



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004306

First-tier Tribunal No: HU/00484/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

9th November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SKINNER

Between

KELLY ANN BUENTIEMPO PASCUA
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D. Krushner, counsel, instructed direct access

For the Respondent: Mr S. Walker, Senior Home Office Presenting Officer

Heard at Field House on 3 November 2023

DECISION AND REASONS

Introduction

1. The Appellant is a national of the Philippines. She appeals against the decision of First-tier Tribunal Judge Sweet (“the Judge”) promulgated on 22 June 2023 (“the FTT Decision”) dismissing her appeal against the Respondent’s refusal dated 6 February 2023 of her human rights claim. That claim was based on her private life under Article 8 ECHR, built up during her long residence in the UK, it being agreed that she has been here since 19 February 2006.
2. I was not asked by either party to make an anonymity order and I do not consider that there is any reason to do so of my own motion in light of the importance of open justice.

Background

3. The FTT Decision is very short. Before turning to that, it is therefore necessary to set out the essence of the Appellant's case. Her evidence, as set out in her witness statement, can be summarised as follows.
4. The Appellant was born on 2 November 1969 and left school at 17 because she was pregnant with her first son. She had a second son a few years later. They are now 34 and 29 and continue to live with their father.
5. It is not clear to me when, but the Appellant then married her now ex husband (who is not the father of her children, to whom she was not married). She considers that she divorced her husband physically in 2006 when she came to the UK, and legally in 2016. The Appellant did not ever work in the Philippines.
6. The Appellant was close to her mother, who was a British citizen, as was her mother's husband. It is unclear to me on what basis her mother was a British citizen, but I assume that the Appellant has sought the necessary advice to ensure that she did not either acquire British citizenship by descent when she was born, or is otherwise entitled to it.
7. The Appellant came to the UK on 19 February 2006 with her mother. The Appellant came on a visit visa. Sadly her mother died that same year whilst they were in the UK, and, it would appear on that basis, the Appellant's visa was extended until 9 March 2007. She has overstayed ever since. Whilst here, she has worked as a domestic worker and is engaged in other voluntary activities, including through her church.
8. The Appellant has "some contact" with her sons who ask her for support from the UK. The Appellant also has two sisters and some extended family in the Philippines. She is not in contact with the extended family, but does have "a little contact" with her sisters. The Appellant's evidence was however that there is no-one in the Philippines who could support her on return.
9. The Appellant accordingly contended in her application and her appeal to the FTT that she had been in the UK for 17 years (at the date of the hearing before the FTT) and would face very significant obstacles to her reintegration into the Philippines and is thus entitled to leave pursuant to paragraph 276ADE(1)(vi) of the Immigration Rules, or, alternatively outside of the Rules pursuant to Article 8 ECHR.

The FTT Decision

10. Having summarised the nature of the claim, the evidence and the burden and standard of proof, the Judge's operative reasoning begins at para. 8. The Judge stated as follows:

"8. I did not accept the appellant's evidence that she had not made an earlier application for leave to remain because of difficulties with the dates on her respective passports, or that she had insufficient funds for such an application. She has not only over-stayed her visa, but has also been working in a child-minding/domestic capacity, contrary to the Rules. She has

blatantly ignored the Immigration Rules of the UK, and now attempts to remain in the UK on the basis of her evidence, which is as follows.

9. She is estranged from her ex-husband, and came to the UK in 2006. She has two sons, aged 29 and 33, who live with their father in the Philippines, and she also has one sister there, who has her own family, although the refusal letter refers to two sisters in that country. I do not consider that there would be very significant obstacles to her integration into the Philippines on return, because that is the country where she has spent most of her adult life, and she confirms that she still has family relations in that country.

10. I do not accept that it would be disproportionate for her to return to the Philippines, or that it would be a breach of her Article 8 ECHR rights. She has been in the UK since 2006, and has provided a supportive letter from her church dated 10 April 2023, (subsequent to an earlier letter dated 26 January 2022), but this is not sufficient to support a claim for leave to remain in the UK on the basis of her private life outside the Immigration Rules. I take into account Section 117B of the Nationality, Immigration and Asylum Act 2002, that little weight should be given to a person's private life when their leave is precarious, or since her leave expired in 2007, unlawful. I accept that she can speak the English language, and she appears not to have sought the use of public funds, because she is working illegally in the UK, and has received the support of friends, but I do not consider it would be disproportionate for her to be removed from the UK so that she can resume her life in the Philippines."

Appeal to the Upper Tribunal

11. The Grounds of Appeal contend as follows:

- a. Ground 1: The Judge failed to give proper reasons for rejecting the Appellant's evidence as to why she had not made an earlier application for leave.
- b. Ground 2: The Judge has failed to address the Appellant's evidence that she has no support available to her from her family in the Philippines in considering whether there are very significant obstacles to her reintegration.
- c. Ground 3: The Judge has failed to take into account the fact that the Appellant has been in the UK for 17 years.

