



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal no: IA 07325-13

**THE IMMIGRATION ACTS**

At **Field House**  
on **10.03.2014 & 22.04.2014**

Decision signed: **25.04.2014**  
sent out: **28<sup>th</sup> April 2014**

Before:

Upper Tribunal Judge  
**John FREEMAN**

Between:

**Bibi Medina RAMPUTH**

appellant

and

**Secretary of State for the Home Department**

respondent

**Representation:**

For the appellant: Mr S Rungasamy (working under the supervision of Lawrence & Associates)

For the respondent: Mr Ian Jarvis (on 10 March); Mr Nigel Bramble (on 22 April)

**DETERMINATION & REASONS**

This is an appeal, by the respondent to the original appeal, against the decision of the First-tier Tribunal (Judge Andrew Devlin), sitting at Hatton Cross on 15 October 2013, to allow a long residence appeal by a citizen of Mauritius, born 28 June 1984. Permission was given on the basis that the judge hadn't followed the guidance set out in *Gulshan* (Article 8 – new rules – correct approach) [2013] UKUT (IAC) 640. Before me, on 10 March, Mr Jarvis applied, without opposition from Mr Rungasamy, to add further grounds challenging the reasoning, or lack of it, for some of the judge's findings of fact.

2. This appellant had been here with leave as a student from 12 October 2003 till 2010: following a successful appeal, her leave to remain was extended in 2011 till 30 January 2013, but 'curtailed' in 2012, to expire on 13 May, as her college had had its licence revoked. It is necessary, particularly in view of *Gulshan* and other recent authorities, to consider the basis for the judge's findings on paragraph 276B of the Immigration Rules.

## ERROR OF LAW

3. On 9 May 2012 the appellant applied for indefinite leave to remain, which was refused on 22 February 2013: she relied in her grounds of appeal on a point about the removal directions which came with that decision, and on article 8. By the date of the decision, the appellant had been here for ten years, with leave; a point to which I shall return. At paragraphs 157 - 8 the judge alluded to the appellant's failure to do anything to complete her studies, and at 159 to the general rule (paragraph 276B (i), though he didn't cite it), allowing indefinite leave to remain for someone here that long on that basis; but he went on:

160. Other than these considerations, I am unable to identify any other reason(s), having regard to the public interest that would make it undesirable to grant the Appellant indefinite leave.

161. In the absence of any such reason, I find that, although I cannot be not satisfied that the Appellant's ties with the United Kingdom are as strong as she claims or that there are any significant compassionate circumstances in her case, I am satisfied that the fact that the Appellant can only avail herself of the rule by reason of her intransigence, and the delay in hearing her appeal, of itself, makes it undesirable to grant the Appellant indefinite leave.

162. I therefore find that the Appellant meets the requirements of paragraph 276B (ii) of the Immigration Rules.

4. I will turn to what those requirements are shortly; but it seems to me that the judge's conclusions in this passage are somewhat contradictory. If it had only been a question of the superfluous double negative in the first sentence of 161, then that might have been read down without difficulty; but the passage as a whole contains a contradiction between the appellant's having indefinite leave to remain being undesirable (at 161) and in accordance with the rule (at 162), which would not be easy to resolve in this way.

5. Paragraph 276B as it now stands reads as follows:

The requirements to be met by an applicant for indefinite leave to remain on the ground of long residence in the United Kingdom are that:

- (i) (a) he has had at least 10 years continuous lawful residence in the United Kingdom.
- (ii) having regard to the public interest there are no reasons why it would be undesirable for him to be given indefinite leave to remain on the ground of long residence, taking into account his:
  - (a) age; and
  - (b) strength of connections in the United Kingdom; and
  - (c) personal history, including character, conduct, associations and employment record; and
  - (d) domestic circumstances; and
  - (e) compassionate circumstances; and
  - (f) any representations received on the person's behalf; and

The Home Office take no point against the appellant on the conditions set out in sub-paragraphs (iii) ['general grounds' for refusal], or on (iv) [knowledge of English language and life], or (v) [gaps in legal basis of stay]; so there is no need to say more about those, except that it may be assumed that this appellant meets them.

