



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001808
First-tier Tribunal No:
HU/09894/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 17 May 20223

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

DURGAMATEE BHOLAH

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

(NO ANONYMITY ORDER MADE)

Representation:

For the Appellant: Mr Z. Sharma, instructed by Charles Simmons Solicitors
For the Respondent: Ms S. Lecointe, Senior Home Office Presenting Officer

Heard at Field House on 31 January 2023

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 21 May 2019 to refuse a protection and human rights claim.
2. First-tier Tribunal Judge I. Ross ('the judge') dismissed the appeal in a decision sent on 01 November 2021.
3. The appellant applied for permission to appeal to the Upper Tribunal on the ground that the First-tier Tribunal failed to give adequate weight to the medical evidence relating to the appellant's mental health, as well as relevant facts such as her experience of past domestic abuse, and her length of residence in the UK in assessing whether there were 'very

significant obstacles' to her reintegration in Mauritius for the purpose of paragraph 276ADE(1)(vi) of the immigration rules.

4. First-tier Tribunal Judge Ford granted permission to appeal in an order dated 31 December 2021.

Decision and reasons

Error of law

5. The respondent filed a rule 24 response dated 17 February 2022 in the following terms:

- '2. The respondent does not oppose the appellant's application for permission to appeal on the basis that the judge did not take into account the psychiatric evidence when making the assessment under para 276ADE of the rules.
3. The tribunal is invited to set the case down for a re-hearing in the Upper Tribunal to specifically address the medical evidence in the context of the assessment under para 276ADE. The Secretary of State considers that the other findings of the judge should be preserved.'

6. Upper Tribunal Judge Allen made the following directions, sent on 03 November 2022:

'In light of the concession by the Secretary of State in the Rule 24 Response (attached) that there is an error of law in the First-tier Tribunal's decision in this case, the parties are directed to provide, no later than 14 days from the date of these directions, their submission as to:

- (1) Whether the rehearing of the appeal should be in the First-tier or the Upper Tribunal, and
- (2) Which, if any, of the judge's findings should be preserved.

Thereafter the matter will be put before a judge to decide the above points.

If either party considers that it is necessary for there to be oral submissions on either or both of these points, they are to inform the Tribunal before the end of the 14 day period.'

7. Further to those directions Upper Tribunal Judge Kamara made the following directions, sent on 09 January 2023:

'The only preserved finding is that contained at paragraph 22 of the decision of the First-tier Tribunal which is reproduced below, in its entirety:

'Whilst it is accepted by the respondent that the appellant was a victim of domestic violence, I find that there is an absence of reliable evidence that the appellant's ex-husband is likely to behave in a manner which would prevent her integration or would cause there to be very significant obstacles to her integration in Mauritius. That is because the appellant left her husband in 2002, which is now 19 years ago, and has not seen him since she left Mauritius in 2008, which is 13 years ago. The appellant was unaware of her ex-husband's whereabouts or what he did when she gave her asylum interview.'

The appeal will be listed before the Upper Tribunal for the remaking of the decision of the First-tier Tribunal at a hearing of estimated length 2 hours.'

8. Neither judge issued a formal error of law decision. The parties agree that it is sufficient for me to record that the First-tier Tribunal decision involved the making of an error of law in this decision before going on to remake.

Remaking

9. The main legal issue for determination in this appeal is whether the appellant meets the private life requirement contained in paragraph 276ADE(1)(vi) (as it was at the date of the decision), and if not, whether her removal in consequence of the decision would amount to a disproportionate interference with her right to private life under Article 8 of the European Convention.

10. Paragraph 276ADE(1)(iii) of the immigration rules requires a person to show that they would face 'very significant obstacles' to their integration in their country of origin. This is a stringent test that goes beyond the usual level upheaval that returning to a home country might involve. In *Parveen v SSHD* [2018] EWCA Civ 932 the Court of Appeal made the following observations about the elevated threshold.

'9. It is fair enough to observe that the words "very significant" connote an "elevated" threshold, and I have no difficulty with the observation that the test will not be met by "mere inconvenience or upheaval". But I am not sure that saying that "mere" hardship or difficulty or hurdles, even if multiplied, will not "generally" suffice adds anything of substance. The task of the Secretary of State, or the Tribunal, in any given case is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as "very significant".'

