



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13725/2017

THE IMMIGRATION ACTS

Heard at Birmingham
On 10th January 2019

Decision & Reasons Promulgated
On 7th February 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

MRS I C C
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms D Revill, Counsel, instructed by Peer and Co
(Birmingham)

For the respondent: Mr. D. Mills, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a national of Malawi, born in January 1965. She came to the United Kingdom in April 2004 as a visitor. In October 2004 she sought leave to remain as a student which was granted, valid until 30 November 2005. Thereafter she obtained a succession of further leaves, the last of which expired on 13

January 2014. All the further applications were made in time. After her last leave expired she overstayed.

2. In August 2014 she made an application based upon article 8 rights which was refused with no right of appeal. She continued to remain. On the 17th November 2016 she made a similar application which also was refused on 11 May 2017.
3. On 14 June 2017 she made a claim for protection. The basis of her claim was that she would be at risk of domestic violence from her former husband if returned to Malawi. She said the relationship began in 1987 and then they separated 10 years later. During that time she claimed he had been violent towards her. She said that in 2002 they were reconciled but the problems resurfaced. She claimed that in 2004 he deliberately crashed their car, intending to injure her
4. Her claim was dismissed on 8 December 2017. The respondent accepted that the claim potentially engaged the Refugee Convention. Based on country information, female victims of domestic violence in Malawi could be considered as forming a particular social group. However, the appellant's account of suffering violence at the hands of her husband was not accepted. Her delay in claiming was raised as an indication of her lack of credibility.
5. Even if the claim were true the respondent took the view that there was sufficiency of protection for her in her home country and, if necessary, she could relocate to avoid her former husband.
6. The respondent had regard to her article 8 rights. She claimed to be married and in a relationship with a British citizen, Mr John R, from 2012 to 2015. They were now estranged. The respondent did not accept the relationship as genuine and subsisting.
7. The appellant's son Raymond from her marriage in Malawi was in the United Kingdom but he was over 18.
8. In considering her article 8 rights under the immigration rules the respondent took the view that the suitability requirements were not met. This was on the basis she had engaged in fraud in attempting to obtain British citizenship.
9. The appellant had also claimed health issues, particularly in relation to her mental state. However, the respondent referred to the high threshold for such a claim to succeed and found this was not met.

The First tier Tribunal

10. Her appeal was heard by First-tier Tribunal Judge Thomas at Birmingham on 29 January 2018. It was dismissed in a decision promulgated on 7 March 2018.
11. In relation to her claim for asylum the judge concluded that her credibility was damaged by her delay in claiming. The judge rejected her claim that she was unaware of the concept of asylum.
12. The appellant and her son Raymond gave evidence about events in Malawi. The judge also had a letter from the appellant's brother in Malawi setting out his observations of mistreatment.
13. The judge accepted that her husband did abuse her.
14. The judge noted that she had returned to Malawi to her home village for several weeks in 2006 and 2011 when she experienced no problems. Her evidence was that her former husband had remarried and had children. The judge found no evidence to suggest he was in a position of power and influence throughout the country or that he had been to her home village or made any attempts to find her.
15. The background information indicated that domestic violence was criminalised but was not enforced. This was because it was considered a family matter. However, the judge made the point that as the appellant was no longer married she could resort to State protection if there were any difficulties from her former spouse.
16. The judge concluded there was no risk of persecution or serious harm to the appellant. There was no evidence that her former husband maintained an adverse interest in her and had the means to locate her. The judge found there was sufficiency of protection for her. If she did not wish to return to the same area where her former husband and his family lived she could return to her home village. There she would have the support of her father, 2 brothers and various relatives.
17. The judge referred to the appellant's health, pointing out no medical evidence had been submitted in relation to diagnoses and prognosis. The evidence indicated there was a healthcare system in Malawi and there was no evidence the appellant would be unable to access this. Consequently, the judge found her medical conditions could not meet the threshold the occasion a real risk of breach of her article 3 or 8 rights.
18. The judge went on to consider her article 8 rights. At paragraph 25 the judge accepted the appellant's evidence and that of her witness to the effect that she was innocent of any deception over

her claim for British citizenship. Rather, the fault lay with dishonest agents engaged. Consequently, the respondent's refusal on the basis of suitability no longer applied.

19. In terms of her family life, the judge at paragraph 32 pointed out that she is no longer in a relationship with the British national. Her son is now an adult and also a national of Malawi. Consequently, the relationship requirements for appendix FM were not met. The judge then turned to consider her private life. The Judge considered the requirements of paragraph 276 ADE, pointing out the appellant had not been here the necessary period. Furthermore the judge did not see any significant obstacles to her reintegration into Malawi; referring to her 2 holidays to her home village and her family members. The judge said was educated and has work skills and experience which would assist in seeking employment in her home country. Although she had claimed a back problem the judge was not satisfied this would prevent her from working as a chef as she had done here.
20. At paragraph 34 the judge referred to the Razgar principles and the decision of Hesham Ali (Iraq) v SSHD [2016] UKSC 60 when considering article 8. The judge noted that she had been in the United Kingdom for 14 years and accepted that her son arrived with her and although he does not live with her they have a close relationship and she is financially dependent on him. The judge found the relationship was such that family life within the meaning of article 8 was engaged. The judge then proceeded to consider the proportionality of the decision and referred to the public interest factors set out in section 117 B of the 2002 Act. The judge recorded that she speaks English and has worked so was not a burden upon the taxpayer. Against this, her family and private life had developed by the immigration status was precarious. At paragraph 39 the judge did weigh in the balance the fact she was here lawfully as a student from October 2004 until January 2014. Against that, she had been here without leave since.

