



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/03385/2015

THE IMMIGRATION ACTS

Heard at Field House
On 16th February 2016

Decision & Reasons Promulgated
On 23rd February 2016

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MISS PAMELA NATASHA DURRANT
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Sharma, Counsel instructed by Paul John & Co solicitors
For the Respondent: Mr Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a citizen of Trinidad and Tobago born on 28th December 1979. She first came to the UK on 18th June 2000 with entry clearance as a working holiday maker. She then remained as a student and with an EEA residence card as the spouse of a Swedish citizen. She was lawfully present until her divorce from her Swedish husband on 5th September 2007. She appealed the revocation of her residence permit but this was unsuccessful and she became appeal rights exhausted on 3rd March 2009. After this time she made an application for another EEA residence card and one

outside of the Immigration Rules which was refused without a right of appeal. She made representations that her removal would be a breach of the European Convention on Human Rights on 4th July 2012 and 22nd December 2014. This application was refused on 12th January 2015. She appealed on 20th January 2015. Her appeal was dismissed by a decision of First-tier Tribunal Judge Beg promulgated on 19th August 2015 (“the Decision”).

2. On 29th December 2015 Judge of the First-tier Tribunal Pooler found that the Decision contained an arguable error of law because it was arguable that Judge Beg had applied the wrong version of paragraph 276ADE of the Immigration Rules (“the Rules”). Judge Pooler expressly confined the grant of permission to this ground, and not the three other grounds put forward by the Appellant.
3. The matter comes before me to determine whether the Decision contains a material error of law.

Submissions

4. At the outset of the hearing, Mr Sharma sought to renew his application for permission to argue grounds two to four in relation to which permission to appeal was refused. He accepted that no formal application had been made to renew. Having heard brief submissions on the substance of those grounds, I determined that I would not permit him to renew the application for permission to appeal. In any event, I agree with First-tier Tribunal Judge Pooler that those grounds are not arguable.
5. It was common ground that the Judge applied the wrong test in relation to the Appellant’s private life. She applied the test whether the Appellant has no ties, including social, cultural or family ties with Trinidad and Tobago [12]. It is possible that this error was compounded by the submissions of the Appellant’s Counsel that this was the appropriate test. However, the Rules changed on 28 July 2014 and the current version of the paragraph insofar as relevant to this case is now in the following terms:-

“276ADE (1) The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:

...

(vi) is aged 18 years or above, has lived continuously in the UK 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 he would have to go if required to leave the UK”
6. Since the issue of whether the Judge erred in law is accepted by both sides, the issue becomes one of materiality. Mr Sharma for the Appellant submitted that it was not possible to pre-judge the outcome if the right test were to be applied. Mr Avery submitted that it was inconceivable that another Judge could reach a different

conclusion applying the “very significant obstacles” test since, if anything, that is a more stringent test to satisfy.

7. Mr Sharma submitted that what distinguishes this case is the Appellant’s circumstances in Trinidad and Tobago before she came to the UK and the stage in her life at which she came here. He pointed to the fact that the Appellant has no family in Trinidad and Tobago and was brought up in an orphanage. She completed her education there but never worked there. She had been sponsored by Father Girod of the Holy Ghost Fathers who was the chaplain at the children’s home and a letter was produced from him in her support but, Mr Sharma submitted, that did not come close to showing that Father Girod would be able to give the Appellant the kind of support which she would need on return to Trinidad and Tobago. Although this trespassed in part on ground two in relation to which permission to appeal was refused, Mr Sharma submitted that it would not be reasonable for the Appellant’s partner, now husband, to return to Trinidad and Tobago with her. It was not reasonable to expect her to return to get entry clearance and he could not support her from the UK in the way which would be needed for the Appellant to reintegrate. In fact, said Mr Sharma, this is not a case of reintegration at all but a case of initial integration in light of the Appellant’s age when she left Trinidad and Tobago, lack of family there and lack of any employment history. The Appellant has adjusted to life according to the ways of Western Europe and adopted skills relevant to that life which would not avail her on return. Those were, Mr Sharma submitted, the very significant obstacles in this case.
8. Mr Avery submitted that the adoption of the old test made no difference. Based on the facts at [13] and [14] of the Decision and the Judge’s findings at [29] in relation to the Appellant’s private life, it was inconceivable that a Judge could form any different view. The findings were adequately reasoned. They were not supportive of an assertion that the Appellant would have no support on return to Trinidad and Tobago.

