



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/22019/2015

THE IMMIGRATION ACTS

Heard at Field House
On 8th November 2017

Decision & Reasons Promulgated
On 28th November 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

MISS TRISCY SUSHANA WILLIAMS
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Fisher, Counsel instructed by D J Webb & Co, Solicitors
For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Jamaica, appealed to the First-tier Tribunal against a decision of the Secretary of State of 28th May 2015 to refuse her application for leave to remain in the UK on the basis of her private and family life. First-tier Tribunal Judge L Murray dismissed the Appellant's appeal in a decision promulgated on 1st February 2017. The Appellant's application for permission to appeal to the Upper Tribunal was refused in the First-tier Tribunal but upon renewal to the Upper Tribunal application for permission to appeal was granted by Upper Tribunal Judge Gill on 4th October 2017.

2. The background to this appeal is that the Appellant entered the UK in on 23rd October 2002 as a visitor (I note that although the reasons for refusal letter indicates that the Appellant first entered the UK in October 2012 the immigration history set out in the Respondent's First-tier Tribunal bundle states that it was 2002). The Appellant was granted leave to remain as a student until 31st January 2004 and subsequent periods of leave to remain as a student were granted until 30th September 2010 when she applied for a post-study visa. Her application was refused but a subsequent application was granted in July 2011. The Appellant's application for further leave to remain as a Tier 4 student was refused in September 2013 and her application for indefinite leave to remain on the basis of long residence was refused in November 2013. The Appellant submitted the application which is the subject of the current appeal on 4th March 2015. That application was based on the Appellant's claim that she would be unable to return to Jamaica because there would be nowhere for her to live there. She also claimed that she helps to care for Mrs Bradshaw with whom she resides, along with Mrs Bradshaw's two daughters.
3. The First-tier Tribunal Judge heard evidence from the Appellant, Mrs Bradshaw and her two daughters. The judge concluded at paragraph 14 that the Appellant had not established that there would be "very significant obstacles" to her returning to Jamaica. The judge went on to consider the appeal under Article 8 through the steps set out in the decision in **R v SSHD ex parte Razgar [2004] UKHL 27**. The judge concluded that the Appellant had established a private life in the UK but weighed the fact that she could not meet the requirements of the Immigration Rules and the fact that her private life had been established while her status was precarious or unlawful, and concluded that the decision to refuse her application for leave to remain was a proportionate one.
4. There are two Grounds of Appeal. The first ground contends that the judge had a flawed approach to the question of "very significant obstacles" in her assessment of paragraph 276ADE of the Immigration Rules. It is contended in the second ground that the judge made a material misdirection in law in terms of her erroneous approach to Article 8, including her fact-finding in relation to the nature and extent of the relationship between the Appellant and the family with whom she resided.
5. The first ground of appeal contends that the judge was flawed in her approach to paragraph 276ADE. As the Appellant had been in the UK for less than twenty years the requirements to be met are those set out in paragraph 276ADE(1)(iv). The judge carried out an analysis of the evidence at paragraphs 12 and 13 noting that at the time of the hearing the Appellant had been in the UK for fourteen years, that her mother and three siblings lived together in Jamaica and set out the qualifications the Appellant had obtained in the UK and her voluntary work that she undertakes. The judge concluded at paragraph 14:-

"The Appellant is clearly a very capable and determined individual who has been very active in the community and has an extremely good reputation amongst her peers. She has also gained a number of qualifications since arriving here. She has asserted that she would find it hard to find employment in Jamaica and gave evidence that she had checked on line but could not find

jobs in events management or behavioural science which are her fields. I do not accept, in the absence of reject letters or supporting evidence of a lack of job opportunities for someone with the Appellant's qualifications and experience, that she would not be able to find employment. She is a resourceful and qualified individual. She has family in Jamaica consisting of her mother, aunt, siblings and cousins and retains family and social ties. She confirmed in cross-examination that she remains in regular contact with her mother. Despite the fact that the house is overcrowded, I consider it likely that they would be able to accommodate her at least in the short term until she finds a job and can provide for herself. I therefore do not consider that there would be very significant obstacles to her integration. She does not make a claim under any other paragraph of the Immigration Rules."

