



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/15926/2019

THE IMMIGRATION ACTS

Heard at Field House
On 16th November 2021

Decision & Reasons Promulgated
On 25th November 2021

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

MASUDA AKTER
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Turner, Counsel, Direct Access

For the Respondent: Mr T Lindsay, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Bangladesh. Her date of birth is 1 October 1979.
2. The Appellant was granted permission by First-tier Tribunal Judge Ford on 11 June 2021 to appeal against the decision of the First-tier Tribunal (Judge Norris) on 30 April 2021 dismissing her appeal against the Secretary of State's decision on 9 September 2019 to refuse her application for ILR on the basis of ten years' continuous residence. Her appeal was dismissed on Article 8 grounds.

3. The Appellant's immigration history is as follows. She entered the UK on 1 December 2008 as a student with valid leave from 19 November 2008 until 31 March 2010. On 1 March 2010 she made an in time application for leave to remain as a student which was granted until 28 March 2011. On 9 September 2010 she made an in time application for leave to remain as a student which was granted until 30 December 2013. On 28 April 2011 a curtailment consideration was opened against the Appellant in respect of her Tier 4 leave however this was not pursued.
4. On 22 May 2012 a curtailment consideration was opened against the Appellant's Tier 4 leave. Her leave was curtailed to 21 July 2012.
5. On 26 June 2012 she applied in time for leave to remain as a Tier 4 Student. She was granted leave to remain until 28 June 2014. On 1 May 2014 she made an in time application for leave to remain which was granted until 28 December 2014. On 28 December 2014 she made an in time application for leave to remain as a Tier 2 Skilled Worker. This application was rejected on 18 February 2015.
6. On 13 January 2015 the Appellant made an out of time application for leave to remain as a Tier 2 Skilled Worker (General) Migrant. On 18 February 2015 she was granted leave to remain in this category until 15 March 2018. On 2 March 2015 a curtailment consideration was opened against the Appellant's leave and her leave was curtailed to 23 August 2015.
7. On 13 July 2015 the Appellant applied in time for leave to remain. The application was rejected on 1 October 2015.
8. On 8 August 2015 the Appellant made an in time application for an EEA residence card. This was refused on 20 January 2016. On 1 February 2016 she made an out of time application for an EEA residence card which was refused on 29 July 2016.
9. On 12 August 2016 the Appellant appealed against the decision of the Respondent on 29 July 2016 to refuse her out of time application for an EEA residence card. The decision was struck out and the Appellant became appeal rights exhausted on 4 August 2017. However the Appellant was granted judicial review against this decision. A judicial review was "eventually closed by the court" as the Appellant was said to fail to comply.
10. The Appellant made an out of time application on 17 August 2017 for an EEA residence card as a non-EEA national. This was refused on 4 December 2017. On 21 December 2017 the Appellant appealed. However the appeal was withdrawn by the Appellant who became appeal rights exhausted on 24 May 2019.
11. The Appellant made an application for ILR on 17 May 2019 which was refused on 9 September 2019 (the subject of this appeal).

The decision of the First-tier Tribunal

12. The judge recorded the Appellant's evidence. She had been advised by a representative, Mr Anowar, to apply under the EEA Regulations on the basis of her Italian citizen cousin. The advice that she was given was in respect of the

curtailment of her leave in 2015. She said that her representative had advised her that even if the application was unsuccessful the time would count towards ten years' residency. The Appellant's evidence was that at the time she was heavily pregnant and she trusted Mr Anowar. She was then told in October of that same year by Mr Masum that applying under the EEA route would invalidate her application under the ten years' residency route, however Mr Anowar denied this and told the Appellant not to listen to what she had been told by Mr Masum. The Appellant was pursuing a case against Mr Anowar in the County Court. The judge had evidence from the Appellant's husband. He also complained of poor and misleading immigration advice from Mr Anowar. There were other witness statements before the judge who stated the following at [48]:

"Mr Ahmed's statement says that he was a similar victim of inadequate and erroneous legal advice from Mr Anowar as to his immigration matters, as does that of Mr Islam, who is the Appellant's brother-in-law; Mr Masum confirms that in 2015, the Appellant discussed her immigration status with him and he told her that her solicitor had given her incorrect advice; she nonetheless continued with the EEA application in line with the advice she had received from Mr Anowar".

