



IAC-AH-CO-V1

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

Appeal Number: IA/46099/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 5 November 2014**

**Decision and Reasons Promulgated
On 17 November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS ANNA LYNNE DE LA CRUZ
(ANONYMITY ORDER NOT MADE)**

Respondent/Claimant

Representation:

For the Appellant:

Mr T Melvin, Specialist Appeals Team

For the Respondent/Claimant: Ms Karen Reid, Counsel, instructed by Direct Access

DECISION AND REASONS

1. This is the resumed hearing of this appeal following my error of law decision promulgated on 22 September 2014, following a hearing at Field House on 10 September 2014. The First-tier Tribunal did not make an anonymity order, and I do not consider that such an order is required for these proceedings in the Upper Tribunal.

2. At the outset of the hearing, Ms Reid addressed the query raised by Mr Wilding at the previous hearing. The claimant had not met the financial requirements at the date of application, and for that reason had not sought to rely on her ability to comply with the financial requirements in Appendix FM. But her case was that she could do so now, and she had gathered together ten months' worth of bank statements and pay slips to show this. This material was not going to be deployed before me, as it was recognised that she could only rely on her ability to meet the financial requirements in the context of a new application, and not by way of appeal against the refusal decision. The claimant was working in a hospital as a healthcare assistant, and earning £21,000 per annum. Her husband was working part-time for a glassware company, earning around £500 per month.
3. The claimant was called as a witness, and she adopted as her evidence-in-chief the witness statement which she had relied upon before the First-tier Tribunal. She entered the UK on 22 July 2008, and first met Jafaaa in March 2010. Although they were in a relationship before their wedding, she had maintained a room at another address because most of his friends were conservative Muslims who disapproved of cohabitation before marriage. So they wanted to show them that they were not living together before marriage. So although they were cohabiting, she had to stay at her alternative address on certain occasions. She got married on 18 September 2013, and they had been living officially as a married couple since 1 October 2013.
4. The family did not approve of her marriage to a Muslim man, as she came from a devout catholic family. They, like the majority of catholic Christians in the Philippines, had a strong bias against Muslims. This was especially at a time when they had a crisis of Muslim extremists who had terrorised one of the three major islands of the Philippines, Mindanao. It would be extremely difficult for Jafaaa to settle in the Philippines because of his rejection by her family and her community.
5. The claimant was cross-examined by Mr Melvin, and she answered questions for clarification purposes from me. Before she came to the UK, she was living with her family in Manila. She was financially independent, earning an income as a nurse. She contributed a portion of her earnings to the household expenses of the family. After coming to the UK, she used to remit money to the family in the Philippines, but she had stopped doing so since the family had found out that she had got married to Jafaaa.
6. She agreed she could work in the Philippines, although nursing jobs were very limited there. It would be difficult for Jafaaa to find a job. There was discrimination against the Muslim community in Manila. She was asked whether there were laws which prevented Muslims from working. She said she did not know. She then added that she was not familiar with the Muslim community in Manila, as she had grown up in a catholic community.
7. In re-examination, the claimant was asked why it would be difficult for her husband to get a job. She said it would be difficult because of his limited knowledge of

English and he would not be able to earn a living through glassware in the Philippines. She was scared for his safety. She did not want to reawaken his trauma.

8. Mr Jafaaa Mohamed Karim spoke through a Kurdish Sorani interpreter whom he clearly understood. Later he confirmed that he spoke to his wife in English, but he preferred to give his evidence to the Tribunal in his first language.
9. He adopted as his evidence-in-chief his witness statement for the First-tier Tribunal. He first entered the UK on 10 October 2002. Living in the Philippines was not acceptable to him for the following reasons. Firstly, he did not know the culture, and the language barrier would be a problem. Secondly, he wanted to live his life in a non-stressful environment where he could easily communicate on a daily basis. Thirdly, his religion was Muslim and his wife was a catholic. The family would not accept him because of his religion. She had asked her parents permission to marry him before the ceremony, but they rejected the idea to the point that they had broken all ties with her because of the marriage. There was a degree of tolerance of Muslims in Manila, according to his wife. But his wife's family were not amongst those who were okay with Muslims.
10. Mr Karim was cross-examined by Mr Melvin, and he answered questions for clarification purposes from me. His work options were limited by the fact that he had problems with his neck. He did not receive a disability allowance. He was currently working in a glass company. He was asked whether he could work in a shop or drive a vehicle. He answered he had a driving licence. But he liked his job, and he would like to gain more experience in that area.
11. Judge Oakley found that Mr Karim did not attend the mosque: see paragraph 19 of his determination. However, when asked to confirm that he was a non-practising Muslim, Mr Karim said that he practised his faith during Ramadan and on holy days. In re-examination, he said he prayed at a mosque every Friday, and had been doing so since one or two years after his arrival in this country in 2002.
12. His problem with his neck was a long-standing one. He had had it in Kurdistan. When he first arrived here, he had studied English to level 3. Subsequently he obtained a job in a pizza restaurant, and he had also worked in a Poundland shop.
13. In his closing submissions on behalf of the Secretary of State, Mr Melvin submitted that the claimant had not shown there were insurmountable obstacles to her enjoying family life with her husband in the Philippines. It was simply a matter of choice. They would prefer to live here. The lack of family support was not an insurmountable obstacle.
14. In reply, Miss Reid submitted that there was societal discrimination in the Philippines against Muslims, as demonstrated by the attitude of the claimant's family in cutting her off. The fact that the couple would be ostracised by the community represented an insurmountable obstacle.

