



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/06469/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 16th July 2015**

**Decision & Reasons Promulgated
On 24th July 2015**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

**DAINA KIMBOLYN MOWATT
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - Kingston

Respondent

Representation:

For the Appellant: Ms C Fielden, counsel, instructed by Chase Legal Services
For the Respondent: Mr Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Jamaica, date of birth 17 May 1996. She sought settlement to join her mother, Marsha Avadorn Henry in UK. At all material times the sponsor held Discretionary Leave (DL) to remain in the UK, valid until 03 October 2016. This had first been granted for a period of 3 years on 24 September 2009 on the basis of the mother's relationship with her British citizen spouse and was renewed on 23 October 2016. The sponsor and the father of the appellant, Mr Marcello Nakasha Mowatt, are separated, but the father also lived in the UK. At the date of the entry clearance application the father did not have

Indefinite Leave to Remain (ILR) but, prior to the decision, on 05 March 2014, he was granted ILR. This meant that he was a settled person (he was free from any restriction on the period for which he may remain in the UK).

2. The application was refused on 01 April 2014. The respondent considered the application under paragraph 297 of the immigration rules. On the information before the respondent he or she was not satisfied, *inter alia*, that the appellant's mother was settled, that she had sole responsibility for the appellant, or that there were serious and compelling family or other considerations which made her exclusion undesirable.

The First-tier Tribunal hearing

3. At the hearing before the First-tier Tribunal Judge it was argued that the appellant complied with paragraph 301 of the immigration rules, which set out the requirements for limited leave to enter the UK with a view to settlement as a child of a parent or parents given limited leave to enter the UK with a view to settlement. It was submitted on behalf of the appellant that, at the date of decision, her father was settled and that her mother had been given limited leave to remain with a view to settlement.
4. The Judge had to consider whether the mother did have limited leave to remain with a view to settlement. It was accepted by the presenting officer at the hearing that there was no definition of leave "with a view to settlement" under the immigration rules, and no authority was cited to the Judge as to the meaning of the phrase. The Judge noted that the phrase appeared frequently in part 8 of the immigration rules (relating to family members) and gave, as an example, paragraph 281, which sets out the requirements to be met by a person applying for entry clearance as a spouse. The Judge noted that these other rules prescribed certain requirements that must be met for an application 'with a view to settlement'.
5. The Judge concluded,

"Given this close connection in the rules, it seems to me that "with a view to settlement" in rule 301 must be taken to mean that the person in question has leave under one of the earlier rules which specifically provide for leave "with a view to settlement". "With a view to settlement is not to be interpreted as a matter of whether the person in question intends to settle in the United Kingdom, or has leave which is capable of resulting in settlement in the United Kingdom, but instead it must be taken to refer back [sic] the earlier rules and the provisions "with a view to settlement" set out in them. The discretionary leave granted to the Appellant's mother does not fall within this category."
6. The Judge stated that his analysis was in accordance with an unreported upper tribunal decision on similar facts (**ECO v Ilunga (OA/13473/2012)**).

7. The Judge went on to consider section 55 of the Borders, Citizenship and Immigration Act 2009 but noted that it did not apply to minors outside the UK. The Judge dismissed the appeal.

Grounds of Appeal

8. In seeking permission to appeal to the Upper Tribunal the Grounds of Appeal restricted themselves to the single issue of whether the Judge's construction of the paragraph 301 was lawful. The Grounds argued that the contentious phrase included those granted DL on the basis of their family life relationships such as the mother. After two grants of DL, each consisting of a period of 3 years, and following the Secretary of State's policy in respect of grants of DL prior to 9 July 2012, barring any material change in circumstances the sponsor could expect to be granted ILR. DL granted to the sponsor in these circumstances was said to be "nothing other than limited leave to remain 'with a view to settlement'".

