



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

Appeal Number: HU/07300/2017

THE IMMIGRATION ACTS

**Heard at Field House
on 11 February 2020**

**Decision & Reasons
Promulgated
on 2 March 2020**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

**NORA [D]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Bayati, Counsel, instructed by Oaks Solicitors
For the Respondent: Mr Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a remade decision following the identification of material legal errors in the decision of Judge of the First-tier Tribunal O'Keeffe, promulgated on 5 June 2018, dismissing the appellant's appeal against the respondent's decision dated 12 June 2017 refusing her human rights claim.

Background

2. The appellant, a national of the Philippines, was born in 1974. She entered the UK pursuant to a domestic worker (visitor) visa on 26 June 2006 after working in Syria as a domestic worker. She overstayed. The appellant began a relationship with [ST] (the partner) in 2009 and they underwent an Islamic ceremony on 15 December 2009. He is a Syrian national who was issued on 4 November 2013 with a UK residence permit as a refugee, valid until 27 October 2018. He has now been issued with further leave to remain as a refugee valid until 6 December 2021.
3. An application by the appellant for leave to remain on human rights grounds made in 2013 was refused on 26 February 2014, and an appeal against this decision was dismissed by judge of the First-tier Tribunal Aziz on 5 May 2015. The daughter of the appellant and her partner was stillborn on 2 February 2015. The appellant and her partner were legally married on 8 May 2016. The appellant was granted 3 months leave to remain on compassionate grounds on 11 July 2016.
4. In her decision of 12 June 2017 the respondent accepted that the appellant was in a genuine and subsisting relationship with her partner (a finding reinforced by Judge O’Keeffe in her decision). The respondent was not however satisfied that there were ‘insurmountable obstacles’, as understood by reference to EX.1 and EX.2 of Appendix FM to the Immigration Rules, preventing the couple continuing their relationship in the Philippines. Nor was the respondent satisfied that the appellant met the requirements for a grant of leave to remain based on her private life in accordance with paragraph 276ADE of the Immigration Rules. In considering whether there were any exceptional circumstances sufficient to warrant a grant of leave to remain on Article 8 grounds the respondent noted that the loss of the appellant’s child had been a very traumatic experience causing depression, and that she wished to remain in the UK in order to visit the grave, but the respondent was not satisfied this was a sufficiently compelling or compassionate reason to grant leave to remain outside the Immigration Rules. The respondent stated that treatment for depression was available in the Philippines, that the appellant still had family members in that country, and that she could maintain contact with her partner through modern methods of communication and that he could, in any event, relocate to the Philippines. The appellant appealed this decision pursuant to s.82 of the Nationality, Immigration and Asylum Act 2002.
5. In dismissing the appeal Judge O’Keeffe found that the appellant’s spouse would be able to join her in the Philippines using either a renewable visit visa or by making an application for more permanent residence. In an ‘error of law’ decision promulgated on 17 January

2019 the Upper Tribunal concluded that this finding was marred by a material legal error. The judge acted in a procedurally unfair manner by failing to grant an adjournment application to enable Ms Bianca Ndirika, a trainee solicitor who previously accompanied the appellant to the Philippines embassy but who was ill on the day of the hearing, to attend and give evidence of her interaction with the embassy staff. Although there was no challenge to the assertions in Ms Ndirika's statement by the Presenting Officer the judge only attached 'some weight' to the statement in circumstances where, had Ms Ndirika been able to attend the hearing, she may have been able to address the judge's concerns. The judge failed to engage with or consider relevant elements of Ms Ndirika's statement and gave inadequate reasons for only attaching 'some weight' to the unchallenged assertions.

6. The decision of the First-tier Tribunal was set aside, and directions were issued for the provision of further evidence to enable the Upper Tribunal to remake the decision.

