



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

Appeal Numbers: HU/07062/2019
PA/04340/2020

THE IMMIGRATION ACTS

**Heard at Field House at a Video Hearing
On 15 December 2021**

**Decision & Reasons
Promulgated
On 21 January 2022**

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MS DELIA CAMAY CASINILLO
(NO ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Ms A Everett, Senior Home Office Presenting Officer
For the Respondent: Ms M Sardar, Counsel instructed by North Kensington Law
Centre

DECISION AND REASONS

1. This is an appeal against the decision issued on 2 February 2021 of First-tier Tribunal Judge Chinweze which allowed Ms Casinillo's appeal on Article 8 ECHR grounds.
2. For the purposes of this decision I refer to the Secretary of State for the Home Department as the respondent and to Ms Casinillo as the appellant reflecting their positions before the First-tier Tribunal.

3. Ms Casinillo is a national of the Philippines born on 15 February 1959. She is now 62 years' old.
4. The appellant came to the UK on 22 June 2013 with leave as a domestic worker. On 24 July 2014 the respondent made a Conclusive Grounds decision finding that the appellant was a victim of trafficking. On that basis she was granted discretionary leave to remain (DLR) until 20 May 2018.
5. On 30 May 2018 the appellant applied for leave to remain outside the Immigration Rules. That application was refused on 1 April 2019.
6. On 14 August 2019 the appellant applied for asylum on the basis that she would be re-trafficked if she returned to the Philippines. That application was refused on 28 August 2020.
7. The appellant appealed against the decisions to the First-tier Tribunal. The appeal was heard on 6 January 2021 before First-tier Tribunal Judge Chinweze.
8. In paragraphs 41 to 73, the First-tier Tribunal found that the appellant could not show that she was at risk of re-trafficking or destitution on return to the Philippines and so her protection claim was not made out. The judge conducted an assessment of the appellant's circumstances on return, taking into account that she had been trafficked and the situation she and her family would face given the difficult socio-economic circumstances in the Philippines. The judge found that it was "unduly speculative" to say that the appellant would be unable to find employment, particularly where she was able to do so in the past. The judge did not accept that her son's partner did not work; see paragraph 54 of the decision and found in paragraph 57 that the appellant had "deliberately downplayed the potential sources of income from her son and his partner". No challenge has been made to those findings.
9. The judge proceeded to consider the appellant's Article 8 ECHR private life claim in paragraphs 74 to 95 of the decision. The judge first assessed whether the appellant could show that there were very significant obstacles to integration in the Philippines such that she met paragraph 276ADE(1)(vi) of the Immigration Rules. As above, the judge had already assessed the socio-economic and family circumstances that the appellant would face on return when considering the refugee claim. The judge identified in paragraph 79 of the decision that the appellant lived in the Philippines until the age of 36 and that her husband and son still live there. She had found employment in the Philippines before leaving the country even though the socio-economic circumstances in the country were also difficult at that time. The appellant spoke three of the main languages and followed the main religion. The judge found that the appellant could not meet paragraph 276ADE(iv) and that she did not qualify for leave under the Immigration Rules.