Hearing before the Upper Tribunal

9. Prior to the commencement of the error of law hearing I provided both parties with the authority of ***Acan, R (on the application of) v Immigration Appeal Tribunal [2004] EWHC 297 (Admin)***. This was a decision of Mr Justice Gibbs which concerned the interpretation of paragraph 301 of the immigration rules. I ensured both parties had sufficient time to consider the authority. There was no application to adjourn by either party.
10. At the commencement of her submissions Ms Fielden stated, with reference to paragraph 54 of ***Acan***, that the authority appeared to be 'on all fours' with the present appeal and that the same arguments that were deployed by the appellant in ***Acan***, which dealt with a sponsor who had Exceptional Leave to Remain (ELR), could be deployed in the present appeal, where the sponsor had DL. Ms Fielden submitted that Mr Justice Gibb had accepted in ***Acan*** that the term 'with a view to settlement', given its ordinary natural meaning, could cover the position of the sponsor in ***Acan***, and that the same could be said of the sponsor in the present appeal. Ms Fielden adopted the arguments advanced on behalf of the claimant in ***Acan*** and drew my attention to the fact that paragraph 301 did not make express reference back to an earlier immigration rule. She submitted that the status of being settled could be achieved not only by reference to specific provision within the immigration rules but also outside of the immigration rules. It was submitted that the sponsor had already received her 2nd tranche of DL and could expect to achieve settlement when it expired. It was argued that the changes to the immigration rules after 09 July 2012 could make a material difference to the interpretation of the term. It was pointed out that there were some forms of Leave To Remain that lead to settlement but in respect of which a person could not seek leave to enter or remain 'with a view to

settlement' and that there may be no rational justification for such a difference.

11. Mr Melvin relied on the rule 24 response and noted that the decision of **Acan** had neither been appealed nor overturned. He submitted that the Judge was entitled to his conclusion in respect of the interpretation of the contentious phrase.

Discussion

12. The term "with a view to settlement" is used within certain categories of the immigration rules where, from the outset of the initial application, there is an expectation that compliance with the rules will lead to settlement. Within these categories an individual may be granted an initial temporary period of leave, but the grant of temporary leave is along a planned pathway to settlement. Examples of these categories include paragraph 281 (dealing with entry clearance applications for spouses), paragraph 295A (unmarried or same-sex partners), and paragraph 298 (applications for indefinite leave to remain as the child of parents present and settled in the UK).
13. These categories must be contrasted with other categories within the immigration rules that do not lead from the outset along a path towards settlement (such as student/Tier 4 applicants), and with grants of leave outside the immigration rules such as DLR.
14. A grant of DLR **may** lead to settlement (for example, in compliance with the Respondent's policy on DLR in respect of applications prior to 09 July 2012) but the grants are not 'with a view to settlement'. DLR may be issued to individuals who would otherwise qualify for asylum or humanitarian protection, or where removal would lead to a breach of Article 3 on medical grounds. DLR can also, for example, be granted in respect of victims of trafficking. In each case the duration of the grant of DLR will be determined by the particular facts of the case.
15. I find considerable support for the above analysis in the authority of **Acan**, and in particular, paragraphs 81 to 86. **Acan** also concerned paragraph 301 and involved a sponsor with Exceptional Leave to Remain (ELR), the precursor of DLR. The arguments advanced on behalf of the claimant in **Acan** are very similar to those advanced on behalf of the appellant in her Grounds of Appeal and by Ms Fielden at the hearing. It was argued in **Acan** that a grant of limited leave with a view to settlement included a grant of ELR.
16. While Mr Justice Gibbs accepted that the words "limited leave with a view to settlement" were capable within their ordinary natural meaning of covering the status of some issued ELR (para 81), he accepted the submissions on behalf of the defendant concerning the structure of the immigration rules and the evident purpose of rule 301 within that structure. Mr Justice Gibbs found that the requirement of paragraph

301 were intended to refer back to previous rules in which the use of the expression "limited leave with a view to settlement" occurred. *"It had a purpose intended to be secondary to those earlier rules so as to permit a child of a person within the categories earlier referred to to have limited leave to enter or remain"* (para 83). Mr Justice Gibbs concluded, *"... the provisions in rule 301 and following, relating to leave, constitute part of a carefully constructed scheme intended, in my judgment, to flow from the particular situations contemplated by the earlier rules, 281 and 282, 295A and 295B"* (para 85).

17. I further note the view of the authors of McDonalds Immigration Law and Practice (9th ed, 12.204, footnote 4) that the dependants of those with DLR may not seek entry as dependants of those in the UK with a view to settlement under Appendix FM or paragraph 301 of the rules, and that 'settled' in the context of the rules means 'settled under the rules'.
18. Having regard to the above authorities I am satisfied that an individual who only has DLR does not hold limited leave 'with a view to settlement'. I consequently find that the Judge made no material error of law.

Notice of Decision

The appeal is dismissed

No anonymity direction is made.



Signed

23 July 2015
Date

Judge Blum
Upper Tribunal Judge

TO THE RESPONDENT **FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.



23 July 2015

Signed

Date

Judge Blum
Upper Tribunal