6. Mr Rungasamy referred me to a decision of the Tribunal, *MU* ('statement of additional grounds' – long residence – discretion) Bangladesh [2010] UKUT (IAC) 442. While the decision does suggest that someone may rely on such a statement, claiming ten years' lawful residence which they have only accumulated on the basis of s. 3C leave, running while their appeal is pending, it also notes, at paragraph 12, that the circumstances in which this has happened are "... not irrelevant to the exercise of the discretion under paragraph 276B". Nor is it irrelevant that the Home Office's own policy guidance on 'Long Residence and Private Life' expressly recognizes that the necessary ten years' residence may be acquired while an appeal is pending in those circumstances, so long as the necessary s. 120 'additional grounds' statement has been served.
7. This appellant would not have had the necessary ten years' lawful residence on the basis of her student leave as originally extended, since that was only till January, and not to October 2013; and she must have known that she did not have it at the date of her application, and could only get it by pursuing an appeal which could, and did take some time to resolve.
8. However, it is now agreed that the judge's first reason for regarding the appellant as not qualifying for consideration under paragraph 276B (no s. 120 'additional grounds' statement served: see his paragraphs 62 – 64) was wrong, because the appellant's representatives had faxed one to the Home Office on 14 October, which did raise the paragraph 276B point. By that time, the day before the first-tier hearing, the appellant *had* built up the necessary ten years' lawful residence to qualify for indefinite leave to remain under paragraph 276B (i).
9. That state of affairs raised questions on the judge's application of paragraph 276B (ii) which were not answered in his decision; but, for the reasons set out at 3 – 4, left conspicuously hanging in the air. This in my view was an error of law on his part, which required the decision to be re-made, which was to be done following a further hearing before me on 22 April.

#### **SCOPE OF FURTHER HEARING**

10. The appellant had not challenged any of the judge's findings of fact on paragraph 276B (ii) by means of a r. 24 response; so they only needed to be revisited if either Mr Bramble chose to pursue the additional handwritten grounds of appeal put forward by Mr Jarvis on 10 March; or if the findings left the factual position on the application of the rule so unclear that they needed to be supplemented. Mr Bramble did not pursue the additional grounds; and both sides agreed that I could re-make the decision on 276B (ii) on the basis of the judge's findings of fact on conditions (a) – (f), together with the facts relating to how the appellant had built up her ten years' residence, in the context of 'reasons why it would be undesirable' for her to be given indefinite leave to remain.
11. If, on re-making the decision on that basis, I were satisfied that it would *not* be undesirable for the appellant to be given indefinite leave to remain, then of course there would be no need to go on to consider the case under article 8, nor any need to re-visit the judge's reasons on that point. However paragraph 276B (ii) specifically allows a wide range

of considerations to be taken into account, and I put it to the parties that, if I found there *were* reasons why it would be undesirable for the appellant to be given indefinite leave to remain on the ground of long residence, then that would leave no room for such ‘exceptional’ or ‘compelling’ features in the case (see *Gulshan* (Article 8 – new Rules – correct approach) Pakistan [2013] UKUT 640 (IAC), and *Shahzad* (Art 8: legitimate aim) Pakistan [2014] UKUT 85 (IAC)) as to require any free-standing consideration of article 8.

12. Both sides agreed with this suggestion; so my sole task is to re-make the decision under paragraph 276B (ii), in the light of the parties’ agreement that the appellant *does* satisfy the requirements of (i), (iii), (iv), and (v). Despite the reference to ‘reasons why’ in (ii), it is clear that I need to reach my own decision on the merits of the case, on the basis of the judge’s findings of fact. That makes it unnecessary to say any more about the burden and standard of proof, though in general it rests on the appellant in a case of this kind to show that any fact she relies on is more likely than not to be true. The appellant has, on the face of paragraph 276B (ii), to satisfy me that “... having regard to the public interest there are no reasons why it would be undesirable for [her] to be given indefinite leave to remain on the ground of long residence”; but it is clearly preferable in such a case for the Home Office to put forward reasons why it *would* be undesirable, so she can answer them.