Discussion and Findings

15. The couple have given credible and unchallenged evidence that at around the time that her student visa was about to expire, the claimant sought permission from her parents to marry Mr Karim with a view to settling with him in the United Kingdom. Although the claimant attributes the refusal, and the subsequent disowning of her, to religious prejudice, it was reasonable to question whether this is the truth or at least the whole truth. For, from a parental prospective, there were reasonable grounds for objecting to the proposed marriage which are unrelated to Mr Karim's faith, not least the fact that they had not met him, and the proposed marriage was taking their eldest daughter down a different path than was envisaged by them when they paid for her to study abroad for a limited period.
16. But even assuming that the sole or main objection to the marriage was Mr Karim's faith, it is not credibly established that the couple would be at risk of being ostracised by "the community" if they had to settle in Manila, which is the capital city of the Philippines and where the claimant was born and brought up, and also worked prior to coming to the UK.
17. The claimant has not brought forward any objective evidence to show that people of Muslim faith are subject to societal discrimination in the Philippines generally, let alone in its capital city. Although the claimant has made some sweeping statements about discrimination against the Muslim community in Manila and elsewhere, it became apparent from her answers in cross-examination that she actually knew nothing at all about the day-to-day experiences of followers of the Muslim faith in Manila. As she said herself, she was brought up in a catholic community, not a Muslim community. Moreover, she has acknowledged to her husband (see his witness statement) that there are people in Manila for whom Muslims were okay.
18. The claimant has demonstrated her independence from her family by going against their wishes and marrying Mr Karim. Although there will be a degree of hardship for the couple in relocating to Manila, the lack of financial support from her family in Manila will not cause severe hardship. It is likely that the couple have available to them sufficient savings from their earnings in the UK to tide them over while they find employment. As the claimant has worked in Manila before as a nurse, there is no reason to suppose that she cannot obtain employment as a nurse in Manila again, particularly as she will be able to rely on the qualifications she has obtained in the UK. For Mr Karim the job opportunities will be more limited, but not non-existent. He can already speak English to some extent, and there is no reason why he cannot strive to improve his level of English.
19. In conclusion, I find that there are not insurmountable obstacles preventing the claimant continuing her marital relationship with Mr Karim in the Philippines, and thus she fails to fulfil the criteria of EX.1(b) of Appendix FM of the Immigration Rules.
20. Turning to an Article 8 claim outside the Rules, I answer questions 1 and 2 of the **Razgar** test in the claimant's favour. I answer questions 3 and 4 of the **Razgar** test in

favour of the respondent, and so the crucial question is that of proportionality. On the Article 8(1) side of the equation, it is the private life rights of Mr Karim which principally militate against removal. The claimant entered the United Kingdom for a temporary purpose, and so has never had a legitimate expectation of being able to carry on private or family life here on a permanent basis. In contrast, Mr Karim has now resided in the United Kingdom for some twelve years, and has become a British citizen. Nonetheless, Article 8 does not confer on a couple the right to choose where to carry on their married life. When the couple embarked on their relationship, they knew, or are to be taken as knowing, that the claimant's status in the United Kingdom was precarious, and they might not be able to carry on their relationship here. They were even more acutely aware of this fact by the time they got married. For by that time the claimant's limited leave to remain had expired, and she had applied for leave to remain as Mr Karim's fiancée.

21. On the other side of the equation, I have taken into account the public interest considerations set out in Section 117B of the 2002 Act, as amended by the Immigration Act 2014. The decision appealed against was made on the premise that the claimant did not satisfy the financial requirements of Appendix FM, and thus was going to be a burden on the tax payer. She is now apparently in a position to provide the specified documents to show that she is earning at least £18,600 per annum. Provided that she makes a new application for leave to remain under the Rules within 28 days of her appeal rights being deemed to be exhausted, she will not be treated as an overstayer. As this route is available to the claimant, I find that the decision appealed against is proportionate to the legitimate public end sought to be achieved, namely the maintenance of firm and effective immigration controls. It strikes a fair balance between, on the one hand, the rights and interests of the claimant and her husband, and, on the other hand, the wider interests of society.

Notice of Decision

The decision of the First-tier Tribunal contained an error of law, and accordingly the decision is set aside and the following decision is substituted: this appeal is dismissed on all grounds raised.

No anonymity direction is made.

Signed

Date **17 November 2014**

Deputy Upper Tribunal Judge Monson