the Appellant may have developed in the United Kingdom or whether this may give rise to compelling circumstances which justified a grant of leave. Furthermore, as submitted by counsel for the Appellant she did not consider the fact that at the date of the hearing the Appellant had been in the United Kingdom for more than half of her life and was between 18 and 25 and that the Immigration Rules indicated that these factors potentially attracted the protection of Article 8 of the European Convention on Human Rights. This was a matter which was capable of amounting to compelling circumstances.
11. Furthermore, in paragraph 19 of his decision, First-tier Tribunal Judge Lawrence failed to apply appropriate case law when considering whether there were compelling circumstances in the Appellant's case. In paragraph 58 of *Rhuppiah v Secretary of State for the Home Department* [2016] EWCA Civ 803, Lord Justice Sales held that:

"Reading section 117A(2)(a) in conjunction with section 117B(5) produces this: "In considering the public interest question, the court or tribunal must have regard to the consideration that little weight should be given to a private life established by a person at a time when the person's immigration status is precarious". That is a normative statement which is less definitive than those given by the other sub-sections in section 117B and section 117C. Although a court or tribunal should have regard to the consideration that little weight should be given to private life established in such circumstances, it is possible without violence to the

language to say that such generalised normative guidance may be overridden in an exceptional case by particularly strong features of the private life in question, where it is not appropriate in Article 8 terms to attach only little weight to private life. That is to say, for a case falling within section 117B(5) little weight should be given to private life established in the circumstances specified, but that approach may be overridden where the private life in question has a special and compelling character. Such an interpretation is also necessary to prevent section 117B(5) being applied in a manner which would produce results in some cases which would be incompatible with Article 8, i.e. is necessary to give proper effect to Parliament's intention in Part 5A”.

12. In addition, in *Treebhawon and others [NIAA 2002 Part 5A – compelling circumstances test]* [2017] UKUT 00013 (IAC) the Upper Tribunal held that:

“(1) Where the case of a foreign national who is not an offender does not satisfy the requirements of the Article 8 ECHR regime of the Immigration Rules, the test to be applied is that of compelling circumstances.

(2) The Parliamentary intention underlying Part 5A of NIAA 2002 is to give proper effect to Article 8 ECHR. Thus a private life developed or established during periods of unlawful or precarious residence might conceivably qualify to be accorded more than little weight”

13. As a consequence, I find that First-tier Tribunal Judge Lawrence did err in law in relation to his findings as to whether there were compelling circumstances relating to the Appellant’s private life, which justified a grant of leave outside the Immigration Rules. As he did not address this issue in any detail, it is appropriate for the issue to be re-visited.

## **DECISION**

- (1) The Appellant’s appeal is allowed.
- (2) The appeal is remitted to a First-tier Tribunal Judge, other than First-tier Tribunal Judge Lawrence, for a *de novo* hearing.

# Nadine Finch

Signed

Date 14 March 2018

Upper Tribunal Judge Finch