

Heard at Field House

IM (overstayers – ILR –
legitimate expectation)
Jamaica [2004] UKIAT 00261

On 24 August 2004

IMMIGRATION APPEAL TRIBUNAL

notified:

Date Determination

2004.....

.....16th September

Before

:

**Miss K Eshun – Vice President
Ms S S Ramsumair JP**

Between

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Representation:

For the Appellant: Mr A Alhadi, Stevjeme and Company
Solicitors

For the Respondent: Mr A Hutton, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Jamaica, appeals with leave of the Tribunal against the determination of an Adjudicator (Mr M J Gillespie) dismissing her appeal against the decision of the respondent made on 18 November 2002 to make a deportation order against her by virtue of Section 3(5) of the Immigration Act 1971.

2. The appellant last entered the United Kingdom on 28 October 1998 and was granted six months leave to enter. She failed to embark when that leave expired. On 24 May 1999 an asylum application was received by the Home Office on the appellant's behalf. A further application under the Regularisation Scheme for Overstayers was received by the Home Office on 2 October 2000. It is the refusal of that application that led to the appeal before the Adjudicator.
3. On 26 November 2002 the appellant appealed against the respondent's decision on the following grounds:

"The Secretary of State decision to make a deportation order against the appellant will not be in accordance with the law and the Immigration Rules for the following reasons.

 - [i] The decision would be contrary to Section 9 of the 1999 Immigration and Asylum Act.
 - [ii] The appellant made an application to regularise her stay in the United Kingdom in which she has a legitimate expectation that she would be granted leave to remain, since her application meets the requirement to Section 9 of the 1999 Immigration and Asylum Act.
 - [iii] Since there is no ambiguity in the interpretation of Section 9, to the 1999 Immigration and Asylum Act, the appellant should have been given leave to remain. And not to be given a notice of a decision to make a deportation order against her.
 - [v] Section 9 clearly states overstayers should apply for leave to remain, in a prescribed manner. The manner was prescribed in Regulation 2000, both Section 9 of the 1999 IAA and Regulation 2000, did give an indication that leave to remain will be granted.
 - [vi] It was wrong for the Secretary of State to say by virtue of Regulation 2000, that the appellant has a right of appeal when this Regulation only relates to the manner in which an application has to be made within the meaning of Section 9 to the 1999 Immigration and Asylum Act."
4. The reason why we have quoted the grounds of appeal in full is because Mr Alhadi virtually repeated the same arguments to us.
5. The Adjudicator found that there was no merit in the submission that the appellant has, under Section 9 of the Immigration and Asylum Act 1999, a legitimate expectation that she will be

afforded leave to remain if an application that meets the formal requirements of Section 9 is made. Section 9 is purely procedural and makes no provisions stating or enacting any right to remain for overstayers who make application for regularisation.

6. Mr Alhadi submitted a small bundle of documents, which contained letters from the Home Office to Stevjeme and Co. Solicitors in respect of applications made under the Regularisation Scheme for Overstayers on behalf of various clients. In the letter the Home Office said that they had enclosed an "ICD.0009" to confirm that the client had been granted indefinite leave to remain and which explained the conditions of that leave and how to contact the Nationality Directorate should they wish to do so. We did not know what an ICD.0009 was. Mr Alhadi tried to explain that the ICD.0009 was a letter, which confirmed that their application under the Regularisation Scheme for Overstayers on behalf of each client had been accepted. In order to confirm this, we granted a short adjournment to Mr Alhadi to produce a copy of an ICD.0009.
7. At the resumed hearing Mr Alhadi produced an ICD.0009 letter, which the Home Office had sent to one of his clients. The letter stated that there were no longer any restrictions on the period for which that person may remain in the United Kingdom and explained the conditions of that leave. The letter did not specifically state the criteria used by the Home Office in granting indefinite leave to that particular claimant.
8. Mr Alhadi relied on Section 9(i) of the Immigration and Asylum Act 1999 which states:

"[1] During the regularisation period overstayers may apply, in the prescribed manner, for leave to remain."
9. Mr Alhadi interpreted this to mean that once a valid application was made under Section 9(1) in the manner prescribed by parliament, that was conclusive evidence that an applicant would be granted leave to remain. Therefore it was wrong of the Secretary of State to refuse the appellant's application and then issue a notice of intention to deport her. In our opinion this is an irrational argument. In our opinion Section 9(1) enables an overstayer to make an application to regularise their stay during the regularisation period, which ran from 8 February 2000 until 1 October 2000. It does not, as stated by the Adjudicator, entitle a claimant to a legitimate expectation that they would be granted leave to remain.
10. Mr Alhadi explained that the prescribed manner of the application envisaged in Section 9(1) is set out in the Statutory Instrument 2000 No. 265, that is, The Immigration (Regularisation Period for Overstayers) Regulations 2000.

Section 2(1) says "an application under Section 9(1) of the Act shall be made in the following manner". Subsections (2) and (3) prescribe the manner in which the application should be made.

11. Section 2(4) states:

"The information referred to in paragraph (2) is:

- (a) the applicant's full name, date of birth and nationality;
- (b) the applicant's home address or (if none), an address where he may be contacted;
- (c) the name and address of any representative who is acting on behalf of the applicant;
- (d) the date of each occasion on which leave to enter or remain has been granted to the applicant since his first arrival in the United Kingdom, if known;
- (e) in relation to each date specified in accordance with subparagraph (d), the period for which leave was granted, if known;
- (f) the applicant's Home Office reference, if known;
- (g) the fact that the application is made under Section 9 of the Act; and
- (h) all the circumstances which the applicant wishes the Secretary of State to take into account when considering his application, including:
 - (i) his length of residence in the UK;
 - (ii) the strength of his connections with the United Kingdom;
 - (iii) his personal history, including character, conduct and employment record;
 - (iv) his domestic circumstances; and
 - (v) any compassionate circumstances."

12. We note from the application made on the appellant's behalf of 27 September 2000 that only the factors set out in Section 2(4) (a) – (g) were put before the Secretary of State. It is also clear to us in his letter of 18 November 2002 responding to the application by Stevjeme and Co. that the Secretary of State took into account the factors set out at Section 2(h)(i) – (v) before refusing the appellant's application to regularise her stay. The

appellant has not challenged the Secretary of State's reasons for refusing her application. The only challenge to the Secretary of State's decision appears to be based on the arguments in the grounds of appeal which mainly rely on Section 9 of the Immigration and Asylum Act 1999. In our opinion that argument is irrational and has no basis in law.

13. Accordingly, the appellant's appeal is dismissed.

**MISS K ESHUN
VICE PRESIDENT**