



**Upper Tribunal
(Immigration and Asylum Chamber)**

**Appeal Number:
IA/26553/2013**

THE IMMIGRATION ACTS

**Heard at Field House
On 20 May 2014 On 12th August 2014
Determination
promulgated**

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

**Maria Vanessa Pascual Salisi
(Anonymity direction not made)**

Appellant

and

**Secretary of State for the Home Department
Respondent**

Representation

For the Appellant: Ms. K. Reid of Counsel (Direct Access).
For the Respondent: Mr. G. Saunders, Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Andonian promulgated on 6 January 2014, dismissing the Appellant's appeal against the Respondent's decision dated 12 June 2013 refusing to vary leave to remain on the basis of private and family life.

Background

2. The Appellant is a national of the Philippines born on 24 November 1987. Her personal details and immigration history are a matter of record on file, and it is unnecessary to rehearse them here; I make reference as is incidental for the purposes of this document.

3. On 6 December 2012 the Appellant applied for variation of leave to remain on the basis of private and family life. She had initially entered the UK as a Tier 4 (General) Student; however, following the withdrawal of the sponsor licence of two successive course providers the Appellant found herself facing a curtailment of leave. In such circumstances, by way of Form FLR (O) signed on 26 November 2012 and a supporting statement of representations, the Appellant applied for further leave to remain essentially on the basis of being in a same-sex relationship, her community ties in the UK, and the absence of family in the Philippines. The Respondent refused the Appellant's application for reasons set out in a 'reasons for refusal letter' dated 12 June 2013 with reference in particular to paragraph 276ADE of the Immigration Rules.

4. The Appellant appealed to the IAC. She attended the hearing and was represented by Counsel (not Ms Reid). The Appellant's partner was also in attendance, but was not called to give evidence (determination at paragraph 1). The appeal was dismissed for reasons set out in the First-tier Tribunal Judge's determination.

5. The Appellant sought permission to appeal to the Upper Tribunal which was granted on 1 April 2014 by First-tier Tribunal Judge Heynes.

Consideration

6. As regards the Immigration Rules, the Appellant has not at any point claimed that her girlfriend is any of a British citizen, a person settled in the UK, or a person in the UK with limited leave as a refugee or a person granted humanitarian protection. Indeed, the Appellant informed the First-tier Tribunal Judge that her partner did not have settled status (determination at paragraph 1). In such circumstances, no reliance has been, or could be, placed on Appendix FM (see section GEN.1.1). As regards paragraph 276ADE, the Appellant does not satisfy the requirements in respect of age / time spent in the UK under (iii)-(v), and therefore must seek to rely upon paragraph 276ADE(vi).

7. The Judge appropriately identified this to be the relevant issue (paragraph 2), but concluded against the Appellant in respect of “*ties (including social, cultural or family) with the country to which [s]he would have to go if required to leave the UK*”, i.e. the Philippines, for reasons set out in paragraph 3 of the determination.

8. The Judge said this: “*Having spent 22 years in the Philippines and in the absence of any evidence to the contrary I am not prepared to accept that any period of time she spent in the UK she has lost ties to her own country*”. Whilst that is a succinct statement of finding, it appropriately reflects the burden of proof and, in my judgement, in all of the circumstances is a sustainable conclusion drawn from the available evidence. It seems to me that the highest that the Appellant’s case was put was that she had lost family ties – her mother having died, her father being a seaman who was rarely seen and rarely communicated with the family, her sister having emigrated to Japan, and the Appellant not having had any contact with her brother since the Haiyan Typhoon (see statement in support of application). The Rule is not limited to the question of family ties: it is, of course, perfectly possible to have no family ties with a country but to retain social and cultural ties.

9. Indeed no specific or particularised complaint is raised in this regard in the grounds in support of the application for permission to appeal. In the context of ties and paragraph 276ADE what is raised is the Appellant’s sexuality, and her partner’s unwillingness to accompany her back to the Philippines. Neither the issue of sexuality, nor the partner’s unwillingness to relocate to the Philippines is a signifier of the Appellant’s own ties to her country of nationality.

