



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/43026/2013

THE IMMIGRATION ACTS

Heard at Field House
On 26th June 2014

Determination Promulgated
On 30th June 2014

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MS SARIKA RAMBISSON

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: The Appellant in person

For the Respondent: Mr G Saunders (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Appellant with regard to a determination of the First-tier Tribunal (Judge Cohen) promulgated on 20th March 2014. In his determination Judge Cohen dismissed the Appellant's appeal against the decision of the Secretary of State to refuse to issue her with a residence card as the extended family member of an EEA national.
2. This appeal was in my 2pm list. Shortly before 2 pm I was notified of a telephone message indicating that counsel in the case had been delayed at Hatton Cross First-tier Tribunal hearing centre and asking that I take the other case first and not hear

this case until 3.30. I agreed to take the other case first but declined to wait until 3.30 to call this case on given that it had been listed at 2 pm. I asked my clerk to contact the Appellant's solicitors notifying them that I would be hearing the case once I had dealt with the first case. This prompted a fax from the solicitors asking for an adjournment on the basis that counsel was detained and the person dealing with the case at the solicitors had been called to hospital urgently and there was no one else who could cover. This was highly unsatisfactory. The case was listed some time ago and listed at 2 pm. Counsel should not have accepted the brief if there was any prospect of his not being able to be present in time for the hearing.

3. I considered adjourning the case but took the view that, as the Appellant was present and the matter was listed for an initial hearing which meant I had to first decide whether the First-tier Tribunal had made an error of law and if so whether and to what extent the determination should be set aside, I could deal with it on the basis of the grounds which had been settled by Counsel. If it should be necessary to redetermine the appeal I would then consider adjourning to allow the Appellant to be represented. I did not consider that the Appellant was prejudiced by Counsel's absence. I explained all this to the Appellant.
4. The basis of the Appellant's claim was that she, a Mauritian national, had sought a residence card as the extended family member of her sister-in-law, a Lithuanian national married to her brother.
5. The Appellant came to the UK in 2005. She had leave as a student which finally expired in March 2010. After its expiry she sought a residence card on the same basis as now and was refused. She appealed and her appeal was dismissed. That decision was upheld by the Upper Tribunal. She then overstayed and submitted the current application on 25th April 2013. The basis of the application is identical to that submitted in May 2010.
6. The Letter of Refusal in the current application was also on the same basis as the previous application, namely that she had failed to provide evidence that she had resided with or was financially supported by her Sponsor prior to arriving in the UK or since.
7. At paragraph 3 of the determination the Judge referred to the previous determination (Judge Denson) in which he noted that the evidence of the Appellant and her brother contradicted that of the Sponsor. The Sponsor, the EEA national, gave evidence that she had not maintained the Appellant before she came to the UK. In Mauritius the Appellant had resided with and was presumably maintained by her parents. Also at that time there was found to be insufficient evidence that the EEA national was exercising Treaty rights.
8. The Judge then described events at the hearing before him including that he had heard evidence from the Appellant, her brother and her sister-in-law, the EEA national, who was referred to as the Sponsor. At paragraph 12 of the determination Judge Cohen said:-

"The Sponsor was a highly unimpressive witness. She appeared evasive and gave changeable answers. She was hostile. She initially indicated that she only supported the Appellant after she came to the UK and then sought to change evidence that she had supported the Appellant in Mauritius and was sent £200-£300 and then £100-£150 every six months through various relatives".

9. In the section of the determination headed "Decision" at paragraph 16 the Judge said this:-

"My starting point is the determination of First-tier Tribunal Immigration Judge Denson. He found that the Appellant and her brother had given discrepant evidence to that of the Sponsor concerning when financial support started. The former two witnesses indicated that financial support from the Sponsor started whilst the Appellant was still in Mauritius whereas the Sponsor indicated that it only started once the Appellant arrived in the UK. For reasons which appear bizarre to me, the Appellant has made an identical application only for exactly the same scenario to unfold at the appeal before me. The Appellant and her brother again attempted to claim that financial support started whilst the Appellant was still in Mauritius whereas the Sponsor initially indicated before me that she only started supporting the Appellant when she arrived in the UK. I find the latter evidence to be the truth. I adopt the findings of Immigration Judge Denson. I find that the Appellant was not being supported by the Sponsor when she was in Mauritius and I find that the Appellant's appeal under the Regulations is bound to fail."