13. The Appellant and her husband also gave evidence in respect of their family and private life here in the UK. The Appellant at the date of the hearing before the First-tier Tribunal was aged 41. The couple have two children. Their eldest son attends school in the UK. He has never been to Bangladesh. He suffers excessive nosebleeds which normally occur in hot weather. The Appellant in her witness statement as recorded by the judge said that there would be insurmountable problems in integrating in Bangladesh with her family because she is too old for a government job and there are limited opportunities in the private sector. Her evidence was that her parents are deceased and her siblings settled with their families in different places. Her husband had borrowed money from his father in order to come to the UK and his father was retired and would be unable to support them. The family have lost connections with Bangladesh, her own parents are dead. The couple's youngest child is in need of treatment for the next five years in relation to his club foot. They have no accommodation or employment in Bangladesh. It is impossible to get a job after the age of 30. The Appellant's evidence was that she came to the UK in order to complete education. She had achieved an MBA from Sunderland University and a postgraduate diploma from the London School of Commerce. Her husband also has a degree from the University of Gloucester. The Appellant had last been in Bangladesh in January 2011 when she stayed with her parents in a house which they were renting. There was a letter from the Appellant's GP in relation to her eldest son's nosebleeds. The GP said that he could not comment on the healthcare system in Bangladesh. It would cost the family a lot of money in order to receive treatment in relation to the youngest sons. The Appellant relied on the case of Mansur (immigration adviser's failings: Article 8) Bangladesh [2018] UKUT 00274 to support the Appellant's case. The judge set out [29] to [33] of Mansur as follows

29. Mr Duffy submitted that the appellant's "lack of culpability" reduces the weight to be placed on that public interest. A lack of culpability is, however, a necessary but not a sufficient factor. Even where the person concerned is not to be taken as sharing the blame with his or her legal

adviser, it will still be necessary to show that the adviser's failure constitutes a reason to qualify the public interest in firm and effective immigration control.

30. Once the issue is analysed in this way, it can readily be seen why it will be only rarely that an adviser's failings will constitute such a reason. As a general matter, poor legal advice in the immigration field will have no correlation with the relevant public interest. The weight that would otherwise need to be given to the maintenance of effective immigration controls is not to be reduced just because there happen to be immigration advisers who offer poor advice and other services. Consequently, a person who takes advice to do X when doing Y might have produced a more favourable outcome will normally have to live with the consequences.
 31. The facts of the present case are, however, strikingly different. The OISC decision shows that IWP did not give the appellant poor advice. The organisation blatantly failed to follow the appellant's specific instructions regarding the timing of the withdrawal of the application for permission to appeal. That failure was the sole reason why the appellant's application for leave fell to be treated as invalid.
 32. The conclusions of the OISC investigation are highly material in determining whether this really is a rare case in which the misfeasance of a legal adviser can affect the weight to be given to the public interest in maintaining an effective system of immigration control. The OISC findings are clear and categorical. The position is far removed from that which we frequently see in this jurisdiction, where legal advisers are belatedly blamed but where there has been no admission of guilt and no finding of culpability by a relevant professional regulator.
 33. Would confidence in the respondent's system of immigration controls be diminished if, in the particular circumstances of this case, regard was to be had to the fact that, if IWP had complied with their client's instructions, the appellant would have made a valid application for leave that is likely to have been successful? It seems to me plain that the answer to that question must be in the negative. On the contrary, public confidence in the system could be said to be enhanced if it were known that the system is able, albeit exceptionally, to take account of such a matter.
14. The judge went on to consider Mr Turner's submissions. The judge found at [58] that "the facts are sufficiently different from Mansur for it to be readably distinguishable; it does not amount to exceptional circumstances for this Appellant". The judge gave reasons for this. She said that Mr Anowar did not hold himself out as a "solicitor" to the Appellant. His e-mail signature describes him as a "legal adviser". She referred to the Solicitors' Regulation Authority (SRA) having found that there was no evidence that he called himself a solicitor.
 15. The firm where Mr Anowar was working at the time, SEB Solicitors, had closed but this was not until November 2018 (see [59]). The Law Society had confirmed that its closure was not as a result of an intervention. The judge also took into account the timing of the complaint being a year after the firm's closure and years after the advice about which she was complaining.

