IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004667

First-tier Tribunal No: PA/54792/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

28th February 2024

Before
UPPER TRIBUNAL JUDGE SMITH

Between

F P
[ANONYMITY DIRECTION MADE]

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Dhanji, Counsel instructed by MBM Solicitors
For the Respondent: Mr E Terrell, Senior Home Office Presenting Officer

Heard at Field House on Tuesday 20 February 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. The Appellant shall henceforth be referred to as FP. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

BACKGROUND

1. By a decision promulgated on 17 January 2024, I found an error of law in the decision of First-tier Tribunal Judge K Swinnerton dated 31 August 2023 dismissing the Appellant's appeal against the Respondent's decision dated 23 September 2021 refusing her protection and human rights claims. My error of law decision is appended hereto for ease of reference.

2. The Appellant's claims were made in the context of a removal to the Philippines. Her appeal was dismissed by Judge Swinnerton on asylum, humanitarian protection and human rights grounds.

3. I preserved the findings made by Judge Swinnerton at [18] to [28] of his decision. Accordingly, the Appellant's appeal remains dismissed on asylum and humanitarian protection grounds. The Judge's finding that there would not be very significant obstacles to the Appellant's integration in the Philippines was also preserved.

4. I found an error of law only on one narrow issue, namely whether removal of the Appellant to the Philippines would be a disproportionate interference with her Article 8 ECHR rights arising from her private and if appropriate family life in the UK. That therefore is the only issue which I am here determining.

5. I had before me a bundle of documents prepared for the hearing before me running to 145 pages (referred to hereafter as [B/xx] based on the pdf pagination) which included the Appellant's bundle before the First-tier Tribunal and supplementary evidence produced in response to the directions given at the error of law hearing. Mr Dhanji however informed me that there were documents missing from that bundle which had been before the First-tier Tribunal, namely a letter from Rose and her brother (to whom I refer below). He sent those to me and to Mr Terrell. There was no objection to admission of that evidence. I also had before me the Respondent's bundle before the First-tier Tribunal to which I do not need to refer.

6. Mr Dhanji informed me that due to a misunderstanding by his instructing solicitors, it had not been appreciated that the hearing before me was to re-make the decision (notwithstanding that it was accepted that they had received the error of law decision). He indicated that, for that reason, the only witnesses in attendance were the Appellant and her daughter (Nathasia). As I pointed out, however, those were the only persons who had given witness statements in any event. The other evidence from individuals was in the form of letters only. Mr Dhanji confirmed that the Appellant wished to proceed in any event.

7. I also indicated that the Tribunal had been unable to source a Tagalog interpreter. Mr Dhanji was unconcerned by this as the

Appellant had already informed him that she wished to give her evidence in English. She did so. Although her English language abilities made it difficult at times for her to follow questions until they were repeated, I am satisfied that she was able to understand the questions and to give her answers as fully as she wished. Mr Terrell did not wish to cross-examine Nathasia and therefore she was not called.

8. Having heard oral evidence from the Appellant and submissions from Mr Terrell and Mr Dhanji, I indicated that I would reserve my decision and provide that in writing which I now turn to do.

LEGAL BACKGROUND

9. The only issue before me is one of proportionality of removal in the context of Article 8 ECHR. It is accepted that Article 8 is engaged, and that removal would interfere with the Appellant's rights in that regard. On the Appellant's side, it is accepted that the Respondent's decision is in accordance with the law and would be justified if proportionate. I therefore have to conduct a balancing exercise between the interference with the Appellant's Article 8 rights and the public interest.

10. The burden of demonstrating the strength of the private and (if appropriate) family life with which removal would interfere lies with the Appellant. Thereafter, the Respondent must prove that removal would be a proportionate interference when measured against the public interest.

11. The Appellant has one daughter in the UK (Nathasia). However, she does not claim to share a family life with Nathasia who is an adult living apart from the Appellant. The Appellant however claims to live with a young adult, Rose, who is now aged eighteen years. The Appellant says that she has cared for Rose for some five years since Rose was aged fourteen years.