11. In *Kamara v SSHD* [2016] 4 WLR 152 the Court of Appeal outlined the key elements of the test, which is also found in section 117C(4) NIAA 2002.

'14. In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.'

12. I heard evidence from the appellant at the hearing and have considered the documentary evidence before me, which includes medical evidence relating to the appellant's mental health.

13. The appellant is a 52-year-old woman from Mauritius who entered the UK on 04 July 2008 with leave to enter as a student. The appellant was 38 years old when first arrived in the UK. She was born in Mauritius and has spent most of her life there. The appellant is well educated and used to work for an IT company before she came to the UK. Although her parents have now passed away, the appellant has many siblings and other family members living in Mauritius.
14. The appellant was granted further periods of leave to remain as a student until 25 March 2014. A further application for leave to remain was refused on 21 July 2014 and the subsequent appeal was dismissed on 17 November 2014. It is said that her appeal rights became exhausted on 05 May 2015. Further applications for leave to remain as a Tier 2 Migrant were refused. The appellant made an application for leave to remain on human rights grounds on 11 January 2018. At the date of the hearing, the appellant has lived in the UK for a period of over 14 years, but for nearly half of that time she has remained without lawful leave.
15. At the hearing the appellant told me about the domestic abuse that she suffered from her husband when she was in Mauritius. It was clear from her evidence that she had an unhappy and difficult marriage. Having suffered violent and abusive behaviour for many years, it is understandable that she might still have a subjective fear of returning to the place where she suffered such abuse.
16. However, it was conceded before the First-tier Tribunal that the appellant did not have a well-founded fear of persecution for one of the reasons outlined in the Refugee Convention. Judge Ross found that the appellant had failed to produce sufficient evidence to show that she would be at real risk of serious harm from her husband after such a long period of time. The appellant separated from her husband in 2002. The judge also found that there was no evidence to suggest that the authorities in Mauritius would not be able to provide sufficient protection if needed. The judge also found that the appellant's concerns about her ex-husband were not sufficient to create 'very significant obstacles' to integration. Those findings were preserved by Upper Tribunal Judge Kamara.
17. In addition, I note that more than 20 years have now passed since the appellant separated from her husband. The appellant told me that she felt under pressure and was worried about further abuse from her ex-husband after they separated. Nevertheless, the appellant was able to remain in Mauritius for a period of about six years after she separated from her husband without any significant problems. She was able to work to support herself. The appellant told me that she came to the UK to get away from the uncomfortable situation in Mauritius and to further her education.
18. The appellant says that she tried to apply for further leave to remain under Tier 2 because she realised that she was dreading to go back to Mauritius after she had completed her studies. Those applications were not successful. Since 2105 she has remained in the UK without leave to

remain. She has not had permission to work and has been reliant on friends for support. She lives with some close friends, who she relies upon for emotional and financial support. Although they wrote letters of support, they did not attend the hearing to give evidence.

19. The appellant's history of domestic abuse, and her precarious situation in the UK, appears to have taken a toll on her mental health. She says that she has suffered from depression for some time.
20. A report was prepared by Dr Mina Bobdey, a consultant psychiatrist. The report itself appears to be undated but I understand that it was prepared in 2019. Dr Bobdey prepared the report after a single consultation. Nothing in the report suggests that she was provided with copies of the appellant's medical records. Dr Bobdey concluded that the appellant was likely to be suffering from Moderate Depressive Disorder with symptoms of anxiety, which were complicated by her ongoing immigration issues. Dr Bobdey noted that the appellant was not receiving treatment and recommended that she would benefit from a specialist assessment by the Community Mental Health Team (CMHT). In Dr Bobdey's opinion returning to Mauritius was likely to lead to a deterioration in her condition because 'it will be another loss and failure for her' and 'she is also worried about ongoing abuse from her ex-husband.' Dr Bobdey made this assessment based on the appellant's evidence that there would be 'limited or no family support' in Mauritius.
21. A letter from the appellant's GP dated 16 July 2020 stated that she was on medication to control her blood pressure and had been prescribed anti-depressants. The appellant's GP states that she was suffering from ongoing anxiety symptoms 'due to her living conditions, home office issues and death of her mother'.
22. There is also a report by Dr Simmi Sachdeva-Mohan dated 17 July 2021. Although this is the most up to date assessment, it is still over a year and a half old at the date of the hearing. Dr Sachdeva-Mohan is a consultant psychiatrist. Like Dr Bobdey, she was not a treating physician. She was asked to provide an assessment following a single consultation. Dr Sachdeva-Mohan was provided with Dr Bobdey's report, GP records and some other information about psychological therapies from July 2021.
23. Dr Sachdeva-Mohan noted that the only treatment the appellant was receiving was anti-depressant medication. She was on a waiting list for 'psychological input' but the waiting time was 12 weeks. Dr Sachdeva-Mohan noted that the appellant had reported suicidal ideation and low mood. She diagnosed the appellant as suffering from symptoms of Major Depressive Disorder of Severe Intensity.
24. In Dr Sachdeva-Mohan's opinion the appellant would be unable to care for herself without extra support, 'especially as she has no place to live and no employment'. She took the appellant's evidence that she was estranged from her 10 siblings at its highest and noted that the appellant

