

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 11.02.2019

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W.P.(C) 11865/2018

ALIBHIYA DAS

..... Petitioner

Versus

UNION OF INDIA & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr J.S. Kushwaha.

For the Respondents : Mr Vikas Mahajan, CGSC with Ms
Saakshi Agrawal, GP and Mr Aakash
Varma and Mr Deepak Goyal.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning the deportation order passed by respondent no.2 (FRRO) for deportation of the petitioner's husband - Mr Richmond Ugochukwu Madidi, who is a Nigerian National.

2. Admittedly, the Visa issued to Mr Richmond Ugochukwu Madidi had expired. The petitioner prays that the same be extended on payment of penalty.

3. The respondents have filed a counter affidavit, which indicates that Mr Richmond Ugochukwu Madidi (holder of Passport

No.A05161440) had arrived in India on 16.03.2015 on a Medical Visa, that was issued to him in Lagos by the Indian High Commission. The said Visa was valid for a period of one month – from 04.03.2015 to 03.04.2015.

4. Mr Richmond Ugochukwu Madidi had claimed, in his Visa application form, that he was suffering from a stomach tumor and was visiting India for treatment from Artemis Hospital, Gurgaon.

5. The respondents have produced Mr Richmond Ugochukwu Madidi's application Visa form, which also indicates his marital status as married to one Ms Madidi Joy.

6. After his arrival in India, he did not report to any local police as required. Further, it was also found that he did not stay in any hotel.

7. The petitioner claims that her marriage with Mr Richmond Ugochukwu Madidi was solemnized on 24.11.2017 at Pandav Kalin Neeli Chhatri Mandir, Delhi. She claimed that the marriage ceremony was performed as per Hindu Rituals. It was also submitted that on the same date, that is, on 24.11.2017, Mr Richmond Ugochukwu Madidi had adopted Hindu religion. The petitioner has also submitted copies of the certificate to the aforesaid effect from Prachin Neeli Chhatri Sanatan Dharam Vivah Padti Trust. The petitioner further states that she has a son from the aforesaid wedlock.

8. The learned counsel appearing for the petitioner submits that the petitioner and her child were dependent on her husband. The

petitioner's husband was apprehended on 18.10.2018 and is presently lodged in a deportation camp at Lampur Border, Narela. The respondents are in the process of deporting him to his country (Nigeria).

9. The learned counsel for the petitioner submits that the petitioner is dependent on both, emotionally and otherwise, and she would be deprived of her married life and the son would be deprived of the care of his father if Mr Richmond Ugochukwu Madidi is deported back. He also submitted that currently, the petitioner is pregnant and it would be very harsh on the petitioner if her husband is deported to Nigeria.

10. He submitted that Mr Richmond Ugochukwu Madidi had overstayed his stay in India, however, that irregularity could be cured by imposition of penalty. He relied on the decision of a Coordinate Bench of this Court in ***Svetlana Kazankina and Ors. v. Union of India and Anr.: W.P.(C) 635 of 2013, decided on 04.12.2015***. He submitted that in this case also, the petitioner had exceeded her stay in India and her application for extension of Visa had been denied. Undoubtedly, this gave persons certain mitigating circumstances. However, this Court is unable to provide any relief to the petitioner except sympathizing with her condition.

11. Undisputedly, Mr Richmond Ugochukwu Madidi had obtained the Visa from an Indian High Commission in Lagos by giving false information. There is no material on record to show that that he was,

in fact, suffering from a tumor in his stomach or was treated at any hospital in India. He had secured an Indian Visa on the representation that he required treatment at Artemis Hospital, Gurgaon. However, there is no material to show that he was even visited the hospital after coming to India.

12. Mr Richmond Ugochukwu Madidi was issued a visa only for limited purpose. Thus, the question of extending the said Visa on payment of penalty does not arise, as the Visa itself is liable to be cancelled as having been obtained by misrepresentation.

13. It is also relevant to note that in his application form, Mr Richmond Ugochukwu Madidi had showed his marital status as married. He had confirmed that he was married to one Ms Madidi Joy. He had also shown his status as being employed as a Director of Madinson Nigeria Enterprises.

14. It is submitted on behalf of the learned counsel for the petitioner that Mr Richmond Ugochukwu Madidi was not married and he had simply signed the form filled by his agent. However, there is little reason for this Court to accept the veracity of the said statement.

15. Mr Richmond Ugochukwu Madidi had expressly declared (as a part of his visa application) as under:-

“a. I do not hold any other passport(s) other than those detailed above.

- b. I have read and understood all the conditions for the visit to India and I am willing and able to abide fully by them.
- c. I declare that the information given in the form is complete and correct and the visit to India will be undertaken for the purpose indicated in the application.
- d. I understand that in case the information provided in the form is found to be incorrect, I will be liable for denial for visit/entry.”

16. In view of the aforesaid affirmation, this Court cannot fault the respondents proceeding on the basis that Mr Richmond Ugochukwu Madidi was already married prior to his visit to India.

17. Indisputably, Mr Richmond Ugochukwu Madidi was an illegal migrant within the meaning of Section 2(1)(b) of the Citizenship Act, 1955, which reads as under:-

“2. Interpretation.— (1) In this Act, unless the context otherwise requires, –

(b) “illegal migrant” means a foreigner who has entered into India—

(i) without a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf; or

(ii) with a valid passport or other travel documents and such other document or authority as may be prescribed by or under any law in that behalf but remains therein beyond the permitted period of time;”

18. In view of the above, this Court is unable to accept that any interference with the decision of the respondents is warranted.

19. In terms of Section 7A(1)(b) of the Citizenship Act, 1955, a spouse of foreign origin of a Citizen of India would be entitled to an Overseas Citizen of India Card. However, the pre-condition for the same is that the marriage should have been registered and should have subsisted for a continuous period of not less than two years immediately providing the presentation of an application under Section 7A of the Citizenship Act, 1955. Plainly, the benefit of this provision is also not available to Mr Richmond Ugochukwu Madidi, as the petitioner's marriage with him is not registered.

20. Undoubtedly, the petitioner has presented certain mitigating circumstances. However, except sympathizing with her condition, this Court is unable to provide any relief to the petitioner.

21. The petition is, accordingly, dismissed.

FEBRUARY 11, 2019
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VIBHU BAKHRU, J