



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001413
[On appeal from: HU/54843/2023]

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 18th of July 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

WARDAH BINT MUNGUL
(ANONYMITY DIRECTION NOT GIVEN)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms P Solanki (Counsel)

For the Respondent: Mr S Walker (Senior Home Office Presenting Officer)

Heard at Field House on 20th June 2024

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Rakhim, promulgated on 7th February 2024, following a hearing at Manchester Piccadilly. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a citizen of Mauritius, a female, and was born on 6th August 1997. She appeals against the refusal of permission to remain in the United Kingdom by the decision of the Respondent dated 9th October 2013.

The Appellant's Claim

3. The Appellant's claim is based upon her private life rights and the relevant Immigration Rule is paragraph 276ADE(1)(v) and (vi). She had entered the UK on 27th March 2005 as a dependant of her father, when she was an 8 year old child, but in September 2012 her leave to remain on human rights grounds in the UK was curtailed by the Respondent. When she appealed this was refused on 1st September 2015. A year later on 14th September 2016 the Appellant left voluntarily to return to Mauritius, but three years later she sought to re-enter the UK on 30th July 2019, and when that was refused, she applied for asylum on 2nd August 2019, which was also refused on 14th July 2020. On 15th March 2022, the Appellant submitted her final application to remain here under paragraph 276ADE but this was refused on 22nd March 2023.

The Judge's Findings

4. The judge observed that "the Appellant's application was made on the private life basis" and that, "she stated in oral evidence that she did try to stay in Mauritius, but she could not tolerate it, the society was different, she did not have the support of anyone other than her husband and she had panic issues" (paragraph 23). The judge concluded that, "I do not accept that she has lost ties with Mauritius" because "she got married and lived almost 3 full years in Mauritius" (paragraph 24). Following a detailed consideration, the judge further observed that, "the Appellant says she was lonely in Mauritius, as was her husband" but that "I do not accept her husband was lonely as his parents were there" (paragraph 38). The judge then goes on to observe that, "whilst I accept the Appellant has family in the UK, and leaving the UK will cause her inconvenience, that does not conclude in her having a right to remain in the UK" (paragraph 40). The judge ended with the remark that, "there was no Article 3 health ground pursued" (paragraph 44).

Grounds of Application

5. The grounds of application were on the basis that the judge failed to consider the Appellant's private life rights under the Immigration Rules. Initially the application for permission was refused by the First-tier Tribunal which observed that the grounds did not identify any arguable error of law. However, on 3rd May 2024, the Upper Tribunal granted permission on the basis that it was arguable that there was no, or no adequate consideration, of paragraphs 276ADE(1)(v) and (vi) of the Immigration Rules.

Submissions

6. At the hearing before me on 20th June 2024 both Mr Walker, appearing on behalf of the Respondent, and the Appellant's Counsel, Ms Solanki, were agreed that the Rules had not been considered with respect to private life rights. Mr Walker at the outset pointed out that the judge had failed to consider the length of time that the Appellant had spent in the UK, which was from the age of 8 until 18, before she left this country.
7. Ms Solanki submitted that the Immigration Rules specifically state that if one has spent half of one's life in the UK then this is a basis for making a claim for leave to remain (see paragraph 276ADE(1)(v)). She submitted that the Grounds of Appeal (at paragraph 7) make clear before the Upper Tribunal that the relevant Immigration Rules had not been considered. Moreover, the judge was not unaware of this aspect of the claim because the Appellant's skeleton argument (at paragraph 8) under the heading "Private Life" specifically drew

attention to the relevance of the Immigration Rule applicable. Yet the judge had failed to consider it. The Appellant had actually spent fifteen years in the UK. She had already satisfied the requirement of “continuous residence” by the time she was 18, having arrived at the age of 8, in the UK. In any event, a failure to consider the Appellant’s private life rights from this point of view, would have attracted Article 8 of the Human Rights Act outside the Immigration Rules.

Error of Law

8. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law. Both Mr Walker and Ms Solanki are agreed on this point. I additionally note that the judge’s account of the facts is clear that, “the Appellant has developed a private life in the UK” and that “her child was born in the UK too” and that “the Appellant has resided in the UK without interruption since 2019”, but the judge’s focus is entirely on the Appellant’s private life rights since 2019. This is clear from what the judge states in the next breath, namely, “this means that any private or family life developed was in the full knowledge that she had no permission to be within the UK” (paragraph 49a). What the judge has failed to do is to consider the Appellant’s period of private life prior to 2019 under the Immigration Rules.

Notice of Decision

9. The decision of the First-tier Tribunal involved the making of an error on a point of law such that it falls to be set aside. I set aside the decision of the original judge. This appeal is remitted back to the First-tier Tribunal to be determined by a judge other than Judge Rakhim pursuant to Practice Statement 7.2(b) because the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal.

Satvinder S. Juss

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

12th July 2024