was still worried that her ex-husband would 'make things difficult for her'. Dr Sachdeva-Mohan concluded that it was in the appellant's best interests to remain in the UK with her friends. It seems that she was not asked to make an assessment in relation to suicide risk.

25. At the hearing, the appellant was asked what the situation was relating to the referral for counselling mentioned in Dr Sachdeva-Mohan's report. The appellant said that the counsellor contacted her and referred her to a service called RAPID. However, they asked her to pay for counselling, but she could not do so because she is unable to work. The only treatment the appellant was receiving was anti-depressant medication.
26. In addition, the appellant told me that she was worried that she would not be able to re-establish herself in Mauritius. Although she had worked in the past, she did not think it would be easy to find work because she is older and might not have the skills required in the current employment market. The appellant told me that she was estranged from her siblings in Mauritius. She said that they are resentful that she was not there to help care for her mother, who suffered from Alzheimer's Disease. After she left her husband, she lived in her mother's house. Since her mother died in 2020, she claimed that this would not be possible.
27. I have considered all the evidence in the round. The appellant's reluctance to return to Mauritius due to a history of domestic abuse garners sympathy. However, I am obliged to consider whether her circumstances meet the requirements of the relevant legal tests. A person's understandable desire to remain in the UK does not necessarily equate to a right to do so under the law.
28. Although the appellant has lived in the UK for 14 years, she does not meet the requirements of the immigration rules for leave to remain on grounds of long residence. She did not acquire 10 years of lawful residence for the purpose of paragraph 276B of the immigration rules and falls far short of the 20 year long residence requirement contained in paragraph 276ADE(1)(iii) of the immigration rules.
29. Paragraph 276ADE(1)(vi) of the immigration rules is intended to apply to those who have been in the UK for such a long time that they have become, in essence, completely estranged from their country of origin. As I have already explained, the test of 'very significant obstacles' is a stringent one that goes beyond the usual difficulties one might face in returning home after a long period away.
30. The appellant did not come to the UK as a young child and is not someone who has lost all connection with her country of origin. She was born in Mauritius and lived there for the first 38 years of her life. She knows how life there works. She is educated and was able to work to support herself for many years during her marriage and after she separated from her husband. She continues to have cultural, linguistic and familial ties in Mauritius.