12. I will come to the nature of that relationship below. However, for current purposes, the Appellant claims that her relationship with Rose amounts to family life. Mr Dhanji relied on what is said in Kugathas v Secretary of State for the Home Department [2003] EWCA Civ 31 as follows:

> "17.Mr Gill says that none of this amounts to an absolute requirement of dependency. That is clearly right in the economic sense. But if dependency is read down as meaning 'support', in the personal sense, and if one adds, echoing the Strasbourg jurisprudence, 'real' or 'committed' or 'effective' to the word 'support', then it represents in my view the irreducible minimum of what family life implies.....
> 18. I would add, for completeness, that it is probable that the natural tie between parent and infant is a special case which may in some

> cases supersede any need for a demonstrable measure of support: see Boughanemi v France [1996] 22 EHRR 228 at paragraph 35.
> 19. Returning to the present case, neither blood ties nor the concern and affection that ordinarily go with them are, by themselves or together, in my judgment enough to constitute family life. Most of us have close relations of whom we are extremely fond and whom we visit, or who visit us, from time to time; but none of us would say on those grounds alone that we share a family life with them in any sense capable of coming within the meaning and purpose of Article 8."

13. Mr Dhanji relies on the test as being whether the Appellant provides "real, effective or committed support" to Rose.

14. Mr Dhanji also said that it was not fatal to the Appellant's case on family life that she is paid to care for Rose nor do they need to be related for family life to exist. He relied in this regard on Uddin v Secretary of State for the Home Department [2020] EWCA Civ 338 ("Uddin"). That case involved the appellant's relationship with his foster carers and their family. It was also concerned with whether there was an error of law in the Tribunal's approach. The Court of Appeal remitted the appeal for re-determination on a correct legal analysis. It did not reach its own conclusion as to whether family life existed in that case. Nevertheless, the Court set out the following principles on which Mr Dhanji relies ([40] of the judgment):

> "i. The test for the establishment of Article 8 family life in the *Kugathas* sense is one of effective, real or committed support. There is no requirement to prove exceptional dependency.
> ii. The test for family life within the foster care context is no different to that of birth families: the court or tribunal looks to the substance of the relationship and no significant determinative weight is to be given to the formal commerciality of a foster arrangement. It is simply a factual question to be considered, if relevant, alongside all others.
> iii. The continued existence of family life after the attainment of majority is also a relevant question of fact. No negative inference should be drawn from the mere fact of the attainment of majority, while continuing cohabitation after adulthood will be suggestive of ongoing real, effective or committed support which is the hallmark of a family life."

15. The Appellant also relies on the fact that she works in a shortage occupation as a carer. Mr Terrell accepted that this was in fact a shortage occupation but submitted that this did not weigh heavily as a factor. He relied on the guidance given in Thakrar (Cart JR; Art 8: value to community) [2018] UKUT 336 (IAC) ("Thakrar") which reads as follows so far as relevant:

> "..(2) Before concluding that submissions regarding the positive contribution made by an individual fall to be taken into account, for the purposes of Article 8(2) of the ECHR, as diminishing the importance to be given to immigration controls, a judge must be satisfied that the contribution is very significant. In practice, this is likely to arise only

where the matter is one over which there can be no real disagreement. One touchstone for determining this is to ask whether the removal of the person concerned would lead to an irreplaceable loss to the community of the United Kingdom or to a significant element of it.
(3) The fact that a person makes a substantial contribution to the United Kingdom economy cannot, without more, constitute a factor that diminishes the importance to be given to immigration controls, when determining the Article 8 position of that person or a member of his or her family.
(4) If judicial restraint is not properly maintained in this area, there is a danger that the public's perception of human rights law will be significantly damaged."

