



Upper Tribunal
(Immigration and Asylum Chamber)

THE IMMIGRATION ACTS

Heard at Field House
On 27 August 2013

Determination Promulgated
On 27 August 2013

Before

UPPER TRIBUNAL JUDGE PITT

Between

EDITHA DELA CRUZ GUMIRAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Wray, Kings Court Chambers
For the Respondent: Mr Walker, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of the Philippines and was born on 30 July 1965.
2. This is an appeal against the determination dated 2 May 2013 of First-tier Tribunal Metzger which dismissed the appeal against the respondent's decision of 18 January 2013 which refused the appellant's application as a domestic worker.

3. It was common ground that the appellant could not succeed under any of the provisions of HC 395 (the Immigration Rules) and that, as before the First-tier Tribunal, the only matter in issue was her appeal under Article 8 of the ECHR.
4. Mr Walker conceded for the respondent that the decision of First-tier Tribunal Judge Metzger disclosed an error on a point of law such that it should be set aside and re-made. The Judge was in error in finding that the appellant did not have leave when she formed her relationship with Mr McLean, a British national, in 2011. In fact, the appellant had leave until 30 July 2012. This error of fact, submitted Mr Walker, had fatally infected the Article 8 proportionality assessment. He also conceded that the use of the term “exceptional” at [18] showed an incorrect approach to the proportionality assessment.
5. Mr Walker also submitted that it was now the respondent’s view that it would be disproportionate to expect the appellant to return to the Philippines and that the appeal should be allowed. It was undisputed before the First-tier Tribunal that the relationship was genuine and subsisting. If more were needed, it was also accepted that the couple had married on 5 July 2013. It was accepted that Mr Wray would have difficulty managing without the appellant due to his health problems. In short, it was Mr Walker’s submission that the appeal should be allowed outright under Article 8.
6. As a result of the Secretary of State’s position at the hearing before me, I found that the determination of the First-tier Tribunal disclosed an error on a point of law such that it should be set aside and re-made.
7. The Secretary of State has also indicated that the appellant’s return to the Philippines would amount to a disproportionate interference with her family and private life. I therefore re-made the appeal as allowed under Article 8 of the ECHR.

Decision

8. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside. I re-make the appeal as allowed under Article 8 of the ECHR.

Signed
Upper Tribunal Judge Pitt

Date: 27 August 2013