Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/14249/2014

THE IMMIGRATION ACTS

Heard at: Columbus House, Newport
On: 3 February 2015

Determination Promulgated
On 10 March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE J F W PHILLIPS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MELODY FLORES ANDRES
(anonymity direction not made)

Respondent

Representation
For the Appellant: Mr I Richards, Home Office Presenting Officer
For the Respondent: Mr A Maqsood. A-R Law Chambers

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the determination of First-tier Tribunal Judge N J Osborne in which he allowed the appeal of Ms Andres, a citizen of the Philippines, against the Secretary of State's decision to refuse to grant leave to remain. I shall refer to Ms Andres as the Applicant, although she was the Appellant in the proceedings below.

2. The application under appeal was made on 2 February 2013 and was refused by reference to Article 8 ECHR and paragraph 276ADE and Appendix FM of the Immigration Rules (HC395) on 6 March 2014. The Applicant exercised her right of appeal to the First-tier Tribunal. This is the appeal which came before Judge Osborne on 30 September 2014 and was allowed both under the Immigration Rules and by virtue of Article 8 ECHR. The Secretary of State applied for permission to appeal to the Upper Tribunal. The application was granted by First-tier Tribunal Judge T R P Hollingworth on 24 November 2014 in the following terms

> It is arguable that the findings that the Appellant can meet the requirements of the rules on the basis of lack of ties with the Philippines, are insufficient.
>
> So are the ultimate findings under Article 8 applying the Immigration Act 2014.
>
> All the grounds are arguable.

3. At the hearing before me Mr Richards appeared to represent the Secretary of State and Mr Maqsood represented the Applicant.

Background

4. The history of this appeal is detailed above. The facts, not challenged, are that the Applicant was born in the Philippines on 17 December 1988. She came to the United Kingdom with leave to enter as a visitor on 9 December 2006. The Applicant came to the United Kingdom to visit her mother who had a terminal illness and to help to look after her two younger half sisters whilst their mother was ill. The Applicant's mother died on 23 May 2007. At the time of her entry to the United Kingdom as a visitor the Applicant had an outstanding appeal against refusal of entry clearance to join her mother and stepfather in the United Kingdom. On 4 June 2007 the Applicant made an application for leave to remain on compassionate grounds. On 16 July 2007 her appeal against refusal of leave to enter as a dependent child was heard and dismissed. On 28 August 2007 her application for leave to remain on compassionate grounds was refused and according to the Respondent's refusal letter there was no right of appeal. The Applicant remained in the United Kingdom and on 5 June 2013 made a further application for leave to remain on compassionate grounds. The Applicant said that she had become an integral part of the family in the United Kingdom comprising her two step sisters and their father Jonathan Goodwin, all British citizens. In particular since the death of their mother in May 2007 the Applicant has taken a maternal role. The Applicant was 18 years old at the time of their mother's death and her sisters were aged 9 and 3. The children's father, the Applicant's step father, works as a tunneller in London and returns to the family home in mid- Wales on a monthly basis.

Submissions

5. On behalf the Secretary of State Mr Richards relied on the grounds of appeal to the Upper Tribunal. He said that in relation to the Immigration Rules the grounds were entirely made out and the findings in relation to the rules plainly wrong. So far as Article 8 is concerned it is asserted that the Judge failed to properly reason his findings.

6. For the Applicant Mr Maqsood said that in respect of the rules the Judge had properly directed himself towards the question of ties in the Philippines. He referred me to paragraphs 11(iii) and 11(vii) of the decision. The Judge correctly self directs following Ogundimu (Article 8 – new rules) Nigeria [2013] UKUT 60 and looks at the quality of ties. There should not be a mechanical approach. In respect of Article 8 the Judge's reasoning is clear and unassailable properly taking into account part 5A of the Nationality Immigration and Asylum Act 2002.

The Immigration Rules decsion

7. In my judgement the decision of the First-tier Tribunal discloses a clear and material error of law so far as the Immigration Rules are concerned. At paragraph 11(viii) of his decision the Judge finds

> 'I have read section S-LTR: Suitability - leave to remain in Appendix FM and find that the Appellant does not fall for refusal so far as the suitability section is concerned'.

He then goes on to say that the Applicant

> '… has no ties with the Philippines and that consequently she fulfils the requirements of the Immigration Rules'.