16. Turning to the public interest, I am bound to have regard to the factors set out in section 117B Nationality, Immigration and Asylum Act 2002 ("Section 117B") as follows (so far as relevant):

"(1) The maintenance of effective immigration controls is in the public interest.
(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
(a)are less of a burden on taxpayers, and
(b)are better able to integrate into society.
(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
(a) are not a burden on taxpayers, and
(b) are better able to integrate into society.
(4) Little weight should be given to—
(a) a private life, or
(b) …,
that is established by a person at a time when the person is in the United Kingdom unlawfully.
(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious."

EVIDENCE, FINDINGS AND DISCUSSION

17. I have taken into account in what follows all oral and documentary evidence but refer only to that evidence which is relevant to the issue I have to decide. I consider the facts as at date of hearing.

18. The Appellant has provided three witness statements on which she relied:

(1) Dated 31 January 2022 ([B/114-117]);
(2) Dated 9 March 2023 ([B/91-95);
(3) Dated 22 December 2023 ([B/2-4]).

19. I begin with the Appellant's immigration history. She has been in the UK since 2011. Before that, she had completed a bachelor's degree in nursing in the Philippines but had failed to pass the National Exam for registered nurses and so could only work in private companies. She came to the UK in 2011 as a student and worked as a carer (as she would have been permitted to do for limited hours). The college where she was studying closed down and she did not complete her education. She has therefore been an overstayer since her student leave expired on 2 July 2012.

20. The Appellant's statements are silent about her time in the UK between 2011 and 2015 when she moved to London and became a full-time residential carer for a Mr Fallah as he suffered from Alzheimer's disease. According to a letter at [B/71] he has since passed away. The Appellant still cares for Mrs Fallah now aged ninety-five years. It appears that this was initially at least unpaid work. She was given accommodation and support by the family in exchange for her work.

21. In 2018, the Appellant was introduced to Mr Momenin (Rose's father). She says that she then became Rose's "fulltime resident carer" ([B/2]) although as Rose was at school (then aged fourteen years), she was also able to continue to care for Mrs Fallah during school hours.

22. In June 2020, the Appellant claimed asylum. That claim along with her human rights claim was refused by the decision under appeal on 23 September 2021. Mr Terrell confirmed in response to a question from me that the Appellant was given permission to work because her asylum claim was delayed for over one year. I observe that the Appellant had no right to work between 2012 and 2020.

23. I begin with the Appellant's current caring responsibilities. She continues to care for Mrs Fallah on Monday and Wednesday. On Monday and Tuesday, she cares for a Ms Mattie Edmonson, now aged ninety-three years and who suffers from dementia and other medical conditions. She also cares for a Sheila Morris for a few hours at the weekend.

24. I do not have any letters from those individuals although given their ages and possible medical conditions, I do not place any weight on that omission. I do have a letter from Ms Rokhsan Fallah dated 10 December 2023 ([B/71]). She provides a glowing reference for the Appellant as a carer and companion to her parents (now only her mother).

25. The Appellant's daughter, Nathasia, lives in Peterborough where she works as a NHS nurse. She came to the UK in February 2021. She was present at the hearing but was not called to give evidence as

her statement dated 31 January 2022 ([B19-20]) was not challenged. At that time, Nathasia says that the Appellant was "currently receiving support and living atmosphere from [herself], friends and family in the UK along with the Philippine charity communities." Nathasia otherwise sets out the facts of the Appellant's background and makes mention of her mother's problems in the Philippines which are no longer an issue before me. There is little evidence about the nature and extent of her relationship with the Appellant. The Appellant does not suggest that the relationship between her and Nathasia amounts to family life. There is no mention in that statement of Rose or the Appellant's relationship with her.

26. There are a number of letters of support in the bundle from individuals who appear to be either friends or the Appellant's extended family members (cousins and second cousins). They live variously in Wales, Peterborough and London. There are photographs of the Appellant with those individuals during family celebrations. None of the letters are in the form of witness statements. However, I do not give them less weight for that reason. They universally portray the Appellant as a kind, generous and family-oriented woman. She is also described as very hard-working. I have no doubt that this is the case but other than attesting to the Appellant having extended family and friends in the UK with whom she has an ongoing relationship by way of visits, they provide little detail about the strength of the Appellant's private life.