6. Ms Fisher relied on the decision in the case of **SSHD v Kamara [2016] EWCA Civ 813** submitting that the judge was required to carry out a broad evaluative assessment when considering whether there were very significant obstacles as to whether the person would be able to fit in, in their home country. She submitted that the evidence before the judge was that the Appellant had spent most of her adult life in the UK from 2002 onwards and the issue was whether she is enough of an insider to make a life in Jamaica again.
7. However, in my view it is clear from the assessment carried out in paragraph 14 as set out above that the judge considered all of the evidence before her in relation to the Appellant's return to Jamaica. The judge took into account the prospects of employment for the Appellant within and out-with her field. The judge also took into account the availability of short-term accommodation and the fact that the Appellant has family members with whom she is still in contact in Jamaica. These findings were open to the judge on the basis of the evidence available to her. It is clear from the terms of paragraph 276ADE that "very significant obstacles" is a very high threshold and in my view the judge has taken into account all the evidence and has given proper reasons for finding that the Appellant had not met these requirements. The Appellant has not made out this ground of appeal.
8. It is contended in the second ground of appeal that the judge made an error in relation to her assessment of Article 8. At the hearing Ms Fisher contended that the judge erred in describing the relationship between the Appellant and Mrs Bradshaw as effectively being "effectively an employment relationship"[19] in light of the evidence before her.
9. Ms Fisher relied on the case of **Lama (video recorded evidence -weight - Art 8 ECHR) [2017] UKUT 00016 (IAC)**. At paragraph 32 the Tribunal said:-

"Thus, at its heart, family life denotes real or committed personal support between or among the persons concerned. Such persons need not necessarily be related by blood and, in that sense, are not a family in the traditional or conventional senses. However, they are readily embraced by one of the dictionary definitions of 'family', namely '*a group of things that are alike in some way*'. Mere likeness is not, of course, sufficient for Article 8 purposes. The

‘likeness’, in Article 8 terms, is constituted by committed support, emotional bonds and, very frequently, a strong sense of duty”.

10. At paragraph 36 the Tribunal said:-

“Based on those findings, I consider firstly the question of whether there is family life between the Appellant and Mr R. I can identify no legal obstacle to an affirmative finding on this issue. Their relationship is characterised by profound bonds of friendship, support, respect and dependency. Furthermore, as regards the Appellant, there is a clear sense of duty. I consider it important not to view dependency through an inappropriately narrow lens. I am satisfied that the element of dependency in this relationship is mutual. It is both of the emotional (bilaterally) and physical (unilaterally) variety. The abundance of documentary evidence, some of which I have highlighted above, bears eloquent testament to the quality, potency and profundity of this relationship”.

11. In Ms Fisher’s submission, as in the case of Lama, the judge should have concluded that there was family life between the Appellant and Mrs Bradshaw.
12. In the instant case the judge has accepted that private life had been established [17], in fact the judge considered that the Appellant had established “strong private life ties to the family she lives with” [20]. In my view it is clear that the judge took into account all of the evidence in relation to this issue. At paragraph 18 the judge took into account the fact that Mrs Bradshaw is 94, partially sighted and suffers from dementia. She took into account the length of time the Appellant had been living with Mrs Bradshaw and her two daughters and the care that she provides. The judge accepted that the Appellant provides a service and cares for Mrs Bradshaw in return for accommodation and money. I note the evidence before the judge as to the relationship between the Appellant and Mrs Bradshaw and her daughters. Ms Fisher did not point to any part of the evidence that the judge had failed to consider. It is clear that the judge was fully aware of the relationship between the Appellant and the Bradshaw family. It is clear that the judge appreciated the role undertaken by the Appellant. In my view it was open to the judge to conclude as she did that the Appellant had established strong private life ties to the family.
13. In my view it is clear from the decision in Lama that there are no hard and fast rules as to what constitutes family life within Article 8. I note the guidance at paragraph 32 in the decision in Lama highlighting the need for “a fact sensitive approach” to the assessment of the existence of family life and referring to the definition in Kugathas [2003] EWCA Civ 31 of real, committed and effective support between or among the persons concerned. It is clear that the judge took into account all of the factors in this case and that is what was required of her.
14. In any event the finding that the Appellant had strong private life ties, rather than a family life, with Mrs Bradshaw and her family, would not make any material outcome to the proportionality assessment. As the then President said at paragraph

