



IAC-FH-AR-V1

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

Appeal Number: IA/38938/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 5 April 2016**

**Decision & Reasons Promulgated
On 14 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**NERISSA MANHANGIN VASQUEZ
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss M Atcha, Solicitor, Ebrahim & Co Solicitors
For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellant against a Decision and Reasons of the First-tier Tribunal (Judge Devittie), who dismissed the appeal against the refusal for leave to

remain on family and private life grounds under the Immigration Rules and human rights.

2. The grounds in support of the application were that the First-tier Tribunal failed to consider the interests of the appellant, her British citizen child and British citizen partner and the existence of insurmountable obstacles on return to the Philippines.
3. Permission was granted by First-tier Tribunal Judge Hollingworth on 4 February 2016 who found arguable grounds in the First-tier Tribunal's failure to consider public interest under Section 117 Nationality, Immigration & asylum Act 2002 (as amended), where the partner and child are British citizens.
4. In a Rule 24 response dated 3 March 2016 the application was opposed by the Secretary of State contending that the balance of interests as between the state and the appellant had carefully been considered by the Tribunal and no insurmountable obstacles were found.
5. This morning Mr Clarke on behalf of the Secretary of State Mr Clarke conceded that the Secretary of State failed to consider the British citizen child and that this amounted to a decision that was not in accordance with the law (**AG & other (policies; executive discretions; Tribunal's powers) Kosovo [2007] UKAIT 00082**). He further conceded that this rendered the Tribunal's decision an error of law and in terms of its failure to apply the Secretary of State's policy guidance that there is no expectation that a British citizen child should have to leave the UK, as set out in statutory form under section 117B(6) Nationality, Immigration & asylum Act 2002 (as amended).

Decision & reasons

6. The First-tier Tribunal found that the appellant failed to meet the financial requirements under the Rules and went on to consider EX1. The First -tier Tribunal found a genuine and subsisting relationship between the appellant and her partner who was a British citizen. It found that although there would be difficulties there would be no insurmountable obstacles to living in the Philippines. The appellant was born and raised there and could be expected to rely on support from her family members settled in the UK. The First -tier Tribunal went on to consider Article 8 outside of the Rules and concluded that the best interests of the child were to remain with both parents in the UK [12 &14]. It then considered proportionality and looked at the question of public interest considerations.
6. The First-tier Tribunal made no specific reference to Section 117 of the 2002 Act (as amended) as regards public interest factors but considered some of the issues that arise under those statutory provisions.
7. However, of significance was its failure to consider or address the public interest in removal of a British citizen child under section 117B(6). That provision states that

there is no public interest in removal of a British citizen child. On that basis I am satisfied that there is a material error of law in the decision and reasons which shall be set aside.

8. Both representatives confirmed that in terms of disposal there was no need for further hearing or submissions. The facts found by the First-tier tribunal were not challenged. There is no public interest in the removal of a British citizen child (**Trebbhawon & others (section 117B(6) [2015] UKUAT 674 (IAC)**). Accordingly I allow the appeal outright.

Notice of Decision

There is a material error of law in the decision and reasons.

The decision and reasons is set aside.

I substitute a decision to allow the appeal on human rights grounds.

No anonymity direction is made.

Signed

Date 10.4.2016

GA BLACK
Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a no fee award of £40.00. A hearing was needed to consider the issues.

Signed

Date 10.4.2016

GA BLACK
Deputy Upper Tribunal Judge G A Black