



(IMMIGRATION AND ASYLUM CHAMBER)

UPPER TRIBUNAL  
APPEAL NUMBER: HU/27310/2016

THE IMMIGRATION ACTS

Heard at: Field House  
On: 27 September 2018

Decision and Reasons Promulgated  
On: 15 October 2018

Before

Deputy Upper Tribunal Judge Mailer

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

ANTISH [B]

ANONYMITY DIRECTION NOT MADE

Respondent

Representation

For the Appellant: Ms A. Fijiwala, Senior Home Office Presenting Officer  
For the Respondent: Ms M. Malhotra, counsel, instructed by Lawrence & Associates

DECISION AND REASONS

1. I shall refer to the appellant as the secretary of state and to the respondent as the claimant.
2. The secretary of state appeals with permission against the decision of First-tier Tribunal Judge Abebrese allowing the claimant's appeal, in a decision promulgated on 24 April 2018.
3. The claimant is a national of Mauritius born on 22 July 1993. He entered the UK on 24 June 2006 with leave to remain as a visitor valid for a period of six months. On 29 April 2009 he was granted leave as a dependent child until 26 June 2010. On 11 January 2011

he was granted leave as a dependent child until 31 July 2011. On 18 November 2011 he was served with an IS 151 A.

4. He has made a number of applications for leave to remain. He became appeal rights exhausted on 21 January 2016. On 6 June 2016 he was served with a RED.0001. On 27 October 2016 he made a human rights claim for leave to remain in the UK on the basis of his established family and private life in the UK.
5. Judge Abebrese found that the claimant had not provided evidence to show that he can meet the requirements of the Immigration Rules in respect of family life as he had not provided evidence showing that he has a partner or child in the UK.
6. Nor was he able to satisfy the requirements under paragraph 276(1)(iii) of the Rules. He accepted that he has spent his formative period in the country of his birth, Mauritius, and is aware of the culture and societal norms in that country.
7. He would however require support in Mauritius in order for him to settle and integrate based on the psychological report provided in support of his claim [19]. He accepted the conclusions of the report regarding the present medical condition of the claimant. On balance he was of the view that the claimant has provided evidence in support for his claim that he would face significant obstacles and that he would not be able to integrate on his return. He found that he therefore satisfies the requirements under paragraph 276ADE(1)(vi) of the Rules [19].
8. Judge Abebrese considered the decision under Article 8 of the Human Rights Convention. He found that the decision is not in accordance with the law as it did not fully take into account the relationship which the claimant has with his parents and sibling and the circumstances he would face on his return to Mauritius.
9. He concluded that the decision to remove him from the UK is not proportionate: He accepted the evidence of the claimant's parents as credible in respect of the claimant's ability to cope if returned to Mauritius [25].
10. He accepted the conclusions of Ms Horton in her Psychologist report. He accepted that the claimant is suffering from significant psychological distress due to the impact of the residency status and that he has been experiencing low mood and high levels of anxiety. He has also been experiencing isolation and suicidal moods [26].
11. He accepted her diagnosis that the claimant has generalised anxiety disorder which means that he is at risk of committing suicide because of his situation. He also formed the view that the claimant would find it difficult to integrate if he were to be returned because his close family are all in the UK and there is a lack of evidence as to the support he would receive from other relatives if he were to be returned [27].
12. He concluded that the decision to remove him would in the circumstances be disproportionate [28].
13. On 8 August 2018, First-tier Tribunal Judge Alis granted the secretary of state permission to appeal: It was arguable that the Judge did not fully engage with paragraph

18 of the refusal letter, especially as his uncle remains in the family home in Mauritius. In considering the appeal under Article 8, it is arguable that the Judge failed to engage with the principles of Ghising and Kugathas bearing in mind that at the date of hearing, he was aged 24 ½ years old.

14. Ms Fijiwala relied on the grounds of appeal. In allowing the appeal under the Rules and Article 8 outside the Rules, Judge Abebrese did not engage with the refusal letter which clearly considered the 2016 report of Ms Horton. The secretary of state also took into account that the claimant had been in the UK without leave and his last grant of leave was solely for him to complete his A levels.
15. The secretary of state's reasons for refusing the application were not properly considered. Ms Fijiwala referred to [19] of the decision. The Judge found that the claimant had provided evidence that he would face "significant obstacles" under paragraph 276ADE(1)(vi) of the Rules. However, the requirement under the Rules is that there must be "very significant obstacles" to his integration into Mauritius. She noted in particular, that the appellant had resided in Mauritius for over 13 years prior to arriving in the UK. This included his formative years.
16. Further, his uncle (his father's brother) resides in Mauritius and he has inherited his parents' home. It is reasonable to expect that he could provide the claimant with support and accommodation on return to Mauritius.
17. She submitted that the secretary of state did consider the social worker's report by Ms Horton dated 26 July 2016. It was noted that although they "referenced" medical sources in the report, no primary medical evidence was submitted directly to the Home Office.
18. She submitted that the Judge did not consider at all the secretary of state's consideration set out from paragraph 11 onwards in the reasons for refusal. The secretary of state also produced evidence in the reasons for refusal that medical care and treatment is available in Mauritius. That includes effective treatment available for those with mental problems and suicidal inclinations.
19. There are accordingly effective mechanisms in place for reducing the risk of suicide which would be available to the claimant in Mauritius. In addition, the secretary of state noted that adequate steps would be taken in the UK to forestall a suicide attempt. The claimant accordingly did not meet the requirements or threshold in the six part test in J v SSHD [2005] EWCA Civ 629 reaffirmed in Y and Another (Sri Lanka) [2009] EWCA Civ 362.
20. In accepting that the appellant is in a relationship with his mother and that he is dependent "on them" because of his medical condition, and that his return would not be in the public interest, the Judge gave no consideration of whether this was more than the normal emotional ties. There was no reference to any dependency in the report. The appellant asserted in his witness statement that he requires the emotional and practical support of his family on a daily basis which he is dependent on.
21. She submitted that in allowing the appeal under the Rules and Article 8 outside the Rules, there was no adequate reasoning as to why the appeal should be allowed. He did

not give any reasons as to why the claimant, who is no longer a minor and who spent his formative years in Mauritius, will face significant obstacles on return. Nor did the Judge adequately reason why his individual circumstances outweigh the public interest. In particular it is inadequate just simply to acknowledge that his leave was precarious.

