



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

Appeal Number: HU/08185/2015

THE IMMIGRATION ACTS

Heard at Field House

On 18th August 2017

**Decision &
Promulgated**

On 6th November 2017

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MRS ROOPADEE CHADIEN
(ANONYMITY DIRECTION NOT MADE)**

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr E Tufan (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge P S Aujla, promulgated on 22nd November 2016, following a hearing at Taylor House on 16th November 2016. In the determination the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female, a citizen of Mauritius, and was born on 15th December 1979. She appealed against the decision of the Respondent Secretary of State dated 1st October 2015, refusing her application for leave to remain in the United Kingdom on the basis of her family life and private life under Article 8 ECHR.

The Appellant's Claim

3. The essence of the Appellant's claim is that she first arrived in the UK on 4th December 2004 on a visit visa. She was living with the Sponsor at [London], who was a British citizen, and they subsequently married on 4th June 2015. She has not been back to Mauritius since she first arrived in the UK. Her parents and other family members lived in Mauritius. She had lived there for the first 25 years of her life. Nevertheless, she could not return.

The Judge's Findings

4. The judge concluded that the Appellant and her sponsoring British citizen husband were both healthy and educated and both spoke the English language which is widely spoken in Mauritius. The Appellant also spoke the local language there. She was familiar with the culture in Mauritius, having lived there for the first 25 years of her life. She had her parents and brothers still living there. She was previously employed as a dispenser in a pharmacy before she came to the UK.
5. The judge also held that although there was an established family life between the Appellant and her sponsoring husband, the Appellant's removal from the UK would not constitute interference with the right to family life, as far as the law is concerned. The option of relocating to Mauritius with the Appellant was open to the Sponsor. There would be hardship initially but for the benefit of their education and employment experience, as well as help from the Appellant's family, they would be able to settle in Mauritius (paragraph 41).
6. The appeal was dismissed.

Grounds of Application

7. The grounds of application state that the judge made perverse irrational findings with respect to the domestic and employment circumstances of the Appellant and her husband and failed to give adequate reasons for these findings.
8. On 2nd June 2017, permission to appeal was granted.

The Hearing

9. At the hearing before me on 18th August 2017, the Appellant was not in attendance, and nor was there anyone else on her behalf as a legal representative, in attendance. I put the matter to the end of the morning's list. The court clerk then made enquiries. She even telephoned the solicitors on record, who informed her that they had already telephoned the Tribunal on the morning of the hearing today, to inform the Tribunal that the Appellant had come to their offices, and had taken away her files, and that they were under no further instructions to act for her. In the circumstances, I proceed with the appeal, notwithstanding the non-attendance of the Appellant or a legal representative on her behalf.

Submissions

10. In his submissions before me, Mr Tufan, appearing as Senior Home Office Presenting Officer, on behalf of the Respondent, stated that the judge had referred to how it was that the sponsoring husband in this case had been looking after his mother and father, and that after the Appellant had married the Sponsor, she also began to look after her father-in-law and mother-in-law. The judge's conclusion, however, was that the relationship that the Appellant enjoyed with her parents-in-law did not engage Article 8. It was open to the Appellant to return back to Mauritius and to make an application to re-enter in order to join family members in the UK, and the decision reached by the judge was not irrational in this respect. Furthermore, there were no insurmountable obstacles that prevented her from doing so.

No Error of Law

11. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law, such that I should set aside the decision (see Section 12(1) of TCEA 2007), and re-make it. My reasons are as follows.
12. First, whereas I am aware that the grounds of application suggest that the judge erred with respect to the stated facts before him, these errors are not material. For example, it is said that the judge (at paragraph 33) referred to the sponsoring husband as a security guard who has no other profession, whereas it was the case that he ran a consultancy business, but also worked as a security guard, such an error would not have affected the eventual outcome of the decision made by the judge. The judge did not hold that there was no established family life between the Appellant and the Sponsor (see paragraph 41). The issue here to determine was whether the Appellant's removal from the UK would constitute an interference with her right to family life. In this respect, the judge's conclusions were open to him.
13. Second, in **Chen [2015] UKUT 189** it was made clear that Appendix FM does not include consideration of the question whether it would be disproportionate to expect an individual to return to his home country to make an entry clearance application to rejoin family members in the UK.

There may be cases in which there are no insurmountable obstacles to family life being enjoyed outside the UK but where temporary separation to enable an individual to make an application for entry clearance may be disproportionate.

14. In all cases, it will be for the individual to place before the Secretary of State evidence that such temporary separation will interfere disproportionately with protected rights.
15. For the reasons that the judge gave, the Appellant could not establish that a period of temporary separation would interfere disproportionately with her protected rights.
16. Third, as far as consideration of the appeal “outside the Immigration Rules” is concerned, this case is no different from **Agyarko [2015] EWCA Civ 440**,. There the Appellant had a “precarious family life” and there were “no medical circumstances shown to exist”. Furthermore, and “in any event no materials were submitted which might show that leave to enter would have to be granted under Appendix FM if applied for” in the sense of **Chikwamba**. This meant that there was no arguable case that “could show that exceptional circumstances existed to support the conclusion that Article 8 required that she be granted leave to remain” (see paragraph 51 of **Agyarko**).

Notice of Decision

17. There is no material error of law in the original judge’s decision. The determination shall stand.
18. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

19th September 2017