Discussion and conclusions

9. I am satisfied that there is an error of law in the Decision. That is accepted by both parties. The issue as I identify above is whether the error is material. The Judge applied the wrong version of paragraph 276ADE (1)(vi) of the Rules when considering this appeal. The focus of this appeal is therefore the Appellant’s private life and not the Appellant’s family life. As Mr Sharma noted, the Appellant has now married her partner and as such her family life would fall to be considered under Appendix FM to the Rules. However, unless there is a material error of law in the Decision, she will have to raise this with the Respondent by way of a further application.
10. Turning then to the Appellant’s private life, the Judge set out her evidence about this at [12] to [14] of the Decision:-

“[12] The appellant claimed that she has been in a relationship with Mr Stephen since 2012 but that they only started cohabiting together in 2015. Mr Sharma on the

appellant's behalf submitted that in respect of private life under paragraph 276ADE, although the appellant has not been in this country for twenty years as required under the Rules nonetheless she has no ties including social, cultural or family ties with Trinidad and Tobago. In Bossadi (ss117A-D – interrelationship with Rules) [2015] UKUT 00415 (IAC) the Court considered the issue of paragraph 276ADE, suitability and ties. The court confirmed that what is required when a person needs to show that he or she is aged 18 years or above and has lived continuously in the United Kingdom for less than twenty years but has no ties with the country to which he or she would have to go if required to leave the UK is:

“... a rounded assessment as to whether a person's familial ties could result in support to him or her in the event of his or her return, an assessment taking into account both subjective and objective considerations and also consideration of what lies within the choice of a claimant to achieve.”

[13] The appellant gave evidence that she grew up in Trinidad and Tobago at the Saint Dominic's Orphanage where she remained just before her 18th birthday. She was then in foster care for a short period while she did her A-levels; following that she came to the United Kingdom as a working holidaymaker. Mr Sharma submitted on the appellant's behalf that she has no family, property or connections in Trinidad and Tobago and therefore no support network. I do not find that credible. Whilst I accept that the appellant was living at Saint Dominic's Children's Home in Trinidad and Tobago, she clearly had considerable support from Father Gervase Girod. A letter from Father Girod of the Holy Ghost Fathers, dated 24 March 2011 states that he was the Roman Catholic chaplain at Saint Dominic's Children's Home and that he began working at the home from 1979. He was appointed chaplain by the then Archbishop of Port of Spain.

[14] Father Girod states in his letter that the appellant was at the children's home from the age of 4 until the age of 17. He also states that she has no family members who have been in contact with her while she was at the children's home. The appellant gave evidence that Father Girod not only assisted her in paying for her A-level course fees but also sponsored her to come to the United Kingdom. He continues to provide moral support to the appellant. His letter is confirmation of that. I find that the appellant therefore has some level of social and cultural ties with Trinidad and Tobago and came to the United Kingdom as an adult. She is familiar with the country and its culture. She also retains some contacts with friends. Consequently I do not find that the appellant meets the requirements of the Immigration Rules.”

11. Having directed herself according to the relevant case law, the Judge then went on to consider the Appellant's private and family life applying that case law. In so doing, she also made reference to section 117 Nationality, Immigration and Asylum Act 2002. In relation to the Appellant's private life, she accepted that the Appellant was in the UK lawfully for some time although became an overstayer in recent years. Her previous residence though was precarious. By the time that she formed a relationship with her now husband she was in the UK unlawfully. The Judge noted that the Appellant's husband could support an application by her for entry clearance from Trinidad and Tobago. The Judge went on to deal with the Appellant's private life at [29] of the Decision in the following way:-

“[29] Mr Sharma submitted on the appellant's behalf that he did not rely upon Article 3 ECHR in respect of a written submission that the appellant would be destitute in