27. The main focus of the Appellant's case is on her relationship with Rose.

28. Dealing first with what the Appellant says about that relationship, in her first statement dated 31 January 2022 ([B/114-117], she makes no mention of it at all. She says, consistently with Nathasia's statement, that she had at that time "established a private life in London with the help of [her] friends and community support" and that "[her] friends and the Philippine charity communities helped [her] most of the time during the whole period of [her] life in the UK". She mentions her work as a carer but makes no mention of caring for a child or living with that child as her main carer. By that date, according to her testimony now, the Appellant had been caring for Rose on a residential basis for three or four years.

29. In her second statement dated less than a year ago (9 March 2023) ([B/91-95]) again there is no mention of her care for Rose. She says only that "In 2015 [she] moved to London and started helping a family as a caretaker. In return they provided [her] with an accommodation and living needs". That may be consistent with her other evidence that she was providing care to Mr and Mrs Fallah at that time (I suspect she meant to say "caregiver" not "caretaker"). However, it does not explain why she would not have mentioned in

that statement that she had moved away from that family some three years later and was now caring for a teenage girl.

30. In light of those omissions, I cannot place any great weight on her testimony now. Nonetheless, I set out what she says in her most recent evidence beginning with her witness statement as follows ([B/3]):

> "12. My relationship with Rose is close and positive. I treat her as my own daughter and love seeing her grow up as a responsible adult; loving her makes my longing with my 3 children more bearable.
> 13. A typical day consist of making breakfast and pack her lunch bag before she goes to school. During the day, I do the laundry and clean the house, shopping and cooking dinner for when Rose returns.
> ...
> 15. Me and Rose spend time together by watching movies, having conversations during meal, and going out for a walk. She also tells me her problems and I am glad to be able to advise her."

31. In her oral evidence, the Appellant was asked how Rose "fitted in" to the Appellant's other care work. She said that she prepared food, cleaned the house, ironed her clothes and stayed with her "for a few nights a week".

32. As I have already mentioned, one of the Appellant's children, Nathasia, is in fact now in the UK but it does not appear from either the Appellant's or Nathasia's statements that they have a relationship which goes beyond the normal bond between mother and daughter. Indeed, the Appellant does not say that this does amount to family life. A bare assertion that the Appellant treats Rose (now an adult) as her daughter does not therefore without more disclose a relationship which amounts to family life.

33. The remaining evidence is that the Appellant looks after Rose as one might expect a paid housekeeper to do and spends time with her and speaks to her as a friend might do. The Appellant provides no evidence that she and Rose do anything together beyond watching movies, talking over dinner or going for a walk. No particulars are provided about advice sought or given. The evidence that the Appellant provides any emotional support to Rose is vague. It could not be described as "real, effective or committed". Whilst I do not place much weight on this as a factor, I observe that there are no photographs of the Appellant and Rose together.

34. The only evidence in the bundle which was before me from Rose is an email dated 8 February 2022 ([B/145]) which reads as follows:

> "Hello! I'm here to inform you that [FP] is a wonderful carer. When my brother is gone to work abroad she stays with me at nights, cooking and cleaning keeping the house sparkling neat and swarms the house with delicious meals! Her service is very appreciated."

35. That email does not disclose a mother/daughter type relationship. I also observe that the email suggests that the Appellant was not at that time living with Rose except when her brother was not at home. That is also consistent with the Appellant's oral evidence that she stays with Rose for a few nights per week. That may not be inconsistent with the Appellant's oral evidence that she is living with Rose now as she said that Rose's brother went to Iran on business some seven months ago and is not presently intending to return. However, I do not accept on the evidence as a whole that the Appellant has been a full-time residential carer for Rose since 2018. She may well have stayed with her when her brother was absent but I do not accept that she has lived with them full-time since 2018 as her most recent statement might suggest.