10. At paragraph 18 the Judge described the Sponsor as a highly unimpressive witness and that her evidence damaged the credibility of the appeal as a whole.
11. At paragraph 19 the Judge noted again that the Appellant had made an identical application to that which was refused in 2010 with no fresh evidence and the same discrepancies had arisen again.
12. At paragraph 20 the Judge indicated that she found the Appellant, the Sponsor and the Appellant's brother lacking in credibility and that they gave substantially discrepant accounts going to the core of the appeal. The core finding of the appeal was that the Appellant did not form part of the Sponsor's household at the time that she lived in Mauritius and nor was she financially dependant on her at that time. The appeal was bound to fail.
13. The Judge then went on to consider Article 8 and gave detailed reasons why removal to Mauritius would not be a disproportionate breach of the Appellant's right to private or family life.
14. The grounds have been settled by Counsel, although I note different counsel from the one who represented at the hearing. Before the First-tier Tribunal the Appellant was represented by Mr Skymer and the grounds settled by Mr Paul Turner.
15. I find the grounds to be at best displaying an ignorance of EEA law and at worst misleading.

16. Paragraph 11 of the grounds suggests that the Judge's reasoning is unclear and that he has not properly understood the nature of the appeal before him. That is completely unfounded and not borne out by a scrutiny of the determination. The Judge has grasped the issue in the appeal completely, namely whether or not the Appellant is the extended family member of her Lithuanian sister-in-law. Paragraph 12 suggests that the Judge had misunderstood the law on the basis that he dismissed the appeal because the Appellant was not dependent upon or a member of the household of the EEA national in Mauritius. With respect, that is the law. Paragraph 13 of the grounds states:-

"It is submitted that this is not the correct law and that there is no obligation that an extended family member have been part of the same household in the non-EU country."

17. The grounds then go on quote what purports to be the relevant law namely Regulation 8 of the 2006 Regulations. However, Regulation 8 is misquoted. The grounds cite Regulation 8 as follows:-

"8.---(1) In these Regulations "extended family member" means a person who is not a family member of an EEA national under regulation 7 (1) (a), (b) or (c) and who satisfies the conditions in paragraph (2), (3), (4) or (5).

(2) A person satisfies the condition in this paragraph if the person is a relative of an EEA national, his spouse or his civil partner and----

(a) the persons is residing in a EEA State is dependent upon the EEA national or is a member of his household;

(b) the person satisfied the condition in paragraph (a) and is accompanying the EEA national to the United Kingdom or wishes to join him there: or

(c) the person satisfied the condition in paragraph (a), has joined the EEA national in the United Kingdom and continues to be dependent upon him or to be a member of his household."

18. I will not recite the remainder of Regulation 8 as it is irrelevant for the purpose of this appeal.
19. Regulation 8 however is **not** as set out in the grounds. Regulation 8 provides:-

8. – "Extended family member"

(1) In these Regulations "extended family member" means a person who is not a family member of an EEA national under regulation 7(1)(a), (b) or (c) and who satisfies the conditions in paragraph

(2), (3), (4) or (5).

(2) A person satisfies the condition in this paragraph if the person is a relative of an EEA national, his spouse or his civil partner and –

(a) the person is residing in a country other than the United Kingdom and is dependent upon the EEA national or is a member of his household;
(b) the person satisfied the condition in paragraph (a) and is accompanying the EEA national to the United Kingdom or wishes to join him there; or
(c) the person satisfied the condition in paragraph (a), has joined the EEA national in the United Kingdom and continues to be dependent upon him or to be a member of his household”

20. It is clear therefore that if anybody has failed to grasp the issues in the case and apply the correct law it is not First-tier Tribunal Judge but Counsel. In order to bring herself within the definition of extended family member the Appellant would have to show she was either dependent upon or a member of the household of her Lithuanian sister-in-law when in Mauritius. That she has failed to do now twice. The grounds do not challenge the finding itself, which was clearly open to the Judge on the evidence. Contrary to the assertion in the grounds, the Judge applied the correct law. The Appellant quite simply does not meet the requirements of Regulation 8.
21. The grounds also suggest that the Judge failed to apply Devaseelan [2003] Imm AR 1 correctly. It is perfectly clear from the contents of paragraphs 16 and 19 that the Judge did approach Devaseelan correctly. It was the Judge's starting point and as the Judge pointed out there was no fresh evidence and no difference in the way the case unfolded before him than it had previously.
22. The grounds also suggest that the Judge's approach to Article 8 was incorrect. Again I can detect no error. As the Judge points out, while the Appellant has been in the UK for some time she has no continuing right to be here. She is 33 years of age and in good health and has spent the majority of her life in Mauritius. There have (twice now) been significant credibility findings against her and her parents are in Mauritius.
23. I therefore find that the grounds upon which permission to appeal was granted to be wholly without merit. Contrary to what is suggested in the grounds the Judge applied the correct law, gave adequate reasons and did not misdirect himself with regard to the evidence.
13. I uphold the determination of the First-tier Tribunal and the appeal to the Upper Tribunal is dismissed.

Signed

Date 27th June 2014

Upper Tribunal Judge Martin