22. On behalf of the claimant, Ms Malhotra, who did not represent him before the First-tier Tribunal, referred to [14] of the decision. It is noted by the Judge that the claimant and his father were called to give evidence and they both adopted their witness statements. There was no cross-examination at all by the Home Office Presenting Officer.
23. She also referred to paragraph 18 of the reasons for refusal. There the respondent asserted that his uncle is in Mauritius. He would be able to provide the claimant with support and accommodation on his return to Mauritius.
24. The claimant in his witness statement stated that he does not have assets or accommodation in Mauritius. His uncle was not mentioned in the witness statement.
25. This was also asserted by the claimant's father in his witness statement that they do not even have any accommodation in Mauritius. He is getting a great deal of support from his friends and family, something which is absent in Mauritius for him. If returned to Mauritius, there will be nowhere for him to stay. He fears that he will be homeless and destitute leaving him in a vulnerable position.
26. There was no cross-examination of either the claimant or his father. It was not even put to him that he had an uncle who would be available to assist him in Mauritius.
27. At [25] the Judge accepted the evidence of the claimant's parents as credible in respect of his ability to cope if he were to be returned to Mauritius. There was no challenge to the evidence and is a perfectly sustainable finding. Accordingly, there was no challenge to the claimant's assertion that he would be destitute on return.
28. She submitted that ground 2 of the secretary of state's application for permission, is informed by the first ground. It is asserted that the Judge did explain and give adequate reasons why the claimant will face significant obstacles on return.
29. Ms Malhotra submitted that the Judge was considering the lack of support that he would receive from relatives if he were to be returned. He had proper regard to the report and diagnosis of Mrs Horton. The references in the report to suicidal ideation was clearly set out in the report. She had provided a detailed report relating to the claimant's current emotional well being.
30. She referred to the decision of the Upper Tribunal in Lama (video recorded evidence - weight - Art 8 ECHR) [2017] UKUT 16 at [31-32]. The Tribunal considered the recent decision of the Court of Appeal in PT (Sri Lanka) v ECO, Chennai [2016] EWCA Civ 612. The Court of Appeal reviewed the decision of the Court of Appeal in Kugathas v SSHD [2003] EWCA Civ 31 - the leading authority in this field - which concurred with the formulation of the Commission in S v UK [1984] DR 196:

*“Generally the protection of family life under Article 8 involves co-habiting dependants, such as parents and their dependent minor children. Whether it extends to other relationships depends on the circumstances of the particular case”* (emphasis in the original).

31. Ms Malhotra finally submitted that there has also been no challenge of his prior medical problems.
32. In reply, Ms Fijiwala submitted that the Home Office Presenting Officer relied on the reasons for refusal. It was incumbent on the Judge to have regard to the decision.

### Assessment

33. Both the claimant and his father gave evidence before the First-tier Tribunal. In his witness statement, the claimant noted that he had spent his formative years in the UK and had developed numerous friendships. He is no longer in touch with friends and family in Mauritius. He has spent nearly half his life in the UK. He has always lived with his parents and brother. He has never lived on his own.
34. He contended that on account of his mental health condition, he requires the emotional and practical support of his family on a daily basis which he is dependent on. The thought of being separated from them is distressing and has pushed him to attempt suicide in the past. He will not get the emotional support that he currently receives if forced to relocate to Mauritius.
35. He stated at paragraph 7 of his statement, that notwithstanding the Home Office contention that there is mental health treatment in Mauritius, it was not appreciated that the support from his family is a fundamental part of his treatment and not just medication or counselling.
36. In the appellant’s father’s witness statement, he also set out the serious problems that the claimant would face if removed to Mauritius.
37. The Home Office Presenting Officer did not cross examine either of them. Nor did he seek to join issue with their assertions in their respective witness statements, confirmed and repeated by them in their oral evidence.
38. The Home Office Presenting Officer simply stated that she relied on the contents of the refusal letter. The Judge recorded at paragraph [15] that she stated that the circumstances of the claimant had altered since the making of the decision “and she had nothing further to add.”
39. The Judge went on to consider the report of Ms Horton. She produced a report of some 18 pages. She has set out in detail the immigration history of the claimant.
40. She also had sight of a letter from the claimant’s psychological well-being practitioner. This confirmed that he received an assessment on 28 June 2016 and that his presenting

difficulties were low mood and anxiety as a result of ongoing immigration problems. He was offered therapy.

41. The Judge has considered the s.119B considerations as part of the proportionality exercise.
42. In finding that the decision would be disproportionate, he accepted the unchallenged conclusions of Ms Horton relating to the claimant's psychological distress including his experience of isolation and suicidal moods. The nature of his disorder meant that he was at risk of committing suicide because of the situation. He went on to find that the claimant would find it difficult to integrate if he were returned because his close family are all in the UK and there is a lack of evidence regarding the support he would receive from other relatives if returned.
43. Although the findings reached by the Judge might be considered to be generous, he has given sustainable reasons for them based on the evidence.

#### Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision shall accordingly stand.

Anonymity direction not made.

Signed

Dated: 8 October 2018

Deputy Upper Tribunal Judge Mailer