31. Although the appellant continues to express concerns about her ex-husband, a finding has already been made that there is insufficient evidence to show that she would be at risk from him on return. There is no evidence to show that the authorities would not be able to provide sufficient protection from him if needed. It is likely to be a continuing source of anxiety for her, but I find that it is not an issue that would impact on her ability to re-integrate on return.
32. The medical evidence shows that the appellant has suffered from depression for several years. This has been assessed as 'moderate' or 'major' depressive episodes by consultant psychiatrists. The medical evidence also indicates that the main causes of her condition is the long standing uncertainty about her immigration status, concerns about her mother's condition before she died, and anxiety about returning to Mauritius because of her husband's past abuse.
33. Without diminishing the distress that ongoing depression can cause, nothing in the evidence shows that the appellant is suffering from such a serious condition that she would not be capable of looking after herself if she returned to Mauritius as she did before. There is no evidence to suggest that she would not be able to receive appropriate medical treatment if needed. Mr Sharma did not seek to argue that the evidence would meet the threshold for a breach of Article 3 of the European Convention on medical grounds.
34. Dr Sachdeva-Mohan's opinion that the appellant would be 'unable to care for herself without extra support' was expressed without full knowledge of the appellant's past employment history in Mauritius. The appellant is dependent upon her friends for support in the UK, but that is because she has no leave to remain and is not permitted to work. The appellant has expressed the desire to work if she could. For these reasons, I conclude that nothing in the medical evidence indicates that the appellant is so vulnerable that she is unfit to work or to look after herself if she returned to Mauritius.
35. In any event, even if there is some ill-feeling between the appellant and her siblings, I find that it is highly unlikely that all 10 siblings would shun her to the extent that they would refuse to provide her with any support on return. In her witness statement, the appellant referred to support provided by her siblings during her marriage. While recognising that having a parent who was living with dementia can place stresses and strains on family relationships, and that there might be an element of resentment that the appellant was not there to help care for their mother, I find that it is unlikely that all her siblings would reject her so completely for this reason. I find that it is likely that at least one or two of her siblings, or other extended family members, would be able to assist her to re-establish herself in Mauritius on return.

36. It is understandable that the appellant might find it daunting to enter the employment market again after several years without work. However, the evidence shows that she had a consistent pattern of employment in Mauritius both during her marriage and after she separated from her husband.
37. Having reviewed all the evidence, I conclude that the difficulties that the appellant might face if returned to Mauritius would be no more than the usual upheaval a person might face in re-establishing themselves after a period of time away. It might take a little time to find work and a place to live, but she has many family members in Mauritius who are likely to be able to provide some initial support. She is known in the community and would be able to re-establish family and private life connections within a reasonable period of time. I recognise that the appellant will find it daunting because she had hoped to remain in the UK. She is also worried that her ex-husband might still show animosity towards her. However, I conclude that when the situation is considered as a whole, the appellant would not face 'very significant obstacles' to integration within the meaning of the stringent test contained in paragraph 276ADE(1)(vi) of the immigration rules.
38. The appellant is not in a relationship and does not have children. I accept that after 14 years she is likely to have established connections with friends in the UK although there is little evidence relating to the strength of those ties. I accept that removal would interfere with the appellant's right to private life in a sufficiently grave way as to engage the operation of Article 8(1) of the European Convention.
39. Article 8 of the European Convention protects the right to private and family life. However, it is not an absolute right and can be interfered with by the state in certain circumstances. It is trite law that the state has a right to control immigration and that rules governing the entry and residence of people into the country are "in accordance with the law" for the purpose of Article 8. Any interference with the right to private or family life must be for a legitimate reason and should be reasonable and proportionate.
40. The Upper Tribunal must consider where a fair balance should be struck for the purpose of Article 8(2) of the European Convention. This involves a balancing exercise considering the relative weight that should be given to the appellant's individual circumstances and the public interest in maintaining an effective system of immigration control. The immigration rules indicate where the respondent considers a fair balance should be struck. It is normally proportionate to require a person to leave the UK if they do not meet the requirements of the immigration rules.
41. Section 117B NIAA 2002 requires a court or tribunal to consider matters that might weigh in the public interest in the balancing exercise. Little weight can be placed on the appellant's private life, which was established at a time when her immigration status was precarious and/or she had no

permission to remain in the UK. Although she speaks English and would be capable of working to support herself these are neutral factors in the assessment.

42. I have carefully considered the evidence relating to the appellant's mental health, but for the reasons given above, I have concluded that her condition is not sufficiently serious to create a significant obstacle to her return. Nor does the evidence suggest that her condition is so serious that it might amount to a compelling circumstance that outweighs the public interest in maintaining an effective system of immigration control. The appellant has remained in the UK for the last seven years without leave and does not meet the requirements of the immigration rules. I understand why the appellant is reluctant to return to Mauritius, but when her situation is assessed within the relevant legal framework, I conclude that the decision does not amount to a breach of Article 8 of the European Convention.
43. For the reasons given above, I conclude that the decision is not unlawful under section 6 of the Human Rights Act 1998.

Notice of Decision

The appeal is DISMISSED on human rights grounds

M.Canavan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 April 2023