10. I have noted paragraphs 11 and 12 of Ms Reid’s Skeleton Argument. This, as Ms Reid acknowledged, seeks to raise matters not relied upon in the grounds to the Upper Tribunal and which did not form the basis of the grant of permission to appeal. Be that as it may, in my judgement reference to the guiding case law of **Ogundimu [2013] UKUT 60 (IAC)** does not in reality advance the Appellant’s case in this regard any further. Paragraph 11 is otherwise no more than an attempt to reargue the case in respect of ties, and erroneously places reliance upon the Appellant’s sexuality, which, for reasons given above, is not determinative of the question of the existence of ties with her country of nationality.

11. The Appellant otherwise seeks to criticise the Judge's approach to Article 8 of the ECHR. Before me, emphasis is essentially placed on two matters: the Appellant's relationship with her partner who is unwilling to accompany her to the Philippines; and the Appellant's assertion that her sexuality would be met with disapproval in the Philippines.

12. The first of these points encounters the difficulty that the Appellant did not call her partner to give evidence before the First-tier Tribunal. Ms Reid sought to explain this as 'bad legal advice': that might be so, but it cannot form the foundation of criticism of the Judge for dealing with the case on the evidence presented to him by a legally represented appellant. The Judge concluded that in the circumstances "*There was a lack of any credible evidence before me to persuade me that the appellant had any form of family life with her partner*", also adding "*there was a total lack of any credible evidence of cohabitation for a reasonable period*" (determination at paragraph 1).

13. As regards any disapproval of the Appellant's sexuality, Ms Reid acknowledged that there was no 'country information' evidence before the First-tier Tribunal as to the treatment of lesbians in the Philippines and did not otherwise seek to suggest that this was a case presented as a claim for asylum or international surrogate protection. It seems to be that Ms Reid essentially seeks an opportunity to present arguments that were not adequately presented to the First-tier Tribunal, but does so without identifying any error on the part of the First-tier Tribunal Judge.

14. In my judgement the Judge explained with adequate reasons why he was not satisfied that family life had been shown to exist between the Appellant and her girlfriend: see paragraphs 1 and 6. Further, the Judge clearly considered Article 8 - both in respect of family and private life - outside the wording of the Rules (paragraph 6). If any criticism might be made of him in this regard it is that he did not accord any particular weight to the Immigration Rules, and did not direct himself as to the necessity of the Appellant demonstrating compelling circumstances: however, such criticisms do not avail the Appellant in that if anything they reveal a more generous approach than strictly required.

15. As regards other aspects of private life - length of time in the UK and concomitant social connections, and pursuit of studies - it is not apparent that anything of significance was advanced before the First-tier Tribunal to take the Appellant's case beyond the

expectations of the Rules. In this context – particularly with regard to study and the Appellant’s wish to pursue becoming a dental nurse – see **Patel and others [2013] UKSC 72** (especially per Lord Carnwath at paragraph 57) and **Nasim and others (Article 8) [2014] UKUT 00025 (IAC)**.

16. In my judgement the grounds in support of the application for permission to appeal did not reveal any error of law, and it is surprising to me that permission to appeal was granted. Permission was not granted on the basis of anything in the grounds, but by reference to the case of **Gulshan**. In this context any possible error on the part of Judge Andonian in not directing himself expressly to **Gulshan**, or in accordance with it, could not avail the Appellant in circumstances where the Judge expressly stated that he considered Article 8 as a “*free-standing Article*”. Ms Reid valiantly seeks to put a gloss on the challenge: but essentially she wishes to run arguments that were not duly presented to the First-tier Tribunal. Such an approach does not identify any relevant error of law in this particular case.

17. Accordingly I find that the First-tier Tribunal Judge did not err in law, and his decision stands.

Decision

18. The decision of the First-tier Tribunal contained no material error of law and stands.

19. The appeal is dismissed.

Deputy Judge of the Upper Tribunal I. A. Lewis 11 August 2014