Trinidad and Tobago. He submitted however that the appellant would have no employment and no home to go to in Trinidad and Tobago where she has no support network. In MA (prove destitution) Jamaica [2005] UKIAT 00013 the court held that anyone making a claim that he will be destitute if returned to his country of origin must be able to establish that by making proper enquiries. I find that the appellant has not been able to demonstrate to the civil standard that she will be destitute in Trinidad and Tobago. For the reasons that I have already given, I find that she has some support network in Trinidad and Tobago where she spent her formative years. She is clearly in contact with Father Girod. I find that the appellant could utilise her work experience to seek employment in her home country. She is a well educated and well travelled woman. I find that she has friends including her current partner Mr Stephen who would be able to financially support her to help her resettle in Trinidad and Tobago. I find that Mr Stephen could either make a decision to go and live with the appellant in Trinidad and Tobago to conduct family life or support an entry clearance application. In conclusion I find that any interference in the appellant's Article 8 rights will be both legitimate and proportionate. Maintenance of effective immigration control is in the public interest."

12. In terms of the obstacles to reintegration in Trinidad and Tobago, the high point of the Appellant's evidence is at [11] of her witness statement:-

"I consider the UK to be my home and primary place of residence. It is where I have established true ties for the first time in my life. Returning to Trinidad and Tobago is not a feasible option for me. I do not have any family or friends there because I left when I was 20 after my A-levels. I have never been employed there and do not know how the economic and financial market works. Further, there will be no support system for me should I relocate. It is impractical to ask my fiancé to help me as he would then have to support two households on his income. I cannot rely on support from my friends here in the UK either as I would be relying on their largesse. I cannot rely on them to support me indefinitely because I do not know when I will be able to secure employment. My partner cannot relocate with me as we have both never lived there; therefore our employment prospects are slim. We both have friends and family here in the United Kingdom and this is where we have established roots. Our decision to remain in the UK is not because it is merely convenient to do so, but because forcefully removing me will result in an unduly harsh decision in my matter and my circumstances gives rise to consideration of compassion".

13. Mr Sharma took issue with the findings of the Judge in relation to the support which the Appellant could expect on return to Trinidad and Tobago. He said that Father Girod's short letter gave no indication that he would be able to support the Appellant. However, that exaggerates the nature of the Judge's finding in that regard. All that she found is that Father Girod remains in Trinidad and Tobago and continues to support the Appellant by, for example, writing the letter in support of her application. The Judge refers to the "considerable support" which Father Girod gave the Appellant in the past as the Appellant herself records. It is not though part of the Judge's findings that Father Girod would be other than the Appellant's "support network" on return. As the Judge points out, the Appellant did not leave Trinidad and Tobago until she was an adult. She grew up there. She would

therefore be familiar with the country and its culture. Although she did not work in Trinidad and Tobago it is of course worth noting that when the Appellant came to the UK aged twenty years, she had no familiarity with the job market here or indeed any family here or familiarity with UK society or culture. The Judge's finding that she is now well educated and well travelled and can use her work experience to find employment in Trinidad and Tobago was clearly open to her.

14. Mr Sharma submitted that it was not open to the Judge to find against the Appellant in light of the Appellant's own expressed opinion which was not challenged that requiring her to relocate to Trinidad and Tobago would be "unduly harsh". That is though not a matter of fact but one of assessment. No doubt the Appellant genuinely envisages that there will be very significant obstacles to her reintegration in Trinidad and Tobago. However, based on the evidence and her Counsel's submissions, I am quite unable to accept that her case could conceivably meet that high threshold. In the circumstances, I am satisfied that the error of law which I have found the Decision to contain is not a material one. I accept the Respondent's submission that, if anything, the test set by the later incarnation of paragraph 276ADE (1)(vi) is more stringent than the earlier version. If the correct version of the paragraph had been applied, the Judge would inevitably have reached the same conclusion that the Appellant could not meet the requirements of the Rules. The Appellant does not point to any material facts which were overlooked by the Judge in the Decision. Accordingly, the outcome would have been the same whether a test of "no ties" or "very significant obstacles" are applied.

Decision

The Decision does not contain a material error of law. I therefore uphold the Decision.

Signed



Date 16th February 2016

Upper Tribunal Judge Smith