Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/14094/2015

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 27 April 2017	**On 2 May 2017**
Prepared on 27 April 2017	

Before

The Hon. Mr JUSTICE McCLOSKEY, PRESIDENT
DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

C. P.
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Kumar, Solicitor, Capital Solicitors LLP
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a citizen of the Philippines, entered the United Kingdom lawfully on 19 September 2008 as the seventeen year old dependent daughter of a work permit holder, her mother. Her leave to remain expired

on 13 December 2011 without any valid application for a variation having been made. Thus she became an overstayer at the age of twenty.

2. The Appellant sought to regularise her immigration status by application made on 13 August 2015, aged 23, for a grant of leave based upon her relationship with her mother and three younger siblings. At the time they were aged 22, 19, and 17, and all of them lived together in one household. Her siblings had travelled to the UK with entry clearance as dependents of their mother, a work permit holder in 2009. In contrast to the Appellant, they had not become overstayers.

3. That application was refused on 4 December 2015, and an appeal against the refusal was dismissed in a decision of the First tier Tribunal ["FtT"] promulgated on 19 July 2016.

4. The Appellant's application to the FtT for permission to appeal that decision is a lengthy one that challenges paragraph by paragraph the analysis of the evidence, and the conclusions reached upon the disputed issues of primary fact. The grounds do not assert that the wrong burden or standard of proof was employed, and on a fair reading should have been identified immediately as no more than an impermissible attempt to reargue the appeal.

5. Permission to appeal was however granted by decision of 29 December 2015 in the following terms:

"The grounds allege that the judge's findings of fact did not accurately reflect the evidence; that the appeal warranted consideration, and should have been allowed, on human rights grounds outside of the Rules.
It seems on the face of the decision, that the Judge may have misinterpreted some of the evidence but I am not satisfied that this would have made a material difference in the appeal under paragraph 276ADE where the focus was on "very significant obstacles" to the appellant's reintegration in the Philippines. ***The Judge did not refer to SSHD v SS (Congo) [2015] EWCA Civ 1604 and R (Sunassee) v SSHD [2015] EWCA Civ 387*** *and concluded that it was not necessary to consider the appeal outside of the Rules. This is an arguable error of law. The Judge went on to make a hypothetical assessment of proportionality in the event of consideration of the appeal outside of the rules being*

warranted. However this focuses almost exclusively upon the public interest factors in s117B of Part 5A of the NIAA 2002 and fails to adequately engage with the family life of the appellant and her family members. The assessment of proportionality is insufficient and the decision contains an arguable error of law."
[emphasis added]

6. The Respondent filed a Rule 24 notice in response to that grant of permission dated 18 January 2017 in which she noted that notwithstanding the terms in which permission had been granted, the FtT had expressly considered the guidance to be found in SSHD v SS (Congo) and argued that the alternative findings that were made upon the proportionality of the decision in the event that Article 8 was engaged were sound and were properly based upon the evidence.

7. Thus the matter comes before us.

8. It is plain that there is an error in the grant of permission, because, as both parties now accept before us, the Judge did refer himself expressly to the guidance to be found in both SS (Congo) and R (Sunassee) v SSHD.

9. Equally it is plain that neither the grounds nor the grant of permission engage with the fact the Judge expressly accepted that the Appellant enjoyed "family life" with her mother and three adult siblings - at [59] - and that the low threshold of engagement for Article 8 was met on the evidence. That conclusion, favourable to the Appellant, was open to him on the evidence notwithstanding the ages of all of those involved; Butt v SSHD [2017] EWCA Civ 184, and, Singh v SSHD [2015] EWCA Civ 630.

10. The Judge noted the evidence of the Appellant and her mother that she was like a "second mother" to her younger siblings. It was accepted that life would be much more difficult for the Appellant's mother if the Appellant were not available to look after the household whilst she was working full time, in particular the occasions she worked on night shift. However, with the passage of time all of those younger siblings were now themselves adults. None of them suffered from any relevant medical conditions and the conclusion was that there was no credible reason why they could not as

adults look after themselves whilst their mother was out at work: [68].

