

SUPREME COURT OF SEYCHELLES

Reportable/Not Reportable/Redact

[2021] SCSC ..708

MA232/2023

Arising in MC32/2023

In the ex-parte matter of:

MARIE JUDITH BERIZIKY

(rep. by K. Domingue)

Applicant

Arising in the matter between:

MARIE JUDITH BERIZIKY

Petitioner

and

THE ATTORNEY GENERAL

Representing the Ministry of Internal Affairs & Immigration

Respondent

Neutral Citation: *Beriziky v Minister of Employment & Social Affairs & Anor* (MA232/2023) [2023] SCSC (20 September 2023).

Before: E. Carolus J

Summary: Application for leave to proceed with application for Judicial Review out of time

Delivered: 20 September 2023

ORDER

Application for leave to proceed with petition for Judicial Review out of time is dismissed.

RULING

E. Carolus, J

[1] The applicant Marie Judith Beriziky has petitioned this Court in MC32/2023 for judicial review of a decision of the Ministry of Internal Affairs, Immigration and Civil Status made on 27th June 2022 maintaining its decision of 17th November 2021 to declare the applicant a Prohibited Immigrant and prohibiting her from entering Seychelles. The petition is supported by an affidavit sworn by the applicant, a Malagasy national, on 7th February 2023

in Madagascar before Maître RABESAOTRA Dominique Mamy Nirina (Notary Public) whose signature appears to have been authenticated by the Ministry of Foreign Affairs in Madagascar as the affidavit bears the stamp of such Ministry and a signature presumably of an officer of such Ministry. Copies of the decision sought to be canvassed and other documents material to the petition certified by Notary Guy Ferley to be true copies of the original are exhibited to the affidavit. MC32/2023 was filed on 30th May 2023.

- [2] The applicant has also filed the present application (MA232/2023) together with the petition seeking leave to proceed to Judicial Review out of time. Similarly to the petition, the application is supported by an affidavit sworn by the applicant on 7th February 2023 in Madagascar before Maître RABESAOTRA Dominique Mamy Nirina (Notary Public) which appears to have been authenticated by the Malagasy Ministry of Foreign Affairs. Relevant documents are exhibited to the affidavit. The application is also supported by an affidavit of Pierre Pascal Hemard dated 7th February 2023 and made in Madagascar which basically confirms as true and correct the matters averred by the applicant in her affidavit.
- [3] The applicant's affidavit in support of the application sets out the background facts relating how the applicant came to be declared a Prohibited Immigrant and the reasons why she has filed the petition outside the statutory time frame of three months provided by Rule 4 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules.
- [4] In her affidavit she avers that she worked in Seychelles on a Gainful Occupation Permit ("GOP") for 16 months up to August 2020, when she had to leave Seychelles because her GOP was not being renewed as a result of the Covid 19 pandemic. Upon the expiry of her GOP she returned to Madagascar. This is confirmed by a copy of her passport exhibited as MJB1.
- [5] Whilst working in Seychelles she had met a French national named Pierre Pascal Hemard with whom she entered into a relationship. Mr. Hemard is a retired businessman who has lived in Seychelles for over 10 years, leaving each time his 3-month visa expires and then coming back to the house he occupies in Glacis.

- [6] Whilst the applicant was in Madagascar, they made arrangements for her to come to Seychelles on a holiday to visit and stay with Mr. Hemard from 17th November 2021 to 13th December 2021. Exhibited is her travel authorization (MJB2). Upon reaching the airport in Seychelles on 17th November 2021 the Respondent searched her luggage and found school certificates, and work-related documents among other personal documents. She tried to explain to the Respondent that she was coming on holiday and showed the Respondent her invitation letter (exhibited as MJB3) and return ticket, but the Respondent refused to believe her and issued her with a Notice dated 17th November 2021 declaring her to be a Prohibited Immigrant and requiring her to leave Seychelles (exhibited MJB4), on the basis that the documents found in her luggage indicated that she was coming to seek employment in Seychelles.
- [7] She avers that she was ordered to leave Seychelles via Mauritius and had no choice but to do so on 24th November 2021. Upon her arrival in Mauritius she was given a visa for 14 days which was extended twice up to up to the end of February 2022, as there were only a limited number of flights from Mauritius to Madagascar due to the Covid 19 pandemic, after which she had no choice but to fly to Paris on 19th February 2022 and get a connecting flight from Paris to Madagascar on 20th February 2022. In support she produced a copy of her airline ticket as well as her passport (Exhibit MJB5). She avers that she had to incur these high expenses due to being declared a Prohibited Immigrant by the Respondent and the restrictions imposed by the Covid 19 Pandemic.
- [8] The applicant avers that she appealed to the Principal Secretary Mr. Alain Volcere, requesting the revocation of her status of Prohibited Immigrant by a letter dated 9th June 2022 (exhibited as MJB6), in which she explained that she travelled with her personal documents including her CV and employment certificates for safekeeping, and that at the time the search of her luggage was conducted in November 2021, she was confused and felt intimidated and was thus unable to explain the real reason for her visit to Seychelles..
- [9] She further avers that her letter was supported by a letter also dated 9th June 2022 written by Mr. Hemard, addressed to the Respondent. In his letter Mr. Hemard informed the Respondent that he was ready to assume all financial responsibilities pertaining to the

applicant during her stay in Seychelles, that she was his partner and would be his future spouse. In addition he stated that he owns the following assets in France: a commercial property of the extent of 2,200 square meters on which is situated an optician shop of 500 square meters and a spare parts shop of 350 square meters, which property is valued at €1,400,00, as well as a property measuring 650 square meters on which he is building a house to the value of €450,000. He also owns a Seychelles registered International business company (“IBC”) registered as New Paradise from which he derives a net yearly revenue of approximately €36,000. Mr Hemard stated that whilst in Seychelles, in addition to the income from his IBC, he receives retirement funds of approximately €17,000 net annually, and approximately €35,000 per year from his commercial building in France. Mr Hemard stated that he rents a house at Glacis for a monthly sum of SCR13,000 during his almost year-round stay in Seychelles, and that his spending in Seychelles totals approximately SCR50,000 to SCR60,000 per month. A copy of Mr Hemard’s letter and supporting documents are exhibited as MJB 7.