16. The judge accepted that the Appellant had been “led something of a merry dance between the OISC, the Law Society, the legal ombudsman and the SRA, each suggesting, on the face of it, that she contact another body and none taking responsibility for the matter” (see [60]).
17. She considered that part of the reason for their non-intervention was because of the age of the proposed complaint or a lack of standing to do so. The judge said
“If a firm is not registered with the OISC, for instance, it is entirely reasonable that the OISC should then not become involved with complaints against that firm, or if they are not a firm of solicitors, the SRA has nothing to do with complaints against them”.
18. The judge stated as follows:-
 - “61. I also note that the December 2020 County Court hearing appears to have been postponed when the Appellant withdrew an application that she had made; it was not because of COVID-related listing issues as Mr Turner appeared to be implying, if not outright asserting. The Appellant may have done this on legal advice; I note she is advised by a (different) solicitor in the County Court; but nonetheless and for whatever reason, I do not have the benefit of a finding of negligent advice against Mr Anowar, either by a regulatory body or by a court.
 62. Where the additional difficulties lie in this regard is that one of the critical issues in Mansur was the adviser’s ‘blatant failure’ to follow the client’s instructions rather than the more familiar and arguably less significant (in Razgar balancing act terms) assertion of ‘poor legal advice’ with which the client would have been fixed. I did not hear that the claimant had given instructions which Mr Anowar ignored; on the contrary, it appears that she readily acquiesced in following his advice, whether because of her pregnant state or in order to avoid the considerably larger expense of the initial route, and indeed maintain that pursuit of his suggested EEA route on more than one occasion and even after Mr Masum had pointed out what he perceived were the flaws therein. This is the classic ‘taking advice to do x when doing y might have had more favourable consequences’ and does not bring the Appellant within Mansur”.
19. The judge said that Mr Turner was;-
“In effect asking me to reach a number of speculative conclusions that are favourable to his client in concluding that Mr Anowar has been, if I can use the phrase, ‘Mansur-negligent’, but these conclusions are not capable of being supported by the evidence before me” (see [63]).
20. The judge stated at [63] in respect of Mr Turner’s submissions as follows:-
“... the first of these is the most difficult to maintain; the Appellant’s application under the ten year route when she had only been in the UK for six years and nine months was doomed to failure. Suggesting that she might try another route when she said she had an Italian citizen cousin might plausibly have been the better – and considerably cheaper – option, at a time when the Appellant was not working because of her pregnancy. Indeed, it appears that MTG similarly advise

pursuit of the EEA route, although I remind myself that the Appellant has also complained about their advice”.

21. The judge at [64] said that Mr Turner submitted that it would have taken a substantial time for the Respondent to reject a claim under the ten year route and for the Appellant to appeal and become appeal rights exhausted so that by that time she would have acquired the ten years needed all the while with Section 3C leave however the judge said that it was

“Hard to see how such a process could have lasted for a further three years and three months, and even more difficult to imagine the basis for such an appeal that would have been so entirely unarguable – one might also say, abusive or misconceived in that it would have stood no prospect of success – other than to extend the process to defeat the very aim of the legislation”.

22. In relation to the evidence of the witnesses in respect of Mr Anowar’s advice to them, the judge stated as follows at [65]:-

“The fact that other people may consider they too have received poor or even negligent advice from Mr Anowar does not assist me, particularly when none of them has a regulatory or legal decision in their favour. Therefore even though I accept the unchallenged evidence of the other witnesses, I find that it does not weigh heavily in the balancing exercise, and nor do I find the advice given to the Appellant to amount to exceptional circumstances in and of itself”.