The hearing to remake the decision

7. The appellant relied on a number of documents including three witness statements from herself, two witness statements from her partner and evidence of his grant of Refugee Leave, three witness statements from Ms Tarek Gotti - a close friend of the appellant, the witness statement of Bianca Ndirika dated 17 May 2018, a statement dated 23 April 2019 from Nichola Hunt - Office Manager at Oaks solicitors, documents relating to the stillbirth of the appellant's child, and documents concerning the appellant's mental health (including evidence of counselling and therapy received by the appellant due to her bereavement, her witnessing of the Grenfell fire and loss of friends to the fire, and her immigration case). The documentary evidence additionally included correspondence sent by Oaks Solicitors to the Philippines embassy in London, a completed 'Report of Marriage' form issued by the Philippines embassy, an application and receipt for a visitor visa made by the applicant's partner and submitted to the Philippines embassy, and a letter from the Philippines embassy to Oaks Solicitors dated 3 February 2020.
8. At the commencement of the hearing I provided both parties with downloaded details I obtained from the Philippines embassy website. I described to both parties the full circumstances in which I located the details and the limited scope of my online search. There was no objection from either party to the admission of the downloaded documents or the limited search that I had undertaken.
9. Having considered the totality of the evidence made available to him Mr Whitwell indicated that there was no challenge to the content of any of the documents or statements upon which the appellant relied. The central issue in the appeal was whether there were

insurmountable obstacles to the appellant and her partner continuing their family life in the Philippines. Mr Whitwell indicated that the unchallenged evidence tended to support the existence of insurmountable obstacles given the appellant's very particular circumstances. In these circumstances it was unnecessary to call the appellant, her partner and the other witnesses. I indicated that I would allow the appeal on the basis that the requirements of Appendix FM were met, with reference to EX.1, in light of the appellant's unusual and particular circumstances. I am grateful to Mr Whitwell for his fair, measured and carefully considered approach to this appeal.

Findings and reasons

10. It was not in dispute that the appellant met the Relationship and Suitability requirements of Appendix FM for the grant of limited leave to remain as a partner (the appellant's partner is in the UK with Refugee Leave). It was agreed that the sole issue was whether there were insurmountable obstacles to the appellant's family life with her Syrian partner continuing in the Philippines (there was no suggestion that the couple could relocate to Syria).

11. EX.1 of Appendix FM states, so far as material,

EX.1. This paragraph applies if

...

(b) the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, settled in the UK or in the UK with refugee leave or humanitarian protection, and there are insurmountable obstacles to family life with that partner continuing outside the UK.

EX.2. For the purposes of paragraph EX.1.(b) "insurmountable obstacles" means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner.

12. The burden of proof rests on the appellant to demonstrate that, on the balance of probabilities, there would be insurmountable obstacles to family life continuing with her partner in the Philippines.

13. I have considered in detail the unchallenged evidence relating to whether the Syrian partner is likely, on the balance of probabilities, to be able to relocate to the Philippines.

14. I have first considered the evidence of Ms Bianca Ndirika. She was a trainee solicitor from Oaks Solicitors, the firm instructed by the appellant. Ms Ndirika accompanied the appellant on 8 November 2017 to the Filipino embassy in London to ascertain whether the appellant's partner would be able to reside in the Philippines. The appellant's

circumstances were described to a member of staff from the visa section who was asked whether it was possible for the partner to obtain a spousal visa to enable him to enter and reside in the Philippines. The staff member told Ms Ndirika that there was no agreement between Syria and the Philippines for Syrian nationals to have permanent residence, and that if the appellant's partner was to apply for permanent residence his application would be rejected. The staff member said that his only option would be to apply for a visit visa which would enable him to stay in the Philippines for up to 30 days. If he was successful he would only be allowed to stay for 30 days and, on expiry, would need to apply for a new visa. Ms Ndirika and the appellant then met with the Consul who confirmed that the appellant's partner would not be able to get permanent residence in the Philippines. When asked whether it was possible to get a statement to this effect the Consul said it was not possible and that this information had been imparted in confidence. The Consul referred to an internal memorandum specifying that Syrian nationals were restricted from residing in the Philippines. The memorandum was shown to Ms Ndirika but a copy could not be provided as the Philippines authorities did not want their position to be common knowledge as it may destabilise good relationships with Syria. Ms Ndirika read the memorandum and saw that different restrictions applied to nationals of certain countries. Syria was in 'Category B'. Ms Ndirika recalled that the paragraph preceding the list of countries in Category B indicated that nationals of these countries had to meet certain conditions in order to apply for permanent residence, but she did not describe any of those conditions. The Consul elaborated and said that these conditions were designed to make it impossible for Syrians to reside in the Philippines. In the final paragraph of her statement Ms Ndirika said that she and the Consul agreed that, due to the nature of the information, she would prepare a statement herself to say what she had seen and heard but that no names would be disclosed. There was no challenge to the content or accuracy of Ms Ndirika's statement, either in the First-tier Tribunal or in the Upper Tribunal.

