



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

Appeal No: UI-2022-002479
(FtT ref HU/50781/2021); IA/03229/2021

THE IMMIGRATION ACTS

Heard at Field House, London
On 6 October 2022

Decision & Reasons Promulgated
On 20 November 2022

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

KHEMLATA MOTY

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms M Hodgson, instructed by Capital One, Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Mauritius, born on 10 September 1974. She made various submissions to the respondent seeking leave to remain in the UK. The respondent declined to grant leave for reasons explained in detail in a decision dated 9 March 2021.
2. FtT Easterman dismissed the appellant's appeal by a decision dated 14 January 2022.

3. The appellant sought permission to appeal to the UT on 4 grounds, set out with detailed accompanying arguments in her application, headed:
 - (1) irrational conclusion when not taking into account the ... welfare of the children in relation to section 55 [of the 2009 Act];
 - (2) failure to have regard to ... risk of suicide and lack of medical support in Mauritius / failure to make findings on inability of appellant to privately fund her medical treatment;
 - (3) irrational finding / inadequate reasons / no weight given to appellant's ongoing medical treatment; and
 - (4) inadequate reasons for not accepting appellant's close ties with her sister's family under the private life rules.
4. On 23 May 2022 FtT Judge Scott extended time for applying and granted permission, saying:

... In the proportionality assessment ... the Judge made no findings on the effect the appellant's removal from her niece and nephew would have on her ... in his article 3 assessment the Judge made no findings on the stigma the appellant submitted she would face in seeking mental health treatment in Mauritius ... arguably relevant findings which could have a bearing on the overall decision.
5. In her skeleton argument dated 3 October 2022 Ms Hodgson added submissions "on the two arguable errors identified by Judge Scott".
6. In oral submissions Ms Hodgson took me through the grounds and referred to the extensive evidence, including the medical reports, which had been before the FtT. She stressed the appellant's close relationship with her sister and with her two children since their birth; the benefits of those close relationships to her poor state of mental health; the value of that relationship to the children not being negated by their relationship with their parents; the Judge turning a "blind eye" to evidence of stigmatisation of mental health sufferers in Mauritius; comparative lack of family support in Mauritius; absence of findings on how the appellant could afford medical treatment in Mauritius; and no reasons for finding that her family in the UK could support her on that matter. She said that the case could have succeeded both on article 3 and article 8 grounds, and that the Judge had failed to take so many factors into account that there should be a remit for full reconsideration by the FtT.
7. The overarching submission by Mr Clarke was that the FtT was entitled to find that the case fell short of the high tests for medical grounds under article 3, and disclosed no unduly harsh consequences for the appellant in terms of article 8, so that the grounds, framed largely in terms of irrationality and perversity, fell short of those targets, and amounted to no more than disagreement. He submitted that a Judge does not have to deal specifically with every item of evidence, but he also went through the grounds, by reference to the decision, to illustrate that most, if not all, matters in the grounds were mentioned.

8. Further points for the respondent were that the grounds were wrong in referring to the children's interests as paramount rather than primary; although the grounds make much of expense of medical treatment, the evidence submitted by both sides showed that both free and private medical care are available in Mauritius; the stigma attaching to mental health problems was dealt with in several passages, including [10-12, 38-40, 52 & 55]; and the appellant made no case of her medication, or its equivalent, not being available in Mauritius, or not being free.
9. In reply, Ms Hodgson said that to mention matters in the decision, such as the closeness of her relationships in the UK, was not the same as recognising their significance to the appellant; it was inevitable that removal would bring about a breach in the appellant's treatment, the effect of which the FtT did not consider; there was no reasoning for the finding that her sister could give financial support for her treatment; sending money abroad was very different to supporting someone in a UK household; and as points which the respondent said were dealt with were "not fully analysed" the decision "was therefore irrational".
10. I reserved my decision.
11. The grounds and submissions for the appellant tend towards a full and eloquent reassertion of her substantive case to the FtT, rather than identification of legal error in the resolution of that case by the Judge. There was a remarkable absence of reference to what the decision actually says. It contains a careful, fair, and through consideration of the facts. There is no misdirection on the law. The shortcomings alleged, on inspection, are only disagreements with an assessment which was firmly grounded in the evidence. No significant omission has been identified. It was obviously open to the tribunal to come down on the side it did, both on article 3 and on article 8. There are high legal test for both aspects of the case. The grounds go much too far in contending irrationality.
12. I therefore prefer the overarching submission for the respondent. The grounds do not show that the decision should be set aside for error on any point of law.
13. On more specific (although not crucial) matters I find that the evidence did not show that the appellant would have any difficulty in obtaining adequate medical treatment in Mauritius at no charge. She made no sustainable case that she would be precluded from treatment by availability, by cost, or by generalisations about stigma (which exists everywhere, in some degree).
14. The argument about a breach in medical treatment seems to come late. It is speculative and weak. There is no reason to think that the appellant could not take a supply of medicine with her to preserve continuity.

15. It is also within public and judicial knowledge that the respondent has policies in place, if removal does not take place voluntarily and needs to be enforced, to manage the transit of vulnerable persons.

16. The case has a strongly sympathetic aspect. It is easy to understand that the appellant and her relatives here have a powerful preference for her to remain. However, no error of law has been shown in the FtT's analysis that she does not have a right to do so in terms of article 3 or article 8.
17. The decision of the FtT shall stand.
18. No anonymity direction has been requested or made.

H Macleman

6 October 2022
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.