



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

Appeal Number: IA/00006/2016

THE IMMIGRATION ACTS

Heard at Field House

On 9 January 2018

Decision

Promulgated

On 16 January 2018

&

Reasons

Before

Deputy Upper Tribunal Judge Pickup

Between

**Kamladevi Veersamy
[No anonymity direction made]**

and

Secretary of State for the Home Department

Appellant

Respondent

Representation:

For the appellant: Mr M Jaufurally, instructed by Callistes Solicitors

For the respondent: Mr P Nath, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge White promulgated 6.4.17, dismissing his appeal against the decision of the Secretary of State, dated 11.12.15, to refuse her application made on 29.4.14 for LTR on human rights grounds as the partner of a person settled in the UK. Both the appellant and her partner are of Mauritian nationality.
2. The Judge heard the appeal on 21.3.17.

3. The matter came before me on 9.1.18 as an appeal in the Upper Tribunal.

Error of Law

4. For the reasons summarised below, I found no error of law in the making of the decision of the First-tier Tribunal such as to require it to be set aside.
5. The appellant entered the UK in 2004 as a family visitor and was later granted LTR as a student. Her last leave expired in 2011. Further applications for LTR were refused. However, she has a right of appeal against the latest refusal decision (RFR) on human rights grounds only.
6. It was accepted in the RFR that the appellant was in a genuine relationship with her settled partner, Preetam Mungrah, having been granted ILR in 2013. However, the Secretary of State considered that there were no insurmountable obstacles to the continuation of their family life outside the UK.
7. The argument put before the First-tier Tribunal was that there were indeed insurmountable obstacles in that the appellant's partner had been charged with conspiracy to import Class A controlled drugs into the UK. He had pleaded not guilty and was at that time awaiting trial. He was on bail with a condition that he may not leave the UK.
8. I was told that Mr Mungrah has now been convicted after trial and remanded in custody in October 2017 pending eventually sentence, which may be some time off, as there are other co-conspirators still facing trial. Given the serious nature of the offence, the likely sentence will be significant and measured in terms of years.
9. However, I am considering whether there was an error of law in the decision of the First-tier Tribunal and thus I have to deal with the matter on the basis of the circumstances prevailing at the date of decision of the First-tier Tribunal, with the partner having pleaded not guilty and having been granted bail. Judge White considered that he had to presume that the partner was innocent until proved guilty and thus that on conclusion of the trial and end of his bail conditions he would be free to join or accompany the appellant in Mauritius. The judge considered at [15] that there might be a separation, but it would only be a temporary one and thus not an insurmountable obstacle to continuing family life. The judge went on to consider family life outside the Rules under article 8 ECHR, but concluded that there were no compelling circumstances that would make removal of the appellant disproportionate.
10. As the judge noted, the only right of appeal to the First-tier Tribunal was on human rights grounds, although the extent of qualification under the Rules was relevant to the proportionality balancing exercise.
11. Mr Jaufurally submitted that there is no distinction in EX1 between

temporary or permanent circumstances amounting to insurmountable obstacles to continuing family life. However, there is nothing in the wording to the contrary, and nothing to suggest that both parties have to be able to leave the UK at the same time. The issue is whether family life will be able to continue outside the UK. As defined in EX2, insurmountable obstacles means the very significant difficulties which would be faced by either applicant or partner in continuing family life together outside the UK, and which could not be overcome or would entail very serious hardship for the applicant or their partner. As Judge White also observed, there might be some hardship in the immediate future during a period of temporary separation, but the appellant's removal would not, in due course, prevent family life together continuing. This was obviously on the basis that on the presumption of innocence and the temporary nature of the bail conditions.

12. I agree with Judge White's assessment. The temporary separation might well meet the description of hardship, but given that at the time of the consideration of the First-tier Tribunal it had to be assumed that it would be but temporary, I am not satisfied that a temporary separation pending completion of the trial qualifies as very significant difficulties or very serious hardship. It had to be assumed that the hardship would be temporary and would be capable of being overcome.
13. Had the conviction and sentence already taken place by the time of the First-tier Tribunal appeal hearing, the judge might well have concluded that there was no longer any genuine and subsisting relationship between the appellant and her partner. In any event, it would seem very likely that the partner will be the subject of deportation proceedings.
14. I also find it difficult to contemplate that a person could have a stronger claim to remain in the UK on the basis of criminal activity and subsequent proceedings against a partner. Recalling that the appeal has to be considered on the basis of article 8 human rights, and thus a proportionality balancing exercise between the rights of the appellant and her partner to be able to continue family life, set against the public interest in both immigration control and public safety and security, I would find it difficult to conclude other than that the decision to refuse the appellant's application remains entirely proportionate.

Conclusion & Decision

15. For the reasons summarised above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



Signed

Deputy Upper Tribunal Judge Pickup

Dated

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The appeal has been dismissed.



Signed

Deputy Upper Tribunal Judge Pickup

Dated