15. The website of the Philippines embassy in various countries, including Singapore, Argentina, and the Scandinavian countries, contains exactly the same information concerning residence visas for spouses of non-Filipino nationals. This is the 13A Non-Quota Immigrant Visa. The information sets out what is required for a person to be issued with a permanent residence visa as a spouse of a Filipino national. The visa can however only be issued to nationals of countries contained in an exhaustive list. The visa cannot be issued to nationals of countries not contained in the list. Syria is a country not contained in the list. This is generally consistent with the information provided to Ms Ndirika at the Philippines embassy in London. The appellant's partner would not therefore be able to obtain a permanent residence visa to enable him to reside in the Philippines.

16. The applicant's partner lodged an application, on the advice of the Philippines embassy, for a 30-day visitor visa to enable him to enter the country with the hope of then being able to obtain an extension of the visa. The application was made on 23 April 2019. No issue has been taken with the bona fides of the application and all the required documentation, including a CRB report and the partner's valid travel document were provided (the partner does not have a Syrian passport). The appellant's solicitors sent several chasing letters to the Philippines embassy.

17. The Philippines embassy replied in a letter dated 3 February 2020. This read,

Dear Sir/Madam,

With reference to your letter 22 January 202, please be informed that the Embassy has not received clearance from the Department of Foreign Affairs to issue a visitor's visa to Mr [ST], a Syrian national on refugee status who holds a UK Travel Document.

It was clearly explained to Mr [T] when he applied for a Philippine visa in April that the processing of visa application for travel document holders would take no less than three (3) to four (4) months. He was also told that he will be notified via telephone or email upon receipt of the clearance but if he fails to receive such notification after the specified period, his visa application shall be deemed refused without any further notice from the Embassy.

While Mr. [T] is not precluded from re-applying for a visitor's visa to the Philippines, the Embassy doubts if there would be any change in the outcome if his circumstances remain the same.

18. The letter was signed by the Deputy Chief of Mission and Consul General.

19. It was not suggested by either party that there was any likelihood that Mr [T]'s circumstances would change in the future. I am consequently satisfied that the appellant has demonstrated that, on the balance of probabilities, her partner is unable to obtain a permanent residence visa to enable him to reside in the Philippines with her, and that he is unable to obtain even a visitor's visa. The unchallenged evidence before me leads inevitably to one conclusion - that the appellant's partner will be unable to relocate to the Philippines and that this would cause very significant difficulties in continuing their family life together outside the UK.

20. I note once again that the appellant meets the Suitability requirements and that the Relationship requirements are met. I note the medical evidence indicating that the appellant has been exhibiting symptoms of PTSD as a result of the stillbirth of her child (the

appellant regularly visits the child's grave) and her witnessing of the Grenfell fire. The statements from the appellant and her partner suggest they have a strong relationship and that the appellant has strong elements of dependency upon her partner. It is readily apparent that the relationship cannot continue by remote means of communication. I am satisfied that, having holistic regard to the evidence before me, and for the reasons set out above, that there are insurmountable obstacles to the family relationship continuing outside the UK. Given that the appellant meets the requirements of Appendix FM, her human right claim succeeds.

Notice of Decision

The human rights appeal is allowed

D.Blum

13 February 2020

Signed
Upper Tribunal Judge Blum

Date