23. The judge at [66] rejected Mr Turner’s argument that the appeal should be allowed so that the Secretary of State could grant a short period of leave so that the Appellant could pursue and participate in County Court proceedings. She distinguished the case from that of R and the Secretary of State for the Home Department, ex p Quaquah [1999] All ER (D) 1437 on the basis that in that case the Home Secretary was both the decision maker in relation to the removal and the potential defendant in Mr Quaquah’s action for damages. However in this case the claim advanced by the Appellant is against a private individual.

24. In any event she found that there was no evidence that the Appellant would not be able to continue the proceedings against Mr Anowar from outside the UK.

25. The judge concluded as follows:-

“68. I accept that both the Appellant and indeed her husband speak English and that is not against her in the balancing act. I do not accept that she is financially independent. Again, unlike in Mansur this Appellant has not held significant positions and has no plans according to the evidence before me to start her own business; she worked for some years in KFC, as, I gather, did her husband. She has not dealt with how she is said to be financially independent but if she is, that will continue in Bangladesh as it has done here, and if she is supported by third parties, the same consideration applies; they can support her there as easily (if not more so) as here.

26. I had before me the grounds of appeal, the Secretary of State's Rule 24 response and Mr Turner's skeleton argument. There was also an application by the Appellant pursuant to Rule 15 of the 2008 Rules.

Conclusions

27. Mr Turner's grounds are threefold. I will deal with each in turn and the submissions that I heard from the parties. Ground 1 is that the judge did not give weight to the evidence of the witnesses which would have been capable of bringing the Appellant's case in line with Mansur.
28. In respect of the evidence of the witnesses (Mr Ahmed, Mr Masum and Mr Islam), the assertion in the grounds is misconceived. The evidence was capable of supporting that Mr Anowar gave poor legal advice. The judge indicated at [19] that she "would not reduce the weight that was to be put on their statements in consequence..." (of technical difficulties or absence of cross-examination). The judge at [39] under the heading "other evidence on behalf of the Appellant" set out the evidence of the Appellant's husband, Mr Rahaman.
29. At [48], under the same heading, the judge summarised the evidence of Mr Ahmed and Mr Islam (they were both similar victims of inadequate and erroneous advice from Mr Anowar) and Mr Masum (that in 2015 the Appellant discussed her immigration case with him and he told her that her solicitor had given her incorrect advice). The judge at [65] said that "the fact that other people may consider they too have received poor or even negligent advice from Mr Anowar does not assist me, particularly where none of them has a regulatory or legal decision in their favour. Therefore even though I accept the unchallenged evidence of the other witnesses, I find that it does not weigh heavily in the balancing act, and nor do I find that advice given to the Appellant to amount to exceptional circumstances in and of itself."
30. The judge clearly took the evidence of the witnesses into account having accepted it. The evidence supported that Mr Anowar gave poor immigration legal advice. In so far as Mansur is concerned, the judge was entitled to conclude that the evidence was not capable of bringing the case within the remit of an advisor's failure which would constitute a reason to qualify the public interests in firm and effective immigration control.
31. In oral submissions Mr Turner draw my attention to the evidence of the witnesses to support his submissions that this was more than just poor legal advice. He submitted that the evidence points to a pattern of criminal or fraudulent behaviour on behalf of Mr Anowar. He submitted that if a person has a "penchant for telling people to make hopeless applications," as in this case having gained their trust, it is different to giving poor advice. He is a disreputable legal advisor. The witnesses' evidence is that there are more people who have fallen victim to Mr Anowar.
32. The submissions I heard from Mr Turner were in reality an attempt to re-argue the case. The judge was wholly aware of the evidence of the witnesses and she attached weight to it. However, she was entitled to conclude that it established that they had received poor and negligent advice too but this did not come within the Mansur

parameters. What weight to attach to the evidence was a matter for the judge. I am not sure whether the Appellant's case was presented before Judge Norris in quite the same way as it was before me. Mr Turner spoke of a pattern of deception exercised by the legal advisor and of him "grooming" potential clients. However, as stated what weight to attach to the evidence was a matter for the judge. The judge properly directed herself on the law. In the absence of a finding of dishonest conduct/fraud, the decision of the judge is unarguably lawful. Mr Turner's submission that Mr Anowar was fraudulent and "a crook" does not accord with the pleadings in the County Court which rely on his having given the Appellant negligent advice. There is no cogent evidence that could support a finding of fraud or dishonestly as opposed to negligence or incompetence in respect of Mr Anowar.

