



**Upper Tribunal
(Immigration and Asylum Chamber)
Number: IA/29499/2014**

Appeal

THE IMMIGRATION ACTS

**Heard at Field House
On 4th August 2015**

**Decision Promulgated
On 13th August 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

Mrs VIVIANNE ANGELA WILIAMS-BLAKE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Sufien (counsel), instructed by the appellant.
For the Respondent: Mr I Jarvis

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the appellant against a decision of First Tier Tribunal Judge Thanki promulgated on 22 January 2015, dismissing the appellant's appeal against refusal of her application for leave to remain on all grounds.

Background

3 The appellant is a citizen of Jamaica, born on 2 December 1960. The appellant entered the UK as a visitor on 7 July 1999 with a visit visa valid for six months. From 6 December 1999 to 31 May 2005 the appellant remained in the UK lawfully because the respondent made successive grants of temporary leave to remain as a student.

4 The appellant returned to Jamaica in 2002 for a brief visit. With the exception of that brief visit, she has remained in the UK since July 1999, but since 31 May 2005, the appellant has not had leave to remain in the UK and has overstayed her visa.

5 On 5 January 2010, the appellant married a British citizen and, on 15 November 2010, the appellant submitted an application for leave to remain as the spouse of a person present and settled in the UK. That application was refused by the respondent on 4 January 2011. The appellant did not have a right of appeal against that decision.

6 On 17 February 2011 and again on 17 March 2014, the appellant asked the respondent to reconsider the refusal decision of 4 January 2011. The respondent adhered to that decision. On 31 March 2014, the appellant's then solicitors made further representations for the appellant to be allowed to stay in the UK on the basis of her Article 8 rights. On 24 June 2014, the respondent rejected the further representations made by the appellant's then solicitors both in terms of the Immigration Rules and outwith the Immigration Rules. On 19 February 2014, the respondent served on the appellant Form IS151A. It is against the decision contained in the respondent's letter of 24 June 2014 that the appellant appealed to the First Tier Tribunal.

The Judge's Decision

7 In a determination promulgated on 22 January 2015, First Tier Tribunal Judge Thanki ("the judge") dismissed the appeal against the respondent's decision. The judge found that the appellant could not fulfil the requirements of either Appendix FM or Paragraph 276ADE of the Immigration Rules. The judge considered the appellant's Article 8 rights outwith the Immigration Rules before dismissing the appellant's appeal.

8 The appellant framed her own grounds of appeal and on 17 March 2015, First Tier Tribunal Judge Levin gave permission to appeal, stating:

"4 It is arguable that the judge erred in his consideration of Article 8 outside the Rules as it appears from paragraph 49 of his decision that he applied the test of "insurmountable obstacles" thereto.

"5 Furthermore, given that the judge has conflated his consideration of the appellant's appeal under the Immigration Rules with that of Article 8 outside the Rules and his findings upon both

are unclear, it is also arguable that the judge's whole approach to the case was materially flawed."

The Hearing

9 The appellant was represented by Mr A Sufien, Counsel. Mr Sufien produced a skeleton argument which, in reality, rehearses the appellant's position at first instance. He then sought to argue that the appellant fulfils the requirements of Paragraph 276ADE(vi) because the appellant has lost all ties to Jamaica. He then argued that the judge had ignored the five stage test set out in Razgar and carried out an inadequate balancing exercise.

10 Mr Jarvis for the respondent complained that the appellant was trying to introduce new grounds of appeal for which she did not have permission to appeal, and that the argument in relation to Paragraph 276ADE was incompetent because it had not been raised in the grounds of appeal. He referred me to the case of Azeemi Moayad (paragraph 16). He argued that there is no material error of law contained in the decision and that although the judge has taken a laborious and unusual approach, he has considered Article 8, both within the Immigration Rules and outwith the Immigration Rules and that although he did not immediately answer the question posed at [33] to deal with the issue within the Immigration Rules, the answer is found at [49]. He relied on SS Congo and Agyarko.

Analysis

11 Mr Jarvis is correct that the permission to appeal focuses on consideration of Article 8 outside of the Rules, but there is also a suggestion that the judge did not follow the two stage process and did not set out the boundaries of his consideration of Article 8 within the Rules and then outside the Rules.

12 Even if I were able to consider the submissions made by Mr Sufien in relation to the Immigration Rules, I would have to find that no challenge is made to the finding that the appellant cannot satisfy the requirements of Appendix FM so that finding stands.

13 At [33] the judge clearly considered both Appendix FM and Paragraph 276ADE of the Immigration Rules. It would have been helpful if he had set out his conclusion there (that the appellant cannot fulfil the requirements of the Immigration Rules) but a fair reading of his determination demonstrates that at [49], having considered the appellant's circumstances and relying on the facts as he found them to be, there is a clear finding there that the appellant cannot fulfil the requirements of Paragraph 276ADE(1)(vi).

14 The judge considered the appellant's Article 8 rights outside of the Immigration Rules. He reminds himself of the five stage test set out in *Razgar* and applies those five stages to his analysis of the facts as he found them to be. He then applies Section 117A to D of the Nationality, Immigration and Asylum Act 2002 before reaching a conclusion. The conclusion reached by the judge was one which was manifestly open to him.

15. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigration Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law.

16 In submissions, Mr Sufien made much of the circumstances of the appellant's British citizen husband. He is of Jamaican origin but has lived in the UK since he was 11 years old. In *SS(Congo) and Others [2015] EWCA Civ 387* Richards LJ suggested a test of exceptional circumstances might apply in cases where a relationship has been formed under conditions of known precariousness before a violation of Article 8 will be found to arise in relation to a refusal to grant leave to remain outside the Rules.

17. I remind myself of the case of *Agyarko and others v SSHD* 2015 WLR (D) 205. At paragraph 25, it was stated that the mere fact that a British citizen had lived all of his life in the UK, had a job here and might find it difficult, and might be reluctant, to relocate to another country, could not constitute insurmountable obstacles. It is open to the appellant's husband to accompany her to Jamaica if he wants to.

18. Although the judge used the phrase "insurmountable obstacles" at [49] of his determination, a fair reading of the decision makes it clear that the correct legal test has been applied. The appellant cannot fulfil the requirements of the immigration rules. There was no reliable evidence before the judge to indicate that the appellant had lost all ties to her country of origin. The evidence indicated that she had visited Jamaica as recently as 2002. The appellant's husband is of Jamaican origin. The judge considered whether article 8 out-with the rules is engaged and found that it is not.

Conclusion

19. I am therefore satisfied that the judge's determination, when read as a whole, sets out findings that are reasoned, sustainable and sufficiently detailed.

20. I therefore find that no errors of law have been established and the judge's determination shall stand.

Decision

21 The appeal is dismissed.

Signed

Date 7 August 2015

Deputy Upper Tribunal Judge Doyle