



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/39272/2013**

THE IMMIGRATION ACTS

Heard at: Field House

Promulgated

Determination

On: 18 December 2014

On: 13 August 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

**MISS SHALINI DEVI SEEGOLAM
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms C M Fielden, counsel (instructed by Raj Law Solicitors)
For the Respondent: Ms L Kenny, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal Judge who dismissed her appeal against the respondent's decision dated 24 September 2013 refusing her further leave to remain as a Tier 4 student migrant. In granting permission, it was noted that it was not clear from paragraphs 25 and 26 of the determination whether the Judge actually found that the appellant met the ten years' condition at paragraph 276B of the Immigration Rules. In the absence of a clear finding on that relevant issue, there was arguably a legal error.
2. On 18 September 2014, the Upper Tribunal set aside the decision of the First-tier Tribunal Judge. The respondent, who was represented by Mr Bramble at the time, accepted that the Judge had not been clear on whether the appellant had established ten years' lawful residence. It did not appear that the Judge had actually stated whether he had in fact made a finding in relation to ten years' continuous lawful residence.

3. The Tribunal found that, based on the application of s.3C of the Immigration Act 1971, the appellant had completed ten years' lawful and continuous residence as at the date of decision. The Judge had made what appeared to be critical comments regarding the public interest requirements under paragraph 276B(ii) of the Rules.
4. In the event, the hearing was adjourned in order to enable the appellant to adduce further evidence for a decision to be made whether, having regard to the public interest, there are any reasons why it would be undesirable for her to be given indefinite leave to remain on the grounds of long residence, taking into account the factors set out in paragraph 276B(ii)(a) to (f).

Hearing on 18 December 2014

5. The appellant attended the hearing and gave evidence. She has produced a further substantial bundle dated 5 December 2014, prepared by Raj Law Solicitors. She referred to and adopted two witness statements. The second statement at C1-C2 was signed at the hearing.
6. She stated that since her arrival in the UK she has lived with her sister and her family, including her brother in law and their young daughter. She has formed a close and strong bond with them. They have supported her during her stay.
7. She would have completed her studies in 2013 but was not able to do so as her marriage broke down. She was "shattered completely" and emotionally disturbed. She could not study or work. The breakdown was the most devastating moment of her life, particularly because she was with her former husband for almost ten years.
8. In particular, her sister and brother in law knew what she was going through. They have assisted and supported her in overcoming her grief and troubles. Her mother in fact came to the UK on two occasions from Mauritius, both in July 2011 and June 2012 to be with her and to provide her with emotional support during that time.
9. When she consulted her GP, he prescribed antidepressants. She did not take them however as she was advised accordingly by her sister who works for NHS Mental Health. She relied on her friends and family who stood by her to help her overcome "the situation."
10. She has been studying in the UK since November 2003. She found the course at the School of Technology and Management too difficult to complete. She started the third year but failed a few modules. She then attended Wilson College for a degree in Administrative Management. She obtained an Advanced Diploma. However, that college lost its Tier 4 licence and closed down. She informed the Home Office about that and applied to Williams College in February 2010 for a BA in Business Management. She completed two years of her BA course.

11. Her sister is her only sibling, her advisor and best friend. They grew up together. They have always been living together for the past ten years. She is closer to her sister than anyone else in the family. Her parents are settled in Mauritius. She has now started to look for work and has received offers from different companies.
12. The appellant has also produced a CV at pages C3-C4.
13. In her earlier statement, she said that her decree absolute was granted on 15 November 2013.
14. She has never had any criminal convictions. She has never come to the attention of the police.
15. In cross examination, she was referred to her witness statement at B2(paragraph 8). She said when she had her problems after the breakdown of her marriage, she informed the college. That was at the end of 2012. She spoke to the administration. She spoke to them at the college itself.
16. She informed them that she was going through a troubled period. They informed her that she had to attend college. She however stopped attending college in 2013. She spoke to the secretary in June 2013 (she accordingly said that she did not speak to them at the end of 2012 as originally stated but in or about June 2013).
17. She was referred to paragraph 7 of that statement where she stated that she applied for her visa to be extended in May 2010. This was in order to finish her course of study in February 2013. However, the visa was only granted until June 2012. She said that she made a new application after the visa expired in June 2012. When she stopped studying in 2013, she was sent a letter. However, she did not attend as she was not well. She spoke to the administration in about June 2013. She does not have a copy of the letter from the college.
18. She stated that she has looked for the prescription concerning antidepressants, but she has not been able to find it. She did not provide any evidence to the college from a doctor.
19. The college has not followed up about her attendance. They have lost their licence. She tried to contact them to obtain evidence concerning her dealings with them, but she phoned a few times, checked online and discovered that their licence had been suspended. This was in about August 2013.
20. She was asked what she plans to do. She wants to pursue her course in Human Resources and find a job in that area. She is feeling much better now. She is not on medication. She is not in a relationship. She lives with her sister, brother in law and niece.

