



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

Appeal Number: HU/13141/2018  
HU/13145/2018

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 4<sup>th</sup> April 2019**

**Decision & Reasons  
Promulgated  
On 2<sup>nd</sup> May 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MS AMEERAH [A] (FIRST APPELLANT)  
MR IMRAN [B] (SECOND APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellant: Ms S Sharma, Counsel

For the Respondent: Ms A Holmes, Home Office Presenting Officer

**DECISION AND REASONS**

1. The first Appellant is a citizen of Mauritius born on 15<sup>th</sup> September 1981 and the second Appellant a citizen of Uganda born on 23<sup>rd</sup> March 1983. They made application for leave to remain in the UK on the basis of their private life. That was refused on 30<sup>th</sup> May 2018. The Appellants appealed and the appeal came before Judge of the First-tier Tribunal Sweet sitting at

Hatton Cross on 23<sup>rd</sup> January 2019. In a decision and reasons promulgated on the same day the Appellant's appeal was allowed.

2. On 22<sup>nd</sup> February 2019 the Secretary of State lodged Grounds of Appeal to the Upper Tribunal. Those grounds contended firstly that there had been a failure to provide reasons or any adequate reasons for findings on material matters and secondly that there had been a material misdirection of law on a material matter.
3. On 27<sup>th</sup> February 2019 Judge Boyes granted permission to appeal. The grounds asserted that the judge had erred by failing to give sufficient reasons and had wrongly reached the conclusion that there were very significant obstacles and that it was arguable the judge's reasoning was deficient in terms of why matters had been accepted.
4. It is on that basis that the appeal comes before me to determine whether or not there are material errors of law in the decision of the First-tier Tribunal Judge. I note that this is an appeal by the Secretary of State but for the sake of continuity throughout the appeal process Ms [A] and Mr [B] are referred to herein as the Appellants and the Secretary of State as the Respondent. The Appellants appear by their instructed Counsel, Ms Sharma. Ms Sharma is familiar with this matter having appeared before the First-tier Tribunal. The Secretary of State appears by her Home Office Presenting Officer, Ms Holmes.

### **Submissions/Discussion**

5. Ms Holmes relies on the Grounds of Appeal submitting that the judge has failed to give adequate reasons. For example, she indicates that the judge accepts the evidence that the first Appellant would be able to find employment in Mauritius but that her earnings there would be so low that it would not be sufficient to support her family and also accepted the evidence that whilst she could return to Mauritius on her own she would have to work for four years before she could apply for the second Appellant and her two young children to join her there. It is Ms Holmes' contention on behalf of the Secretary of State that the judge has not given reasons as to why she accepts the evidence. Ms Holmes seeks to challenge the lack of documentary evidence and that there is in her submission no evidence provided to show on what basis the judge made his decision. Ms Sharma advises that she was Counsel before the First-tier Tribunal and that there was reference therein to country guidance, a societal discussion and evidence on the Appellant's own pay scale in Mauritius. I did point out at this stage to Counsel that whether or not that was the case it was not for Counsel to give evidence and if she is to be called as a witness she should do so and alternative Counsel should have been instructed.
6. In acknowledging this criticism Ms Sharma went on to state that it was clear that the judge had taken account of all relevant matters that were before her and reminded me that the first Appellant is Ugandan by birth

but that he has not lived in Uganda for nineteen years and that it is not possible for him to return there. She further submits that the second Appellant who is Mauritian has never been to Uganda. She contends that there was evidence available in the public domain and that the judge took this into account in particular with regard to the discrimination that her children would suffer due to their mixed heritage. She refers me to the judge's decision and to the evidence given at the first hearing with regard to the position in which the children would find themselves.

7. It is her submission that the judge was entitled in such circumstances to find that there were insurmountable obstacles to return and that the submissions made by the Secretary of State amount to little more than disagreement.

### **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 considerations, 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 Error of Law**

10. The thrust of the Grounds of Appeal are that the judge has made findings without reasoning and that the judge has merely accepted the first Appellant's evidence that her family would face widespread racial discrimination on return to Mauritius that would prevent them from integrating.
11. This is a decision which sets out the facts and the evidence quite clearly. The Appellant gave evidence with regard to her ability to relocate to

Mauritius and what her earnings would be including child care costs. She gave evidence as to family members in Mauritius but of their failure to talk to her and evidence that she could not relocate to Uganda as her husband had no-one there and that she had never visited there.

12. The Appellant was cross-examined and that evidence is set out in some detail at paragraphs 11 to 16. The second Appellant also gave evidence and his evidence is set out including cross-examination at paragraphs 17 to 19. It is based on this evidence and subsequent submissions which are recited at paragraphs 22 to 26 that the judge made detailed findings of fact at paragraphs 29 through to 31. Those were findings which based on the evidence and submissions made that I am satisfied the judge was entitled to make. Albeit that contentions are made to the contrary she has given reasons for her findings. The Appellant had given evidence as to what her earnings would be in Mauritius and it is open to the judge to accept that oral testimony. Whilst it may be preferable so far as possible for oral testimony to be backed up by written evidence that is not always practical. It does not mean that a judge must reject that testimony. Similarly, so far as the findings made by the judge as to how long the Appellant would have to work in Mauritius before she could apply for the second Appellant and two young children to join her is also a finding that the judge was entitled to make.
13. In such circumstances I am satisfied that the findings made by the judge were ones that were open to her and that her findings are reason based. In those circumstances the challenges made by the Secretary of State amount to no more than disagreement. I therefore conclude that the judge was entitled to reach the decision that she did and she has given reasoned findings in doing so. The decision consequently discloses no material error of law and the Secretary of State's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

### **Notice of Decision**

The decision of the First-tier Tribunal Judge discloses no material error of law. The appeal of the Secretary of State is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed

Date 29th April 2019

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 29th April 2019

Deputy Upper Tribunal Judge D N Harris