36. As I indicated at the outset, Mr Dhanji produced letters at the start of the hearing from Rose and her brother Mohammadamin which were not to be found in the bundle. He assured me and Mr Terrell that these had been produced to the First-tier Tribunal. Although we were unable to find a copy in the Appellant's bundle before that Tribunal, they are paginated and I will assume for current purposes that they were therefore submitted to the First-tier Tribunal.

37. The letter is a manuscript letter apparently written by Mohammadamin. It is undated and is not in the form of a statement. It refers to the Appellant having cared for Rose for five years so must have been written sometime in 2023 which would be consistent with it having been written for the First-tier Tribunal hearing. The letter from Rose is typed and dated 8 April 2023. Again, it is not in the form of a statement.

38. Given the limited evidence from the Appellant herself about the relationship with Rose and the reliance she places on that relationship, I set out the content of those letters in full:

Letter from Mohammadamin

> "I Mohammadamin Momenin, British National, confirm that [FP] is working for my sister, looking after her as her carer for the last five years.
>
> She is great at her work. She has formed a great bond with my sister like a family and I am here to support her case. She is excellent in her duties and responsibilities towards my sister. We have no-one to take care of my sister due to travelling a lot because of business meeting. We can't hire anyone from outside as my sister has a bond with [FP]. She is dependent on her emotionally, mentally and physically since she was taking care of my sister from young age.
>
> Please help us by allowing [FP] to stay in this country as part of our family."

Letter from Rose

> "I am Rose Momenin, 17 years old and I first knew [FP] when I was 14 years old, which was on 2018, she has taken care of me since then. I cam here in the country as a student and my brother is my main guardian here in the UK but as he is always busy and always traveling for work, [FP] has been the one who has been with me most of the time.
>
> On a typical day, [FP] prepares me breakfast before going to school and packs me snacks and lunch, she always makes sure that there's food in our fridge and keeps our house tidy and clean. In addition to this, she make certain that my clothes are ironed especially my school uniform. When I arrive from school, I do my homework while she prepares fruits for me to eat as a snack. After that, she makes us dinner. [FP] also knows who my friends are for I have introduced them to her.
>
> She has been one of the most important figure of my life because she treated me as her own daughter. I appreciate [FP] for her guidance throughout the years and being selfless whenever I need her help and time. She provides emotional support and help me navigate the ups and downs of life.
>
> We often celebrate holidays together and also spend time on watching movies, going out and she's even there if I need a shoulder to cry on. I really feel comfortable telling her my personal problems for I know that she would give me proper guidance. I know [FP] for years now and I am aware that she has 3 children, one of whom I have met already, Tasha, and I've seen [FP]'s struggles as a mother as she always put her children's need before her own which she does for me as well.
>
> I will always cherish and appreciate the love and care that [FP] has provided me."

39. I can give only limited weight to this evidence. Neither Rose nor Mohammadamin attended to give evidence. In relation to Mohammadamin, that is perhaps unsurprising if he is in Iran as the Appellant says. I appreciate that Rose may have been at school at the time of the hearing. However, there is no explanation for why neither has provided a statement in proper form.

40. Whilst I appreciate that Rose would have been only sixteen when she wrote the email which is also in evidence, her later letter stands in contrast to that email in terms of what is said about the relationship. As I have already observed, the email suggests that the Appellant at that time only stayed at night if Rose's brother was away. It does not suggest that the Appellant at that time lived with Rose and her brother otherwise. The tenor of the email is that the Appellant was providing Rose with a service and not acting as a surrogate mother.

41. I also note that in spite of Mohammadamin's assertion of dependency, his letter too talks of "work" and "duties" rather than caring responsibilities. There is in any event no particularisation of the claimed dependency. I can see no reason why Rose, who would

have been by this time sixteen or seventeen, should have any physical dependency on the Appellant apart from the Appellant cooking and cleaning for her.

