



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

Appeal Number: IA/37706/2013

THE IMMIGRATION ACTS

Heard at Field House

On 17th July 2014

Determination

Promulgated

On 18th July 2014

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MS ROSELY RANILLE CABUS

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not Represented

For the Respondent: Mr P Nath (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. This is an appeal to the Upper Tribunal, with permission, by the Respondent with regard to a determination of the First-tier Tribunal (Judge Buckwell) promulgated on 25th April 2014. For the sake of clarity and continuity however, I shall continue to refer to the Secretary of State as the Respondent and Ms Cabus as the Appellant.
2. In his determination Judge Buckwell allowed the Appellant's appeal against the Secretary of State's refusal to grant her leave to remain on Article 8 grounds.

3. The background to this case is that the Appellant arrived in the United Kingdom on 20th June 2012 as a visitor with leave due to expire on December 2012. She made an application for leave to remain on 10th December 2012, prior to the expiry of her leave.
4. The Appellant was not eligible to remain under the Immigration Rules due to the "no switching" provisions.
5. The Appellant and her partner, Andrew Andrea, a British citizen, have been in a relationship for four years and eight months. Mr Andrea has health problems and the couple have a son, Charles, born on the 11 December 2009 in the Philippines. He is a British citizen.
6. The First-tier Tribunal heard evidence from the Appellant and her partner to the effect that although the Appellant has family in the Philippines including nine siblings, who all live in the same area, their homes were destroyed by a typhoon which hit the Philippines after she had come to the UK. As a result the whole family is now living in camps.
7. The Judge accepted that the Appellant been working in a restaurant in the Philippines, which is where she met Mr Andrea. Mr Andrea had regularly travelled to the Philippines but his health issues meant that had become more difficult. Mr Andrea has an adult daughter, Charlotte to whom he is very close in the UK. She lives close to Mr Andrea and the Appellant and they see each other several times a week. She has had mental health issues. Additionally, Mr Andrea has an elderly mother in the UK.
8. Candidly, in giving his evidence Mr Andrea told the First-tier Tribunal that his physical problems would not prevent him living in the Philippines should that prove necessary. The issue would be his other family members such as his mother and his daughter and it was also the couple's wish that their son should have the benefit of life in the United Kingdom.
9. The Secretary of State's grounds suggests that the Judge erred in failing to take the correct approach in considering the cases which engage Article 8. The grounds suggest that failing to follow the guidance in Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 00640 (IAC), Nagre [2013] EWHC 720 (Admin) and Shahzad (Art 8: legitimate aim) [2014] UKUT 00085 (IAC) constituted a material error of law.
10. At paragraph 29 of the determination Judge Buckwell referred himself to the recent cases relating to Article 8 and the new Immigration Rules, in particular MF [2013] EWCA Civ 1192, Gulshan, Nagre [2013] EWHC 720 (Admin), Shahzad and Ahmed[2014] EWHC 33 (Admin). However, the Judge also recognised the necessity for a two-stage approach and case law which remains binding from the House of Lords in terms of Huang [2007] UKHL 11 and Razgar [2004] UKHL 27. The Judge set out the five-stage approach suggested in Razgar and found on all the facts before him that removal was disproportionate. He referred particularly to consideration of the welfare of the young child who is a British national and he also took

into account the fact that the family relocating to the Philippines would adversely affect Mr Andrea's other family members in the form of his daughter and mother.

11. While the Judge did not say in terms that there were compelling reasons to stray beyond the Immigration Rules, it is abundantly clear from the determination that he was aware of the necessity to consider both the Rules and Article 8 under the ECHR. It is quite clear that he found the exceptional circumstance in this case was a natural disaster which had befallen the Philippines and the Appellant's family in particular while she was in the UK as a visitor and he was thus entitled to come to the conclusion that removal of this Appellant would be disproportionate.
12. It is now trite law that a court should be wary of interfering with credibility and proportionality findings that are properly reasoned and neither irrational nor perverse and made by a Judge who has had the benefit of hearing from the witnesses.
13. The Judge was entitled to find that the consequences of not granting the Appellant leave in this case would be unjustifiably harsh in the effect on all principal members of the Appellant's family and on the Appellant herself and also that it is in the best interests of the child for the family to remain together in the UK.
13. I uphold the determination of the First-tier Tribunal and the appeal to the Upper Tribunal is dismissed.

Signed

Date 17th July 2014

Upper Tribunal Judge Martin