#### **DECISION RE-MADE**

13. The judge was obviously directing his attention to the individual considerations under paragraph 276B (ii), though he did not always make it quite clear where one started and another stopped. I shall go through them one by one:

(a) age

The appellant is now nearly 30, as good an age as any other for changing country, other things being equal.

(b) strength of connections in the United Kingdom

I shall deal with this together with (d) and (e), as the judge did.

(c) personal history, including character, conduct, associations and employment record

Here the judge’s findings were almost entirely positive: see his paragraphs 143 – 146. He found no reason to think that her character, conduct and associations were anything other than impeccable: as for her employment record, letters she produced from the hospital where she worked as a care assistant made it “... relatively clear that she is hardworking and dedicated to her work and the patients under her care”. The appellant had remained in that employment (see paragraph 131) despite her claims to require significant physical support. The judge accepted what the letters said as showing that the appellant was economically active in this country, and able to remain so.

(d) domestic circumstances

(e) compassionate circumstances

Please see the following paragraphs for the judge’s findings of fact, and my conclusions on these, and on (b).

(f) any representations received on the person's behalf

The judge dealt with this at paragraph 152: while the appellant had expressed a wish to complete her studies and qualify as a midwife, he noted that she had not given any reasonable explanation for her failure to try to find and enrol at another college, after her previous one lost its licence (see the judge's paragraph 17 (iv)) in March 2013. Mr Rungasamy stressed the fact that the appellant had been lawfully in this country for over ten years, without breaking the immigration laws or using deception to evade them: he suggested that there was nothing to justify her removal. I shall return to this topic later.


14. The judge dealt with considerations (b), (d) and (e) at paragraphs 107 – 142 [(b) and (e)], and 148 – 151 [(e)]. To summarize his findings, the appellant was “relatively fluent” in English (107) and had studied here from 2003 to 2011-12 (135); but the judge was not prepared to accept that she had lived throughout her ten years here with her brother and his family, especially because of her cousin Nadia's evidence that she had in fact been living with her since November 2011 (111 – 112). Nor was the judge prepared to accept that the appellant's brother had paid her course fees, after she fell out with her father in Mauritius, following her marriage to a Pakistani in 2006 (which had ended in divorce in 2007); or (as her brother put it:) “met all her needs”.
15. The appellant had been back to Mauritius in 2006, 2008 and 2009, the last time for her mother's funeral rites. Each time she had stayed in her father's house, despite her claim to have fallen out with him, though the judge did note (at 14 (viii)) her evidence that her father had stayed elsewhere himself on her 2008 and 2009 visits.
16. Besides the course fees, the appellant had claimed to receive more general financial support from her brother; but the judge did not accept (127) either that she needed it, or that he was in a position to give it. While he accepted her evidence (130) that she suffered to some degree from arthritis of the spine and knee, high blood pressure and depression, and reduced mobility, he noted the almost complete lack of any medical evidence of this, in particular to show that the appellant's condition required significant or any physical support. As already noted, she had stayed at work.
17. While the appellant had produced letters from friends or acquaintances of her own or her families, her brother had been unable to name any friends of hers, and there was no oral evidence from any of them: the judge was not prepared [140] to accept that she had any significant relationships outside her family, though at the same time he noted that this might increase whatever reliance she might have on her family members. It followed that the judge was not satisfied (142) that the appellant's ties with this country were anything like as strong as she had claimed.
18. Turning to the possible compassionate circumstances, the judge noted his previous findings about the appellant's physical condition (also mentioning – see 149 – that she suffered from obesity) and her relationship with her father, which led the judge not to be satisfied (150) that she would be unable to turn to him or his family members if she had to go back there. Finally the judge concluded at 151:

Other than being parted from her family, and some dislocation in place and medical treatment ... I cannot be satisfied that there are any significant compassionate circumstances in this case.