42. Even if I did place weight on these two letters, the content is vague and unparticularised. Rose does not say where she and the Appellant have holidayed together or where they go when they go out together (not mentioned by the Appellant in her evidence). I assume that any holidays could not be taken outside the UK as the Appellant would not be able to return if she left. I have already observed that, whilst there are a number of photographs of the Appellant with friends and extended family members, there are none of the Appellant with Rose. There is also no explanation for why the relationship between Rose and the Appellant is not mentioned in any of the Appellant's own statements before December 2023.

43. Although I accept that the evidence is that Rose's parents both live in Iran and that her only sibling is also now back in Iran, Rose is now an adult. I accept that she remains in school (she will go to university in September according to the Appellant's evidence). However, at her age, absent particularised evidence of dependency (of which there is none in this case) I do not accept that the relationship between Rose and the Appellant amounts to family life.

44. Whilst it may suit Rose's brother and parents and Rose herself to have continuity of care for Rose (so far as she may still need it), I am unable to find on the evidence provided that the Appellant provides the sort of emotional support that would be provided by a mother to a child (even an adult child). I accept that the fact that the Appellant is not related to Rose and is paid to look after her is not fatal to the Appellant's case. However, if one looks at the evidence there was in the case of Uddin (set out at [8] of the judgment), the comparison is stark. Here, there is no evidence beyond bare and unparticularised assertions that there exists between the Appellant and Rose anything which could even remotely be described as family life. At best, there is evidence that the Appellant carries out the duties of a housekeeper and acts towards Rose as would an older friend or relative by providing "a shoulder to cry on" and advice when she needs it. There are no particulars of anything approaching "real, effective or committed support".

45. That is not to say that I do not take the relationship into account for the purposes of the Appellant's private life. I accept that all the relationships to which I have referred above are part of her private life and go to the strength of it. The evidence is however vague as to the ties which the Appellant has formed in the UK and those which she continues to enjoy with her own daughter, Rose, her extended family members, those whom she cares for and her friends.

46. Beyond those friendships, the Appellant says in her witness statement that she volunteers for a church looking after elderly people who require assistance ([B/3]). Again, beyond one example given of Sheila Morris, for whom the Appellant cares a few hours at the weekend, there is no supporting evidence. In any event, I doubt that the Appellant is the only volunteer willing to provide that service.

47. That brings me on to the fact that the Appellant is working in a shortage occupation as a carer. I take into account as was accepted by Mr Terrell that this is a shortage occupation. However, I also take into account the guidance in Thakrar. I can give this factor some weight as reinforcing the strength of the Appellant's private life, but it does not diminish the public interest. To allow it to do otherwise and to allow those who have no right to be in the UK to remain simply because there is a shortage of labour in the area in which they work would be positively undermining of the public interest in the maintenance of effective immigration control.

48. That then brings me on to the public interest. I am willing to accept that the Appellant speaks English. She is certainly not fluent but was able to give her evidence in English. I also accept that she is financially independent and would remain so if she were permitted to stay in the UK. Those are both neutral factors.

49. Having regard to Section 117B(4) and (5), I can give the Appellant's private life little weight. Whilst I give it some weight based on the evidence I have and on which I have made findings above, the evidence does not as a whole disclose a very strong private life formed in the UK. Whilst not directly relevant to the strength of the Appellant's private life here, I note that the Appellant's own family (husband and two other children) remain in the Philippines.

50. As Mr Terrell pointed out, the Appellant has been in the UK on a precarious basis until 2012 and then unlawfully. She cannot meet the Immigration Rules. Both of those factors weigh in favour of the public interest and against the Appellant. They are strong factors militating in favour of removal.

51. Having balanced the interference with the Appellant's private life against the public interest, I am amply satisfied that removal is a proportionate interference with the Appellant's Article 8 rights.

CONCLUSION

52. I accept that the Appellant has developed a private life in the UK. I reject her case that she has formed a family life here with Rose. Weighing the interference with the Appellant's private life against the public interest, removal is a proportionate interference with the

Appellant's Article 8 rights. Her appeal was dismissed on protection and human rights grounds by Judge Swinnerton and I upheld that decision other than in relation to the issue with which this decision is concerned. Having rejected the Appellant's case on that issue, her appeal now fails on all grounds.