37 of the decision of **Lama** that, although the Tribunal had found that there was a family life between the Appellant and the person he cared for:-

“It is not, however, a necessary pre-condition of this appeal succeeding, given that there is no dispute that the Appellant has a highly developed private life in the United Kingdom, the elements and components whereof are significantly based on his relationship with Mr R. The Appellant’s private life extends beyond that relationship to encompass matters such as his involvement in charitable activities, about which there is uncontested documentary evidence. Thus, irrespective of whether one views the Appellant’s case through the prism of family life or private life or a combination of both, the ultimate question of law is unaffected, namely whether the impugned decision of the Secretary of State represents a disproportionate interference.”

11. Ms Fisher further contended that the judge erred in failing to undertake a more nuanced assessment of the role played by the Appellant in the life of Mrs Bradshaw. She relied on paragraph 41 of the decision of **Lama** where the Tribunal found that the Appellant in that case was not irreplaceable in the narrow sense in that Mr R with the assistance of others self-funded or state-sponsored may be able to find a substitute carer. The Tribunal went on to find:-

“However, taking into account the nature and longevity of the relationship which has developed and having regard to Mr R’s advanced years and progressive disabilities, I consider that the Appellant is irreplaceable in the broader, more nuanced and emotional sense” [41].

12. However, it is important to distinguish the facts in **Lama** from those in the instant case. The Appellant in **Lama** lived with the person he cared for alone. However, in this case the Appellant lives with Mrs Bradshaw and her two daughters. Further, Mrs Bradshaw attends a day centre. In these circumstances the evidence does not point to the Appellant being irreplaceable in the narrow sense, or indeed in the broader, more nuanced sense set out in **Lama**. Ms Fisher pointed out that the Appellant is regarded as a family member and has known the family for twelve years, however it is apparent that the judge was well-aware of this in her analysis of paragraphs 18 and 19.
13. Mr Bramble pointed out that there is a further distinction between the facts of this case and the scenario in **Lama** where the Tribunal took into account that the Appellant had “impeccable immigration history” [43] and that he had been a primary carer during the period of some five years [21]. However, in this case this Appellant had been in the UK precariously until September 2013 and unlawfully thereafter, a factor taken into account by the judge at paragraph 25 and a factor which affected the weight to be attached to the Appellant’s private life. Further, it is unclear on the evidence when it is said that the Appellant became a carer for Mrs Bradshaw. Ms Fisher submitted that the Appellant had been Mrs Bradshaw’s primary carer for a period of six years, however, she did not point to evidence which clearly supports that assertion.

14. Ms Fisher further submitted that the Appellant's failure to meet the Immigration Rules is not determinative of the public interest and the proportionality assessment. However, in my view the judge does not consider that matter determinative. The judge considered the weight to be attached to the fact that the Appellant did not meet the Immigration Rules, but also considered all of the other factors as set out in paragraphs 18-20 and 24 to 26. Ms Fisher submitted that the judge had failed to consider the Appellant's wider community relationships. However, the judge did consider this at paragraph 20 where she accepted that the Appellant had "formed good relationships with individuals in the community". Essentially Ms Fisher's submissions in this regard complain about the weight attached to these factors. Weight is a matter for the judge having considered all of the evidence before her.
15. In conclusion I find that the judge properly considered all of the evidence before her and reached conclusions open to her on the evidence in relation to paragraph 276ADE of the Immigration Rules, and in relation to the assessment of family and private life and the assessment of the proportionality of the Respondent's decision Article 8.

Notice of Decision

16. There is no material error of law in the judge's decision.
17. The decision of the First-tier Tribunal shall stand.
18. There is no anonymity direction.

Signed

Date: 27th November 2017

Deputy Upper Tribunal Judge Grimes