Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/07038/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23rd November 2017	**On 4th January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

ARCHANA PYDEGADU
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Aitken of Counsel instructed by Novells Legal Practice
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Hembrough made following a hearing at Harmondsworth on 21st March 2017.

Background

2. The appellant is a citizen of Mauritius born on 5th January 1998. She came to the UK on 1st June 2008 with her parents and sister. Her father then worked as a chef in London with the assistance of a bogus indefinite leave to remain stamp. When that was discovered all of the family members

were served with notice of liability to removal, in 2010, and further representations were made throughout 2011, 2012, 2013 and 2014. At that point the respondent made a fresh decision refusing the human rights application but granting a full right of appeal, which was dismissed by Judge Gandhi following a hearing in May 2015.

3. The present appellant was named in that appeal. Shortly before she became 18 she made an application in her own right, on the grounds that she was a minor who had been living in the UK for a continuous period of over seven years and it was not reasonable to expect her to leave. It was the refusal of this decision which was the subject of the appeal before Judge Hembrough.

4. The judge set out the appellant's immigration history and the oral evidence of the appellant and her parents. He also considered evidence from church members where the appellant worships. He then set out the relevant case law and concluded that, whether considered as a child or as an adult, her removal was necessary and proportionate to the legitimate aims identified by the respondent.

The Grounds of Application

5. The appellant sought permission to appeal on the grounds that the judge had materially erred in law by failing to adequately consider the appellant's private life in the UK and had not properly considered the relevant case law.

6. Permission to appeal was initially refused by Judge Hollingworth but, upon reapplication, was granted by Upper Tribunal Judge Plimmer who, in the grant of permission, stated that it was arguable that significant weight had not been given in the decision to the appellant's length of residence or the formative years in which that residence took place.

7. On 4th October 2017 the respondent served a reply defending the determination.

Submissions

8. Mr Aitken relied on his grounds and argued that the judge had given insufficient weight to the appellant's private life. It was not reasonable, given her length of residence in the UK, that she should be removed. He referred in particular to paragraph 49 in R (on the application of MA Pakistan & Ors) [2016] EWCA Civ 705 which held, inter alia, that the fact that a child had been in the UK for seven years would need to be given significant weight in the proportionality exercise, first because of its relevance to determining the nature and strength of the child's best interests; and second, because it establishes as a starting point that leave should be granted unless there are powerful reasons to the contrary. He submitted that the judge, in referring to whether there were serious obstacles to the appellant returning to Mauritius had conflated different legal issues and had thereby erred in law.

9. Mr Melvin relied on his Rule 24 response and submitted that the situation of the family as a whole had already been litigated in 2015 by Judge Gandhi. This application had been made simply in order to prevent the removal of the family and was an attempt to circumnavigate the Rules. In any event, the question of reasonableness had been dealt with adequately by the judge.

Findings and Conclusions

10. The decision of Judge Gandhi was the starting point for the consideration of Judge Hembrough, but because the appellant had not yet reached seven years residence in 2015, Judge Hembrough was required to engage with the question of whether there were powerful reasons why leave should not be granted, even though the factual matrix which the appellant relied on was essentially the same as that which had been before Judge Gandhi.

11. Whilst the judge did not set out the test in terms, I am satisfied that the judge did not err in law for the following reasons.

12. First, although Mr Aitken sought to persuade me that there had been a conflation of the legal issues, this is not the case. The judge set out whether the appellant could meet the requirements of paragraph 276ADE, not only in relation to 276ADE(1)(vi), but also 276ADE(iv) and (v). It was not an error to consider the Rule as a whole, which required an examination of the serious obstacles test.

13. Furthermore, the question of whether there would be substantial obstacles to her integration is not irrelevant to the question of whether it would be reasonable for the appellant, as a qualifying child, to return. The judge was correct to take into account the fact that the appellant would be returning to her country of nationality and throughout the time she has been in the UK has been living with her Mauritian family and mixing with the Mauritian diaspora in the UK. Moreover, as a Mauritian citizen, she would enjoy freedom of religion, expression and movement and, as the judge pointed out, there are several universities and places of higher learning in Mauritius whose courses and qualifications are accredited by universities here. The appellant has completed her A levels in the UK and there was no satisfactory explanation as to why she would not be able to study her proposed subject, Travel and Tourism, in Mauritius. The evidence was that there had been no enquiries made.

14. The judge rejected the contention made on behalf of the appellant that she would be destitute in Mauritius. He considered that it was reasonable to anticipate that her parents would be able to obtain employment in the Mauritian tourism industry, since her father had worked as a chef in London.

15. Mr Aitken was wrong to argue that the judge had not identified strong reasons why the appellant should not be removed. The judge acknowledged that the appellant had been in the UK for over seven years, and during her formative years, but was entitled to highlight the fact that,

not only were there were no barriers to her returning to Mauritius with her family, there were strong public interest arguments in their removal. Her father had obtained a false stamp on his passport which enabled the family to enter and had then failed to leave for seven years after they had been served with notice of liability to removal.

16. The appellant's arguments amount to a disagreement about the weight which the judge attached to the appellant's residence in the UK but disclose no error of law. This is a careful and thoughtful determination. The judge reached a conclusion which was plainly open to him for the reasons which he gave.

Notice of Decision

17. The original decision stands. The appellant's appeal is dismissed.

18. No anonymity direction is made.

Deborah Taylor

Signed Date 1 January 2018

Deputy Upper Tribunal Judge Taylor