12. Permission to appeal was granted on all grounds by First-tier Tribunal Judge Beach on 18 September 2023. Her reasoning was as follows:

"The Judge of the First-tier Tribunal finds that the appellant could reintegrate into the Philippines because she has spent most of her life in the Philippines and she has close family there. In her witness statement, the appellant stated that, whilst she has close family in the Philippines, they are not able to support her and that she has no family in the UK who could provide her with support to reintegrate. In her case summary, the appellant submits that she will not be able to reintegrate because of lack of family and social ties, her age, absence from the Philippines and her lack of assets and work skills. It is arguable that the Judge of the First-tier Tribunal has not engaged with

that evidence or, if he has rejected that evidence, has not given clear findings for doing so.”

13. The Respondent filed a response to the appeal pursuant to rule 24 of the Upper Tribunal Procedure Rules. In summary, the Respondent submitted that:
 - a. In relation to Ground 1, the Judge gave adequate reasons, namely that the Appellant was working illegally in the UK and has received the support of friends.
 - b. As to Ground 2, the findings as to the extent of her relationship with the Appellant’s family members in the Philippines is consistent with the Appellant’s original application and the findings were open to the Judge.
 - c. In relation to Ground 3, the Judge properly considered all aspects of the Appellant’s private life and immigration history when considering proportionality under Article 8 and reached a conclusion to which he was entitled to reach.

Discussion

Ground 1

14. By Ground 1, the Appellant challenges the adequacy of the Judge’s reasons in relation to the rejection of her claimed reasons for not having claimed leave to remain earlier than she did. I do not accept that the Judge’s reasons were inadequate in this respect. The Judge’s reasons for rejecting the Appellant’s claimed reasons for not applying for leave before she did are clear, namely that the Appellant not only overstayed but she then also engaged in illegal employment. To the extent that this is a challenge to the cogency of the reasons, I also do not consider that this reasoning is perverse. The Appellant’s illegal overstaying and working for a very long period of time indicates a disregard for the Rules, which in turn damages the credibility of her claim to have been seeking to abide by them.
15. However, in any event, the reason that she overstayed, as opposed to the fact that she did so, and for such a long time was not in my judgment part of the Judge’s reasoning in relation to her Article 8 claim. It is not relevant to the questions to be answered in the determination of entitlement under paragraph 276ADE(1)(vi) and does not feature in para. 9 for that reason, and in para.10, dealing with Article 8 outside the rules to which it might possibly have a tangential relevance, the manner by which the Appellant came to be in the UK unlawfully is not mentioned. Rather, the fact that her private life has been built up during periods of precarious, and then no leave, is what the Judge took into account.
16. Ground 1 accordingly fails.

Ground 2

17. Ground 2 challenges the reasons given in para.9 for concluding that there would be very significant obstacles to the Appellant’s reintegration in the Philippines. The reasons given by the Judge are two-fold: that the Philippines is the country where she has spent most of her adult life, and second, that he still has family relations in that country. It was however a central plank of the Appellant’s case

that she would not receive any support from that family if she were returned and the Judge has not explained why he either rejected that claim or considered that, notwithstanding the lack of support, the presence of family members in the Philippines made a difference to the assessment of very significant obstacles. While the Respondent's submission that the Judge's assessment of the Appellant's family ties is consistent with her original application may well be correct, that is not a reason given by the Judge. In this regard therefore I consider that the Judge has failed to give adequate reasons and has accordingly erred in law.

18. I put to Mr Krushner at the hearing whether, even if the Appellant had no family in the Philippines, her case would surmount the very significant obstacles threshold. Mr Krushner submitted that it at least could do, such that the issue is material. I have not found the question of the materiality of this error very straightforward. On any view, this is far from a strong claim for leave pursuant to paragraph 276ADE(1)(vi), but, having regard to the broad evaluative assessment that must be undertaken in determining whether there are very significant obstacles (see Kamara v SSHD [2016] EWCA Civ 813; [2016] 4 WLR 152 at [14] per Sales LJ, as he then was), and given that I have not heard the evidence, I am not satisfied that this is an error which can be said to reach the high threshold of immateriality recently reaffirmed in ASO (Iraq) v SSHD [2023] EWCA Civ 1282 at [43].
19. It follows that the appeal succeeds on this ground and the FTT Decision shall be set aside.

Ground 3

20. Mr Krushner placed the least emphasis on this ground in his oral submissions, and I consider he was right to do so. The Judge has plainly taken into account the length of time for which the Appellant has been here in para. 10. Indeed, he records expressly in that paragraph that she has been here since 2006. This ground is accordingly predicated on a misreading of the FTT Decision and is rejected.

Relief

21. The scope of the evidence in this case is relatively narrow. Notwithstanding that however I am setting aside the FTT Decision as a whole and the appeal will have to be re-determined anew. Moreover, the failure in this case is a failure to give reasons, which forms part of the duty to act fairly. On balance, and having regard to Part 3 of the Tribunal's Practice Direction and paragraph 7 of the Practice Statement, as well as the guidance given in the reported decision of Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC), it therefore seems to me more appropriate to remit this appeal for redetermination in the FTT.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and is set aside. The appeal is remitted to the First-tier Tribunal to be decided de novo by a Judge other than First-tier Tribunal Judge Sweet.

Paul Skinner

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

6 November 2023