



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/21272/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 31 July 2017

Decision & Reasons Promulgated  
On 18 August 2017

Before

DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL

Between

RUQAIYAH BIBI ROUKSHALL BODHEE  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: In person  
For the Respondent: Mr P Duffy, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, a citizen of Mauritius aged 25, has permission to challenge the decision of First-tier Tribunal (FtT) Judge Watt sent on 14 October 2016 dismissing his appeal against a decision made by the respondent on 21 May 2015 refusing

further leave to remain under Appendix FM of the Immigration Rules. The basis of the appellant's written grounds was that the judge had failed to give proper consideration to that issue and to the issue of whether the respondent was right to refuse his Article 8 case outside the Immigration Rules.

2. The appellant appeared before me unrepresented. She confirmed she wished to proceed with the hearing. I explained that as she was unrepresented I would do my best to ensure she had full opportunity to put her case. I explained that I was concerned solely at this stage with whether the FtT judge had got it wrong in law. Her husband was in attendance and I permitted him to sit next to her to lend advice if she needed it. Mr Duffy agreed to make his submissions first. In short he submitted that the judge properly considered the appellant's case both under the relevant Immigration Rules and outside the Rules. In the nature of the requirements of the Rules relevant in this case, the judge's reasons for concluding the appellant could not meet them doubled as a reason why the appellant failed to show exceptional circumstances outside the Rules. In her submissions the appellant highlighted the fact that the judge had accepted that she and her husband were in a genuine and subsisting relationship and that it would not be proportionate to expect her husband to return with her to Mauritius or alternatively for the couple to maintain communication by other means. She produced a letter from her cousin, Mr Toofail certifying that he provided financial support to her and a letter of employment relating to her husband having started work as an Assistant Chef on 29 July 2017. She emphasised that her husband (who had suffered from health problems including severe depression) was getting better. The judge was wrong, she submitted, to refuse the appellant's application for purely financial reasons.
3. Like the FtT judge I have some sympathy for the appellant and her husband who have experienced financial difficulties because she is not permitted to work and he has had health issues. However, I can discern no error of law in the judge's decision. The respondent had decided to refuse the appellant's application for leave to remain under Appendix FM for two main reasons: first because she was not satisfied they were in a genuine and subsisting relationship as required by E-LTRP.1.10 and second because neither she nor her spouse worked, and therefore could not provide evidence of earning a specified gross annual income of at least £18,600 as required by E-LTRP.3.1. The respondent also concluded that the appellant could not succeed under paragraph 276ADE(1) as she had not shown there would be very significant obstacles to her re-integration back into Mauritian society, in which she had mixed and lived up until April 2011. The respondent also concluded that the appellant had not shown there were any exceptional circumstances consistent with her right to respect for family and private life.
4. At the hearing the judge heard from the appellant and her husband. In contrast to the respondent, the judge was satisfied the couple were in a genuine and subsisting relationship and that they married because they both wanted to, not to achieve any immigration status (paragraph 16). However, like the respondent he was not satisfied the appellant could meet the requirements of the Rules.

5. The judge was unarguably right to conclude that the appellant could not meet the requirements of the Rules. The failure of the appellant to meet the financial requirements of the Rules was manifest: at the date of the hearing she had no income through employment; she survived on £300 per month from her uncle plus the appellant's employment support allowance. Her husband was not in work and was in receipt of unemployment support allowance.
6. I take note of the evidence produced by the appellant at the hearing before me showing her husband has now got a job, but this was not the state of affairs when the case came before the judge and he cannot be said to have erred in law in failing to take into account of a fact not then in existence and whose existence was not reasonably foreseeable.
7. At paragraphs 17 and 18 the judge stated:
  - "17. In regard to the ten year route under Appendix FM, there was no evidence put before me to show any insurmountable obstacles to family life with the appellant's partner continuing outside the UK and therefore I consider that the respondent's decision under Appendix FM is correct.
  18. In regard to paragraph 276ADE I have to agree with the decision of the respondent that there would not be very significant obstacles to the appellant's integration into Mauritius if she were returned there. She is a national of maintenance and lived there for nineteen years, spent all her formative years in that country and has provided no evidence to show any problems with reintegration into Mauritius."
8. I consider these findings are free of legal error. It was entirely within the range of reasonable responses for the judge to find that the appellant had failed to show that there would be either insurmountable obstacles or very significant obstacles to the couple resuming their family life in Mauritius.
9. It is also clear that the judge gave separate consideration to the issue of whether there were any special or exceptional circumstances justifying a grant of leave outside the Rules. At paragraph 19 the judge wrote:
  - "19. In regard to considering special circumstances or exceptional circumstances for why the application could be considered under Article 8 outwith the Rules, I do not consider there are any special circumstances in this case. As pointed out by the Home Office, if Mr Aransivia does not travel to Mauritius with his wife then he could continue to keep in touch with her via e-mail, telephone or internet. However, I agree that any infringement of his Article 8 rights in such an instance would be justified and proportionate in the pursuit of the maintenance of an effective immigration control."

10. Whilst this paragraph is brief, I agree with Mr Duffy that it has to be read in the light of the judge's preceding findings of fact regarding the fact that the appellant's history showed she would not have problems reintegrating in Mauritian society. The identified health problems of her husband were not such as gave any valid reason to consider he would not be able to receive adequate treatment in Mauritius for his problems. Quite properly the judge also considered what the situation would be if the husband, who is a British citizen, chose to remain in the UK. Given that such a decision would amount to a choice rather than a response to any insurmountable obstacles, the judge was entitled to consider it proportionate to expect the couple to keep in touch by indirect means for so long as he continued to choose not to go and live with her in Mauritius. It must also be borne in mind that the appellant has the option, if and when the couple's financial circumstances improve sufficiently, to apply for entry clearance as a spouse and their circumstances will have to take account of the latest guidance from the Supreme Court in the R(MM) Lebanon [2017] UKSC 10 case on this issue.

**Notice of Decision**

11. For the above reasons I conclude that the judge did not materially err in law and accordingly her decision to dismiss the appellant's appeal is upheld.
12. No anonymity direction is made.

Signed

Date:18 August 2017



Dr H H Storey  
Judge of the Upper Tribunal