



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-006243
First-tier Tribunal No:
HU/52285/2021
IA/06675/2021**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 25 June 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

**JOHCEL PINGIL TADINA
(NO ANONYMITY ORDER MADE)**

Appellant

v

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Hodson of Counsel, Queens Park Solicitors
For the Respondent: Mr T Lindsay, Home Office Presenting Officer

Heard at Field House on 31 May 2023

DECISION AND REASONS

1. The Appellant is a national of the Philippines born on 25 July 1980. She arrived in the United Kingdom on 4 May 2010 on a Tier 4 visa which was subsequently extended to permit the Appellant to find a new college and leave was granted until 13 May 2015. Thereafter, the Appellant made a number of attempts to regularise her stay and ultimately made an application for leave to remain on the basis of

her private life on 23 September 2020 which was refused in a decision dated 21 May 2021.

2. Her appeal came before First-tier Tribunal Judge Young-Harry for a hearing on 29 September 2022. In a decision dated 31 October 2022, the judge dismissed the appeal.
3. Permission to appeal was sought and refused by the First-tier Tribunal but renewed grounds of appeal were made on 28 December 2022, which provided at ground 1 that the judge had failed to read or take account of one of the two bundles submitted by the Appellant, which contain material evidence relating to the person for whom she cares, Mrs Brooks and her health conditions and also third party statements of support in relation to the relationship between the Appellant and Mrs Brooks. There were further grounds of appeal raised also in relation to whether or not there was family life between the Appellant and Mrs Brooks and whether the judge had failed to make relevant and sustainable material findings in relation to Article 8 family life and/or had failed adequately to take into account the impact of the Appellant's removal on Mrs Brooks and whether this would amount to justifiably harsh consequences.
4. Permission to appeal was granted Upper Tribunal Judge McWilliam on 13 February 2023 in the following terms:

"It is arguable that the judge did not have all the evidence before him when deciding the appeal, with reference to the Appellant's bundle referred to as 2021 1005 in the grounds".

Hearing

5. At the hearing before the Upper Tribunal, Mr Lindsay for the Secretary of State indicated that he accepted that the judge had not considered the 45 page bundle submitted by the Appellant and in these circumstances that he was bound to accept that it could have made a material difference to the outcome of the appeal. He requested that in the circumstances the appeal be remitted for a *de novo* hearing before the First-tier Tribunal. Mr Hodson, on behalf of the Appellant, had nothing further to add.

Decision and Reasons

6. In light of the pragmatic concession by Mr Lindsay on behalf of the Secretary of State, I find that the First tier Tribunal judge erred materially in law in that he failed to take account of material evidence in the form of a 45 page bundle submitted on behalf of the Appellant. I find that the failure to take account of this evidence could have made a material difference to the outcome of the appeal.

7. Therefore, I set aside the decision of First-tier Tribunal Judge Young-Harry and remit the appeal for a hearing *de novo* before the First-tier Tribunal in Birmingham.

Rebecca Chapman

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 June 2023