11. There were a number of areas in which the Judge rejected the evidence of both the Appellant and her mother as untrue. The grounds identify no arguable error of law in the Judge's approach to the evidence or findings relevant to these matters. We are satisfied that at best they amount to no more than an impermissible attempt to reargue the appeal. The correct burden and standard of proof were employed and the findings were more than adequately reasoned and are plainly rational.

12. By the decision of the FtT the Appellant was found to have lied:

    (i) when she denied any subsisting relationship between the maternal and paternal sides of her family, the reality being that both sides of the family had provided significant assistance to both her and her mother,
    (ii) when she described the circumstances in which she and her siblings had lived in the Philippines between 2005 and 2008, the reality being that they had been cared for properly by an uncle and aunt, with the help of remittances from her mother in the UK, and
    (iii) when she denied having sat the "Life in the UK" test, which she had in fact failed on three occasions.

    Although before the Judge the Appellant had blamed her mother for the failure to make an application within time to extend her leave to remain in 2011, the Judge noted that in 2012 she had accepted that both she and her mother had overlooked the requirement to do so. The Judge was entitled to consider that the failure of the Appellant to tell the truth in these respects was significant, and that she had failed to engage with the Respondent with the degree of candour and co-operation that could properly be expected of her, and that her failure to do so was something that should properly be considered when assessing the proportionality of the decision under appeal.

13. The Judge noted that the Appellant's mother had been able to remit funds to the Philippines between 2005 and 2008 in order to provide financial support to her children (including the Appellant) and there was no obvious reason on the evidence why the Appellant should not once again be supported financially by her mother in the

event of her return should she need this: [69]. Equally, although there would be an impact upon all of the members of the family now living in the UK in the event of the Appellant's removal, these family members had been separated before when rather younger as a result of their mother's decision to travel to the UK for work in 2005 and the decision to bring them to the UK as her dependents sequentially. It was therefore concluded that it was a matter for their individual choice whether they now followed the Appellant back to the Philippines or remained in the UK.

14. The Judge identified, correctly, that in the circumstances the Appellant did not meet the requirements of the Immigration Rules for a grant of leave. She had not spent more than half of her life in the UK and there were no significant obstacles to her reintegration to the Philippines. She had been educated there and was familiar with the language and culture. She had not cut her ties to her family and since she had previously been cared for by an uncle and aunt satisfactorily there was no reason why she could not draw upon the support and shelter that would be available to her from her family. She had a brother and both paternal and maternal aunts, uncles and cousins to look to.

15. Although the Judge did not have the benefit of the guidance of the Supreme Court to be found in R (Agyarko) [2017] UKSC 11, it is plain that the decision discloses no arguable material error of law in the approach taken to the evidence. The Judge was obliged to consider the public interest in the Appellant's removal and did so in accordance with the guidance to be found in the relevant jurisprudence.

16. The Appellant's position in the UK was initially "precarious" within the meaning of that term as used in *Jeunesse* and as explained in AM (s117B) Malawi [2015] UKUT 260 (IAC). From 2011 it was unlawful. The weight to be given to the "family life" that she relied upon had therefore to be considered in that light. This was not a case in which the Appellant was ever under a reasonable misapprehension as to her ability to remain in the UK. Furthermore, the refusal of the application would not result in unjustifiably harsh consequences for the Appellant for the reasons given by the Judge. Thus, as the Judge identified, there was nothing very compelling about her circumstances or those of her family members to outweigh the public interest in her removal. Moreover the Appellant's case was never put

on the basis of the *Chikwamba* principle. The findings of fact made by the Judge and the undisputed evidence that had been submitted fell a long way short of establishing that entry clearance would be bound to be granted to the Appellant if it were applied for from the Philippines.

Our Conclusions

17. Permission to appeal was granted in the terms set forth in [5] above. As demonstrated, this was based on a manifest error. Standing back, it is difficult to conceive of any error of law which, to a material extent, could have vitiated the decision of the FtT. This was, *ab initio*, a quite hopeless appeal. On the current state of the law it could only have been dismissed. While the permission judge may have been seduced by the prolix grounds of appeal, permission to appeal should not have been granted.

18. Thus the FtT did not make any material error of law in his decision to dismiss the appeal, and that decision must stand.

DECISION

The Decision of the FtT did not involve the making of any error of law and is accordingly affirmed.

Deputy Upper Tribunal Judge JM Holmes
Dated 27 April 2017