10. The First-tier Tribunal proceeded to consider Article 8 ECHR outside the Immigration Rules. In paragraphs 80 to 84 the judge set out the correct legal approach to be taken in that assessment. In paragraph 84 the First-tier Tribunal set out the provisions of Section 117B of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act).
11. In paragraphs 86 to 89 the judge identified factors weighing against the appellant. In paragraph 86 the judge set out that the appellant did not meet the requirements of the Immigration Rules. The judge also noted that the appellant's status as a victim of trafficking had been acknowledged by the respondent and had been reflected in the grant of leave of two years' leave to remain, the maximum available on that basis.
12. The judge went on in paragraph 87 to identify the correct approach in an Article 8 ECHR assessment where the Immigration Rules are not met, provided by the Supreme Court in R (Agyarko) v Secretary of State for the Home Department [2017] UKSC 11. The judge set out an extract from paragraph 47 of Agyarko which provides that the Immigration Rules are a legitimate expression of how individual rights should be balanced against the public and that, where the Rules are not met, only an "exceptional" case should succeed. The judge found in paragraph 89 that the appellant's inability to meet the Immigration Rules was a factor of "significant weight" against her in the proportionality assessment.
13. In paragraphs 90 to 93 the judge set out the factors in support of the appellant's side of the balance. He acknowledged in paragraph 90 that the appellant had undergone the traumatic experience of someone being trafficked to the UK which had included a threat to kill her. In paragraph 91 the judge found that the fact that the appellant had been in the UK lawfully for over seven years was a matter that should "reduce the public interest in her removal, for the purposes of immigration control (sic)". The judge went on in paragraph 93 to afford "limited weight" to the difficult social and economic circumstances the appellant would face on return to the Philippines. The judge found that the appellant's private life outweighed the public interest in the maintenance of immigration control.
14. The respondent maintained that it was not rational to find no very significant obstacles to reintegration but also that weight should be placed on the appellant's socio-economic circumstances on return. The judge had also erred in failing to address the "little weight" provision in s.117B(5) of the Immigration Rules as the appellant had always been in the UK precariously. The facts as found did not permit a conclusion that the decision was disproportionate.
15. I found that all aspects of the respondent's challenge had merit. The respondent had recognised the appellant's status as a victim of trafficking by way of the maximum grant of two years' leave that could be made on that basis. Indeed, as a result of intervening litigation, the appellant had had over four years' leave on that basis. It is difficult to see how material

weight could attract to her side of the balance on the basis of that factor as a result.

16. The judge set out the provisions of s.117B of the 2002 Act but nothing in the decision shows that he considered whether there was anything in the appellant's circumstances that allowed him to give more than "little weight" to her private life where it had been established whilst she was in the UK precariously. The fact that the appellant has been here legally is not such a factor. If that were to be so, it would entirely undermine the intention of s.117B(5) that legal, limited leave should generally weigh little; see Rhuppiah v Secretary of State for the Home Department [2018] UKSC Civ 803. Nothing in the decision or the evidence showed that more than "little weight" attracted to the appellant's private life here.
17. Further, the First-tier Tribunal found that the appellant would not face very significant obstacles to integration in the Philippines. As above, the higher courts have found that the Immigration Rules are a legitimate expression of when an Article 8 ECHR may be well-founded. The appellant had not shown that her circumstances on return came within the Rules and having failed to do so was not entitled to place material weight on the same factor on the appellant's side of the balance in the proportionality assessment. The respondent was correct to submit that on the facts found by the First-tier Tribunal, the decision could be not found to be disproportionate.
18. I provided these reasons for finding an error of law in the First-tier Tribunal decision at the hearing and set aside the Article 8 ECHR assessment to be remade. Ms Sardar submitted that the remaking should take place at a future hearing the evidence was from a year ago and the appellant was not present to give updated evidence. However, the directions issued for the hearing indicated to the parties that in the event of an error of law being found, the presumption would be that the Upper Tribunal would proceed to remake the appeal at the same hearing with consideration being given to admitting further evidence that had not been before the First-tier Tribunal. Also, this was not a remaking *de novo* where the First-tier Tribunal decisions on the refugee claim and the Immigration Rules were preserved. Where that was so and where there was nothing indicating that there was any material alteration to the appellant's circumstances, I found that it was appropriate to proceed to remake the appeal and heard submissions from both representatives.
19. The reasons for finding an error of law anticipate the reasons for finding that the decision to refuse leave was proportionate. The reasons for finding that the appellant does not face very significant obstacles to re-integration in the Philippines stand. The appellant's private life attracts little weight. The fact that she has been here lawfully is not a factor capable of adding material weight to her side of the balance. Her status as a victim of trafficking has already been recognised by periods of leave to remain on that basis. As before, the circumstances she and her family will face on return to the Philippines are not capable of amounting to factors of

an exceptionality that outweighs the Immigration Rules. Put simply, the facts here cannot not show a rational basis for allowing the appeal under Article 8 ECHR outside the Immigration Rules.

20. For these reasons, I dismiss the appeal under Article 8 ECHR.

Decision

21. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade.

22. I remake the appeal as dismissed.

Signed: S Pitt
Upper Tribunal Judge Pitt

Date: 20 December 2021