[10] The applicant avers that despite the aforementioned facts, the Respondent sent her a letter dated 27th June 2022 informing her that the Notice issued to her on 17th November 2021 would be maintained and that therefore she would still not be allowed to enter the country. A copy of the letter is exhibited as MJB8.

[11] She avers that as a result of the decision of the Respondent she has filed the present petition for the Supreme Court to exercise its supervisory jurisdiction to review the decision of the Respondent and revoke her status as a Prohibited Immigrant and allow her to enter Seychelles.

[12] As for the reasons as to why she filed the present petition outside the statutory time delay she avers that:

a. Being a Malagasy national and having been declared a Prohibited Immigrant it was and is not easy for me to seek legal advice from lawyers in Seychelles. The same applies to my partner, who is a French national and who normally has no need for the services of a lawyer in Seychelles, as he is retired. Furthermore, since most lawyers in Seychelles are more conversant in English, very few lawyers take on clients who speak only French. The latter is my predicament and that of my partner.

- b. *My partner managed to secure the services of a French-speaking lawyer in Seychelles in mid-2022 and we were advised by the lawyer to write to the Principal Secretary, which we both did, as evidenced by the letters of 9th June 2022, exhibited as MJB 6 and MJB 7 respectively.*
- c. *Upon receipt of the letter of the Respondent, exhibited as MJB 8, my partner and I were advised by our, then-lawyer in Seychelles that we had to wait for one more year before attempting to get my prohibited Immigrant status revoked and we believed the advice of that lawyer.*
- d. *It was only after my partner discussed the matter with a few friends that he was advised to go and seek a second legal opinion. I am advised by my partner and I verily believe him that it was difficult to find a lawyer who wanted to take the case because either the lawyers he approached were too busy or else they did not want to take on a client who spoke French.*
- e. *By the time my partner managed to secure the services of our current lawyer, we were already outside the prescribed time delay.*
- f. *I state that we were wrongly advised and our personal circumstances, namely me being physically absent from Seychelles and my partner and I being lay persons, who normally have no need for the services of a lawyer and most Seychellois lawyers not being keen on taking on clients who speak French only have made it difficult for my partner and I to remain within the time delay prescribed by the law.*
- g. *I state that the reasons why I am filing my application out of time is not due to any lack of diligence or any laches on my part and I therefore pray to the Court to condone the delay and extend the time and thus grant me leave to proceed to judicial review.*

[13] In terms of her application the applicant prays for the following reliefs:

- A. *That the delay is condoned by the Court and that I obtain leave to proceed with the Petition;*
- B. *For a writ of Mandamus compelling the Respondent to give reasons as to why I should remain a Prohibited Immigrant;*
- C. *An order of Certiorari quashing the Respondent's decision that I should remain a Prohibited Immigrant and thus allowing me to enter Seychelles.*

[14] Rule 4 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules, provides as follows:

A petition under rule 2 shall be made promptly and in any event within 3 months from the date of the order or decision sought to be canvassed in the petition unless the Supreme Court considers that there is good reason for extending the period within which the petition shall be made. Emphasis added.

[15] In the present case the petition and present application were both filed on 30th May 2023, just short of one year after the decision of 27th June 2022 maintaining the Respondent's decision to declare the applicant as a Prohibited Immigrant and prohibiting her from entering Seychelles, which she is seeking to be reviewed.

[16] In terms of Rule 4 there must be "good reason" for the Court to grant leave to file a petition for Judicial Review out of time. It is my view that the reasons put forth by the applicant do not constitute good reasons as they are implausible. The applicant was declared a Prohibited Immigrant on 17th November 2021 and left Seychelles on 24th November 2021. She therefore had seven days to take steps to seek a remedy which she does not seem to have done. She only appealed against the decision by letter of 9th June 2022, 7 months later, and received a reply dated 27th June 2022. The present case was only filed on 30th May 2023, 11 months later. I am not convinced by her explanations that she and her partner encountered difficulties to secure the services of a lawyer because she is outside Seychelles, because both she and her partner normally have no need for a lawyer, and because very few lawyers take on clients who speak only French. I also find it hard to believe that they were advised by a lawyer that she had to wait for one year before getting her status as a Prohibited Immigrant revoked. It appears to me that the applicant sat on her rights throughout this whole process. She failed to seek a remedy during the first 7 days of being declared a Prohibited Immigrant while she was in Seychelles. After that she only appealed against the Respondent's decision after 7 months. After she was informed that her appeal was unsuccessful she waited another 11 months before filing the Judicial Review petition. The reasons that she has given to convince this court to condone the delay in filing the

petition, in my view, do not constitute good reasons for extending the period for filing the petition for Judicial Review.

[17] In the circumstances, I dismiss the application for leave to proceed to Judicial Review out of time. The petition in MC32/2023 accordingly falls.

Signed, dated and delivered at Ile du Port on 20th September 2023



E. Carolus