19. **Conclusions** The appellant has been in this country for 10½ years now, either studying or working, without having anything to her discredit, either in terms of immigration or the general law, and with good references from her work. As the judge accepted (141) she must have built up some ties with people here, besides her own family, though none of these were particularly significant. So far as her family were concerned, it seems she had lived for some time with her brother, and now lived with a cousin; but the judge did not accept, for reasons I have reviewed, that she got or needed any significant support from them.
20. Apart from the appellant's manifest obesity, which may nor may not be associated with some of the other problems she described, the judge rightly saw no clear evidence of her suffering from any significant condition which could not be treated in Mauritius, a relatively advanced Commonwealth country. The judge did not accept, for reasons he gave, that she would be without family support there, if she needed it.
21. If this appellant had built up ten years' lawful stay on the basis of leave granted by the Home Office, then all she would have needed to show is that considerations under paragraph 276B (ii) (a) – (f) led on balance to there being no serious reasons why it would be undesirable for her to be given indefinite leave to remain on the ground of long residence. As already noted at 12, there is no issue on the remaining sub-paragraphs of paragraph 276B [(i), (iii), (iv) and (v)]. I am prepared to accept that, in view of the appellant's good record in this country, she might have managed to succeed, on (ii) (a) – (f) taken by themselves.
22. However, that is not the case here: as already noted at 7, at the date of the decision, and of her appeal against it, it must have been clear to her and her then advisers (Lambeth Solicitors), that she had no claim to remain under paragraph 276B (ii), or any other Immigration Rule. Her present solicitors (Lawrence & Associates) certainly moved fast, following the tenth anniversary of her arrival here on 12 October 2013, serving the s. 120 statement on the 14<sup>th</sup>, to get it in before the first-tier hearing on the 15<sup>th</sup>. I should not want to criticize them for that: they were simply doing the best for their client, in a way which the law allows and the Home Office recognize as allowed: see 6.
23. While this appellant has not been guilty of the "blatant deception", practised by the appellant in *MU*, she and her solicitors between them have managed to put her in a position where she is, with one possible exception, eligible for the indefinite leave to be granted those who have been lawfully here for ten years, not by getting or keeping leave granted by the Home Office; but by their own unilateral action in appealing when she was not eligible for ten-year leave, and serving a s. 120 notice as soon as she was. Though I do not blame them for that, there is still a strong public interest in making sure that such stratagems do not succeed in defeating the clear purpose of the Immigration Rules, unless that is outweighed by an even stronger legitimate interest on the appellant's side.

24. For my part, I should regard that as requiring the appellant to show that, on the considerations at paragraph 276B (ii) (a) – (f), there are exceptional reasons why it would be wrong for her to be required to leave. Whether that is right or wrong, it must be quite clear from the judge’s findings of fact, as I have summarized them at **19 – 20**, that this appellant’s case raises no reasons outweighing the public interest referred to at **23**. It follows that there are serious reasons why it would be undesirable for her to be given indefinite leave to remain on the ground of long residence, and on that point her appeal must fail under the Immigration Rules. There is no scope for her to be given limited leave, for the same reasons as set out in *MU* (at paragraph 2 of the judicial head-note and paragraph 9 of the text); nor was this argued before me.
25. It may be objected that this result leaves very little room for any application of *MU* or the Home Office policy guidance at all. However, I do not think that is right: so long as it is recognized that exceptional family or personal reasons under 276B (ii) (a) – (f) may outweigh the public interest in not granting indefinite leave to remain to someone who has only achieved ten years’ lawful residence in this way, then the principle in *MU* will have the effect it was intended to have.
26. Since both sides agreed (see **10**) that the breadth of paragraph 276B (ii) left no room for consideration of article 8, if the appellant were not to succeed under the Rules, it follows that the judge’s decision is set aside, and re-made, dismissing the appeal as a whole. I will simply add that I regarded the agreement on this point as clearly right: unlike so many of the current Rules, 276B (ii) allows enough room for discretion in considering the appellant’s private and family life, as against the public interest, for article 8 not to come into play, unless some consideration is put forward which could not come under those set out at (a) – (f); and I cannot think at present what that could possibly be.

**Appeal dismissed**

A handwritten signature in black ink, consisting of stylized, overlapping letters that appear to be 'JLR' followed by a horizontal line.

(a judge of the Upper Tribunal)