The Upper Tribunal

21. The appellant applied for permission to appeal to the Upper Tribunal herself. She wrote out 6 pages in which she sought to explain her situation. She sets out how her subsequent marriage did not prove happy and how her husband did not earn enough money to meet the financial requirements of appendix FM. She refers to the comfort she takes from her son and her church. She also sets out details of her health. She states whilst here she paid taxes and volunteered for charities.
22. The First-tier Judge who granted permission to appeal acknowledged that the grounds were largely a restatement of the compassionate features about the appellant's circumstances.

However, it was noted she had arrived in the United Kingdom in April 2004 and had leave until January 2014. She did not apply for further leave until August 2014 saying her husband was on social security benefits and she had problems raising the application fee. Consequently, she appeared to have almost qualified under the 10 years lawful residence rule. It was also pointed out that she had been in the United Kingdom for over 14 years. The grant of permission states that the judge made no specific reference to the lengthy period of lawful residence or her reasons for applying late and it was arguable and sufficient weight was accorded to this in the proportionality assessment.

23. At hearing the appellant's representative provided me with a copy of the skeleton argument used in the First-tier Tribunal. In relation to article 8, it was pointed out that the appellant had lived in the United Kingdom for almost 14 years. Paragraph 26 of the skeleton argument points out that the appellant was close to completing 10 years continuous lawful residence.
24. At hearing, the appellant's representative acknowledges that First-tier Tribunal Judge Thomas does refer to her long lawful residence but does not specifically referred to it when carrying out the proportionality consideration. She submitted she was not suggesting a near miss argument but referred to the Supreme Court decision in MM Lebanon [2017] UKSC 10. This concerned the lawfulness of the financial requirements and also considered cases where the rules were not met.
25. In response, the presenting officer said that the judge was fully aware that the appellant had been here lawfully for an extended period and her immigration history was set out at paragraph 4 of the decision. At paragraph 39 the judge commented that she was here lawfully as a student from October 2004 for until January 2014. The reference to October 2004 relates to when she was 1st granted leave as a student. On this basis she was actually 6 months short of the 10 years continuous lawful residence. However, whether it was 3 months short if the visit visa was included or 6 months otherwise, she still was short. In response, the appellant's representative accepted that the judge had acknowledged the length of time she was here lawfully.

Conclusions.

26. No challenge was made to the judge's conclusions in respect to the claim for protection. The decision is well reasoned and acknowledges that the appellant was the victim of domestic violence but concluded her husband no longer posed a threat. In any event there was sufficiency of protection and the option of relocation.

27. In terms of article 8 the judge accurately sets out the appellant's immigration history. The judge initially considered whether she met the terms of the immigration rules in respect of article 8. The judge accepted that she was a victim of unscrupulous agents and was not involved in any fraud in seeking citizenship. Consequently, suitability was not an issue. In respect of family life she was estranged from her husband and no challenge was made to the judge's conclusion. Her son was living independently and was an adult so she could not benefit from the parent route. No challenge was made to these aspects.
28. In terms of private life the appellant had not been here the necessary 20 years as required by paragraph 276 ADE and the judge gave the sustainable reasons why she could integrate back into her home country. It is also accepted that factually the appellant could not meet the 10 years lawful residence requirement.
29. The judge then considered her article 8 rights outside the specifics of the rules. There was no evidence to support her claim in relation to healthcare. The judge did accept that the appellant had a relationship with her son which went beyond the normal emotional ties and that family life was engaged. Clearly therefore this was a balance decision with findings made in favour of the appellant on disputed areas.
30. The challenge now made relates to how the judge dealt with the length of time the appellant had been here, a proportion of which was lawful. The judge appreciated these features and refers to them at paragraph 34. The judge set out the periods of leave at paragraph 4. The judge refers to her statement wherein she states that had she been advised to make a human rights application in 2014 she would have done so and would then have completed 10 years lawful residence.
31. The judge has followed the Razgar sequential approach, progressing through to the final stage of proportionality. The judge clearly balanced the appellant's interests with the public interests and the statutory provisions in section 117B. At paragraph 39 the judge specifically refers to weighing in the balance the length of time the appellant had been here lawfully.
32. Ultimately, it was a matter for the judge to weigh up the balancing of the public interest with the appellant circumstances. I can see no material error in how this was done. The judge has clearly set out the factors taken into account and these have included the length of time the appellant was here lawfully and the totality of her time here. Consequently, I do not find a material error of law established.

Decision.

No material error of law has been established. Consequently, the decision of First-tier Tribunal Judge Thomas dismissing the appeal shall stand. This appeal is dismissed.

Francis J Farrelly
Deputy Upper Tribunal Judge.