33. Mr Turner argues that that Mr Anowar was not regulated and falls outside the SRA and Legal Ombusman jurisdiction. However, the advice he gave to the witnesses and the Appellant was historic and there was no evidence of efforts to complain about the advice they had been given, save complaints by the Appellant some four years after.
34. The second ground is that the judge speculated when considering the Appellant's County Court claim against Mr Anowar. The judge stated that the hearing in December 2020 "appears to have been postponed when the Appellant withdraw an application that she had made..." (my emphasis). There is no support for the suggestion in the grounds that the judge "implied" that the Appellant had withdrawn the case as opposed to an application (to strike out a defence). I do not agree with Mr Turner that the judge was "implying" that the Appellant was intentionally prolonging the County Court matter. This misrepresents the decision of the judge. In any event the point made by the judge at [61] is that there is no finding of negligence against Mr Anowar by a court or regulatory body. This finding is not challenged. It is asserted in Mr Turner's skeleton argument that the Appellant should have been given the opportunity to answer allegations of dishonestly; however, there was no finding express or implied that this Appellant had acted dishonestly.
35. The judge was entitled to conclude that the Appellant appeared to have "readily acquiesced in following [Mr Anowar's] advice whether because of her pregnant state or in order to avoid the considerably larger expends of the initial route , and indeed maintained that pursuit of his suggested EEA route on more than one occasion and even after Mr Mansum had pointed out what he perceived were the flaws therein. This is the classic "taking advice to do X when doing Y might have had more favourable consequences" and does not bring the Appellant within Mansur.""
36. Context is relevant here. The Appellant made an application in 2015, following Mr Anowar's advice, under EU law on the basis of her Italian cousin. She said that she was advised by Mr Anowar that her leave would continue and count towards ten years residence. At that time, in 2015, the Appellant had been in the United Kingdom for seven years. She did not qualify at that time under the long residence rules. It is far from certain that had she applied for leave under the Rules/ Art 8 her application would have been successful let alone that she would have accumulated 10 years lawful continuous residence. The judge rejected Mr Turner's argument about this.

There is no challenge to her findings. The argument advanced by Mr Turner in an attempt to show that but for Mr Anowar's negligent advice this Appellant would have been entitled to ILR is at best tenuous.

37. The Appellant's own evidence was that she trusted Mr Anowar and was pregnant at the time. There is nothing speculative about the judge's findings. They were open to her on the evidence. She drew reasonable inferences from the evidence and the factual matrix before her. There is no issue of fairness arising from the decision. The Appellant was represented and had the opportunity through Mr Turner to advance her case.
38. The findings were open to the judge on the evidence before her. The grounds are a disagreement with the findings and an attempt to re-argue the case.
39. The documents on which the Appellant relies, having made an application under Rule 15, support that she has an ongoing claim against Mr Anowar concerning negligent advice he gave to her when he was working as an advisor at SEB law. It is unclear to me why the Appellant has to take action against Mr Anowar in the County Court rather than pursue action against SEB law now Raymond solicitors. However this is not a matter for me. The judge was entitled to take into account that the Appellant had not attempted to take any action for negligent advice until 2019. There was no evidence seeking to explain the delay.
40. Mr Turner raised an issue outside of the grounds, in respect of the ability to conduct proceedings in the county court from Pakistan. The judge concluded that the Appellant's return to Bangladesh would not be a "bar to continuing proceedings". There was no evidence before the judge which would support that it would not be a possibility or reasonable. The evidence before the judge on this issue was scant. The conclusions were open to the judge on the evidence.
41. The findings of the judge are lawful. There is no substance in the grounds.

Notice of Decision

The Appellant's appeal is dismissed.

No anonymity direction is made.

Signed *Joanna McWilliam*

Date 24 November 2021

Upper Tribunal Judge McWilliam