Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA061822015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7 July 2017	**On 10 July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

MISS JOSETTE NALICAO
(ANONYMITY DIRECTION NOT MADE)

Appellant

And
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Ilahi, of Counsel
For the Respondent: Mr S Staunton, Senior Presenting Officer.

DECISION AND REASONS

1. The appellant's appealed against the decision of the respondent's dated 17 November 2014 to refuse to vary her leave to remain in the United Kingdom as a Tier 4 (student) Migrant and to remove her by way of Directions under section 47 of the Immigration and Asylum and Nationality Act 2002. Rights. Judge of the first-tier Tribunal Cohen dismissed the appellant's appeal in a decision promulgated on 18 November 2016.

2. Permission to appeal was granted by first-tier Tribunal Judge Grant Hutchinson on 17 May 2017 stating that it is arguable that as part of the

Article 8 assessment the Judge has misdirected himself by failing to apply section 117B of the Nationality Immigration and Asylum Act 2002.

3. The Judge of the First-tier Tribunal in dismissing the appellant's appeal stated the following which I summarise. The appellant's appeal is dismissed the extent that she relies on the Immigration Rules because she has not submitted a valid CAS and therefore was awarded zero points. The appellant confirmed that she did not have a valid CAS. There was no evidence whatsoever to indicate that she sought to register at a new college to indicate what she has been doing in the interim.

4. In respect of Article 8 the Judge accepted that the appellant is in the United Kingdom where she has studied. She entered the United Kingdom in 2008 and there is no evidence that she has any family members in this country and therefore her removal will not cause interference to her right to a family life. The appellant's boyfriend does not constitute family life. The appellant has established her private life in the United Kingdom in the full knowledge that she has no continuing right to remain here. She is a 30-year-old woman in good health. She lived for the majority of her life including her formative years in the Philippines. She achieved a degree in that country and studied and worked in accountancy. The appellant has studied in the United Kingdom and has achieved the BSC degree, knowledge, experience and skills will stand her in good stead upon return to Philippines in finding employment. She can progress her career in the Philippines having the benefit of having lived, studied and worked abroad and this will make her attractive to many companies.

5. The appellant's immediate family members including her mother, sister and grandmother remain in the Philippines and they can provide her valuable support upon her return. The appellant does not meet the requirements of the Immigration Rules. The life that the appellant established in the United Kingdom is not sufficiently serious to warrant her exclusion from the United Kingdom as being disproportionate. The appellant's case is not one of the small minority of cases that it was anticipated would be allowed under Article 8 as invented in cases like **Huang** and **EB Kosovo**. The respondent's decision to exclude the appellant from this country will not be a disproportionate response and would not breach her Article 8 rights to a private life. The Judge dismissed her appeal.

6. The grounds of appeal essentially state that the judge has not considered the new part 5 in Immigration and Asylum and Nationality Act 2002. He has not considered Paragraph 117B of the Immigration Rules and therefore has materially erred. This new part sets out certain mandatory public interest considerations in immigration cases which bind the Tribunal when deciding whether permission should be granted and were in force at the time of the Tribunal decisions. It was incumbent on the Tribunal to consider the appellant's Article 8 rights given that any decision made by the Tribunal would potentially engage such rights, whether or not such

rights were explicitly pleaded. If the judge had considered section 117 he would have reached a different conclusion.

7. There is no insurmountable test applied to Article 8. The decision to remove the appellant amounts to a disproportionate interference with her right to respect for her private life at this stage and there are truly exceptional circumstances worthy of consideration in her case.

8. At the hearing, I heard brief submissions from both parties as to whether there is an error of law in her decision. On behalf of the appellant the only ground which was raised was the judge do not consider section 117B of the Immigration and Asylum and Nationality Act 2002.

Decision as to Whether there is an Error of Law in the Decision

9. The First-tier Tribunal Judge dismissed the appellant's appeal pursuant to the Immigration Rules and Article 8 of the European Convention on Human Rights. Cogent reasons were given for why the respondent's decision will not breach the appellant's right to a private life in the United Kingdom and that it would be proportionate to the respondent's legitimate interest to remove her from the United Kingdom.

10. The complaint against the Judge is that the Judge did not consider section 117B and had he done so he would have come to a different decision. Although the Judge has not specifically mentioned 117B, and his decision, he took into account all the relevant considerations of the appellant circumstances that he was duty-bound to do. He found the appellant came to this country as a student. He found that the appellant was a young woman who had lived the formative part of her life in the Philippines where she had worked and she had family in that country. He found that the appellant could return to Philippines and continue with her career and get a job with the qualifications, knowledge and skill that she has acquired in the United Kingdom. These findings were open to the Judge on the evidence before him.

11. Failure by the Judge to specifically mentioned 117B did not lead him into a material error. There is no indication as to what aspects of the appellant circumstances were not taken into account by the Judge in his decision. In the grounds of appeal, it is claimed that there are exceptional circumstances in the appellant's appeal but none of these exceptional circumstances have been detailed. The Judge took into account all the circumstances of the appellant which were before him. I find that a differently constituted Tribunal would not come to a different decision on the evidence in this appeal.

12. In conclusion, I find that the Judge entitled to find that the appellant has no family life in the United Kingdom and in fact a family life is in the Philippines where her mother and siblings remain. The Judge also correctly found that interference with the appellant's private life by the

respondent's decision is proportionate in the appellant's circumstances. There is no material error of law in the decision and it is merely a quarrel with it. I uphold the First-tier Tribunal's decision.

Notice of Decision

The appellant appeal is dismissed.

No anonymity direction is made.

Signed by,
A Deputy Upper Tribunal Judge
Mrs S Chana

Dated this 7th day of July 2017.

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.