21. She will try to finish the same course and also study a human resources course. She plans to continue living with her sister.
22. She said that she regards the UK as her home. She has all her friends and relatives here. She has a strong bond with her sister. She is her best friend. She wants to be with them here.
23. Her parents are in Mauritius. She has Skype contact. This is about every two weeks. She last visited Mauritius in 2012.
24. She stated that she is close to her friends. She referred to B55/6 containing a letter from Mr Prithviraj Sajadah dated 9 March 2014. He confirmed that he has known the appellant for years. They have been close friends since she has been in the UK. He has encouraged and supported her during her difficult times. He will continue to do so.
25. He is a British citizen and works for the NHS at Kings College Hospital.
26. She said that she met him in the UK. She knew him already from Mauritius. When she had her marriage breakdown he supported her emotionally. He has known Ms McArthur for nine years. They used to work together in William Hill.
27. At C5, she produced a letter from Kervin Gungih. He currently works as a manager at MacDonalDs Restaurant. He confirms that they were unable to offer her a job as she does not meet the minimum requirement of a six month valid visa as per company recruitment policy. In fact this is her brother in law. He said she does not mind working at MacDonalDs pending the obtaining of a qualification after which she would wish to obtain appropriate employment.
28. I have had regard to various other documents and letters produced in the bundles.

Submissions

29. Ms Kenny submitted with regard to the appellant's strength of connections in the UK that she has her sister, brother in law and friends here. However, these relationships developed in the knowledge that she may not be able to stay here. Her parents remain in Mauritius. It is not denied by the respondent that the appellant has a close relationship with her sister. However, that relationship could be maintained from Mauritius.
30. The appellant has in fact exceeded the maximum five year period of study allowed. Although this has been explained by the marriage breakdown, she has continued to pursue courses.
31. There is however no contention that she has breached any of the conditions relating to her visas in the UK.

32. Ms Kenny said she had no submissions with regard to the appellant's domestic circumstances. With regard to the "compassionate circumstances", Ms Kenny submitted that there is scant evidence of her depression. Aside from vague evidence of those who support her, there is no medical evidence produced. She informed the college that she was suffering from problems and stopped attending for those reasons. However, there is nothing produced from the college in that regard.
33. On behalf of the appellant, Ms Fielden referred to her short skeleton argument. She submitted that the "checklist" at paragraph 276B(ii) (a) to (f) has to do with identifying whether it was undesirable for the appellant to be granted indefinite leave to remain. The respondent would have to show that she is "undesirable", having regard to the circumstances identified. Accordingly, circumstances such as offences having been committed, or that she has been associating with "bad people" or that she has been receiving public benefits, or anything adverse from her past history would have to be shown.
34. Even then, the appellant is capable of "redeeming" herself. Regard must be had to the circumstances including the strength of her connections and the compassionate basis.
35. She has not been shown to have any adverse factors that count against her for the purpose of the rule.
36. The fact that the college's licence was lost was not her fault. Nor is this a case about her relationship with her mother or parents in Mauritius, or her connections there, but the strength of her connections in the UK. She has those here.
37. Ms Fielden referred to various letters at A15, A33, B26, B35, B55. These are letters of support from various relatives and friends, including her sister, Ms Gungiah, who confirms that she has a strong and supportive relationship with the appellant. This has also benefited her daughter, who is three years old. She refers to the breakdown of the appellant's marriage in 2012. This has resulted in a "very hard phase" for the appellant. There has been a very painful psychological process for her. She has received support from the family and parents all the way through.
38. The other letters in a similar vein are from her aunt, Ms Padaruth, and her parents, who continue to support her indefinitely.
39. She has attempted to obtain corroborative evidence from her colleagues. However, the licence was revoked and the college was shut down.

Assessment

40. I found the evidence of the appellant to be credible. In any event, there has been no significant challenge to her evidence. There is no suggestion

that her marriage did not break down causing her considerable emotional hurt resulting in her inability to continue with her course.

41. I have also had regard to the various supporting statements and letters produced.
42. I am accordingly satisfied that the appellant has strong connections in the UK. I am also satisfied that there is nothing in her character, conduct or associations that in any way suggest that it would be undesirable for her to be granted indefinite leave to remain.
43. I have had regard to her domestic circumstances which are not in issue, as well as the compassionate circumstances which have been fully set out. I am also satisfied that she has no convictions in the UK. She has not been in breach of immigration laws.
44. I have an exercisable discretion as to whether or not indefinite leave on long residence grounds should be refused for the reasons set out in paragraph 275B. There is no suggestion in this case, as there was in the decision of MU ("statement of additional grounds" - long residence - discretion) Bangladesh [2010] UKUT 442 (IAC) that the appellant has practised deception as was practised in **MU**.
45. I find that the appellant came here as a student, intending at the time to return there at the end of her studies. In fact her husband remained in Mauritius.
46. I accept the submission that the breakdown of her marriage, resulting in divorce, constituted a substantial emotional event in her life. She did not rely on antidepressants.
47. She has however relied on support from her family here as well as friends.
48. The First-tier Tribunal Judge referred to the appellant's apparent determination to stay in the UK. However, that was in the context that the appellant's life had substantially altered following the breakdown of her marriage and divorce.
49. Having regard to the evidence as a whole, I find that there is nothing to suggest that her presence in the UK would be undesirable for any of the reasons referred to in paragraph 276B.

Notice of Decision

The appeal is allowed under the immigration rules

No anonymity direction is made.

Signed
29/12/2014

Date:

Deputy Upper Tribunal Judge Mailer