8. The finding that the Applicant fulfils the suitability requirements is not challenged. Paragraph 276ADE(vi) at the date of the Respondent's decision (6 March 2014) required the Applicant to show that she

> … is aged 18 years or above, has lived continuously in the UK for less than 20 years … but has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK.

9. Before finding that the Applicant has no ties (paragraph 11(v) – 11(vii)) the Judge finds

> 'Before leaving the Philippines the Appellant had a close relationship with her maternal grandmother who still lives in the Philippines but who now resides with the Appellant's uncle … her grandparents are old and are cared for by the Appellant's uncle … The Appellant remains in contact with one or two friends … but that contact over a period of approximately eight years has been at a considerable distance … The Appellant remains in correspondence … with her grandmother and one of two "close" friends but her only ties now are to her two sisters … and her step father … there is now nothing which 'ties' the Appellant to the Philippines'

10. In my judgement these clear findings of fact militate very strongly against the conclusion reached by the Judge. Ogundimu holds that the word 'ties' imports something more than 'merely remote and abstract links'. What the judges describes here is more, a lot more, than merely remote and

abstract links. It is a grandmother with whom the Applicant lived before she left the Philippines and with whom she had a close relationship and remains in correspondence. It is friends with whom she remains in contact and correspondence and it is an uncle. Further the Respondent's refusal letter, referring to the Appellant's statement in relation to her July 2007 appeal, refers to the Appellant's brother with whom the Appellant lived prior to coming to the United Kingdom. The brother is also referred to at paragraph 6.12 and 6.17 of the application made in 2013 (form FLR(O)). The Judge makes no reference at all to this brother. The brother is yet another close tie. Taking all of this into account along with the fact that the Applicant was born and educated in the Philippines and lived there until she was 18 years old the finding that she has no ties with the Philippines is unsustainable. Having reached this conclusion I do not need to deal with the assertion that the Judge should instead have considered the rules in force from July 2014.

The Article 8 decision

11. It is clear in my judgement that the findings of the First-tier Tribunal in respect of the Article 8 appeal contain no error of law. The Judge deals with Article 8 in very clear and detailed terms from paragraphs 13 to 34 of his determination. He properly self directs to the applicable law including Razgar [2004] UKHL 27 and part 5A Nationality Immigration and Asylum Act 2002. The grounds of appeal only challenge the finding in respect of proportionality asserting that the Judge failed to take into account alternative caring arrangements for the Applicant's siblings and the alternative of a greater role being taken by their father.

12. At the hearing of this appeal the Judge heard evidence from the elder child Lucy and her father. He found both to be impressive witnesses and made wholly positive credibility findings in respect of their evidence. He makes particular findings as to why the father, Mr Goodwin, would not be able to provide the quality of care given by the Applicant (paragraph 24). He makes further findings as to the effect it would have upon the family if Mr Goodwin had to give up his employment which would be the inevitable consequence if the Applicant was unable to look after her siblings. The Judge considers section 55 Borders Citizenship and Immigration Act 2009 and takes into account the best interests of the children.

13. The circumstances of this Applicant are fully detailed by the Judge and in doing so he makes the unusual, exceptional and compelling circumstances leading him to his decision very clear. The Applicant as an elder sibling has taken a maternal role in the care of two children aged 3 and 9 at the time their mother died and who at the time of the Judge's decision were aged 16 and 10. The Applicant had a significant role in the lives of her younger siblings both at a time when they lost their natural mother and thereafter throughout their formative years. It is a continuing relationship and it is not a relationship that can be carried on remotely and it is not one that the father, working away from home much of the time to support the family,

can reasonably be expected to carry out by way of substitution. In my judgment the decision of the First-tier Tribunal in this respect is unassailable. There is no error of law.

14. My conclusion from all of the above is that the decision of the First-tier Tribunal contains no error of law material to the decision to allow the appeal by reference to Article 8 ECHR. The appeal of the Secretary of State is therefore dismissed.

Summary

15. The decision of the First-tier Tribunal involved the making of a material error of law in respect of the decision to allow the appeal under the Immigration Rules. I set aside that decision and substitute a decision dismissing the appeal.

16. The decision of the First-tier Tribunal did not involve the making of a material error of law in respect of the decision to allow the appeal on Article 8 ECHR grounds. In this respect I dismiss the Secretary of State's appeal and the decision of the First-tier Tribunal stands.

Signed: **Date: 3 February 2015**

J F W Phillips
Deputy Judge of the Upper Tribunal