NOTICE OF DECISION

The Appellant's appeal is dismissed on all grounds.

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

22 February 2024

APPENDIX: ERROR OF LAW DECISION

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004667

First-tier Tribunal No: PA/54792/2021
IA/14525/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

.....**17/01/2024**.....

Before
UPPER TRIBUNAL JUDGE SMITH

Between
~~T K~~
F P
[ANONYMITY DIRECTION MADE]

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms E Atas, Counsel (appearing via Microsoft Teams) instructed by MBM Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

Heard at Field House on Thursday 7 December 2023

Order Regarding Anonymity
Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. The Appellant shall henceforth be referred to as FP. Failure to comply with this order could amount to a contempt of court.

[AMENDED] DECISION AND REASONS

1. The Appellant appeals against the decision of First-tier Tribunal Judge K Swinnerton dated 31 August 2023 ("the Decision") dismissing the Appellant's appeal against the Respondent's decision dated 23 September 2021 refusing her protection and human rights claims. Those claims were made in the context of a removal to the Philippines. The appeal was dismissed on asylum, humanitarian protection and human rights grounds.

2. The Appellant's asylum claim was based on a claimed fear of her husband's cousin from whom she had borrowed money. She also claimed to fear a bank in the Philippines from which she had also borrowed money. The Respondent did not accept that the Appellant was at risk as claimed. The Judge similarly did not accept that the Appellant would be at risk on return to the Philippines.

3. The Appellant also claimed that there were very significant obstacles to her integration in the Philippines. The Judge rejected that case for reasons given at [28] of the Decision.

4. The Appellant finally relied on her private and family life in the UK. She claimed that, when considered outside the Immigration Rules ("the Rules"), her removal would be disproportionate. That aspect of her case was rejected by the Judge at [29] of the Decision.

5. The Appellant appeals the Decision on one ground only namely that the Judge has failed to provide adequate reasons for the finding that removal would not be disproportionate when her Article 8 claim is considered outside the Rules. I come to the detail of that ground below.

6. Permission to appeal was granted by First-tier Tribunal Judge Dempster on 23 October 2023 in the following terms so far as relevant:

> "..2. There is a single ground of appeal, namely that the judge failed to provide reasons for their finding that the refusal decision was proportionate with specific regard to the appellant's claim that her relationship with [R] engaged Article 8.
> 3. The appellant's initial claim was a protection claim and was refused on 23 September 2021. In that refusal decision, the appellant's claim based on her relationship with [R] was not considered. However, at a Case Management Review hearing conducted by Judge Chinweze on 20 March 2023, the appellant was directed to upload any evidence concerning her family and private life claim. The appellant did so on 14 April 2023 in a 20 page bundle which included statements from [R] and her brother. This relationship was identified as an issue in the Appellant's Skeleton Argument dated 11 February 2022.
> 4. At the hearing before Judge Swinnerton, it is apparent that the judge was aware of the 20 page bundle which had been uploaded on 14 April 2023. It is also identified as a matter in respect of which the appellant gave evidence [10] and formed part of the submissions by counsel at the hearing [16]. I have assumed therefore that this was

> a matter in respect of which the respondent provided her consent. I cannot however see any reference in the judge's findings to the evidence of the relationship between the appellant and [R] and it appears that the judge failed to make a finding on a material matter. There is thus an arguable error of law and permission to appeal is granted."

7. The matter came before me to decide whether the Decision contains an error of law. If I conclude that it does, I must then decide whether to set aside the Decision in consequence. If I do so, I must then go to on re-make the decision or remit the appeal to the First-tier Tribunal for re-making.

8. At the outset of the hearing, and following preliminary discussions with Ms Atas, Mr Clarke indicated that the Respondent conceded that there is an error of law in the Decision for the reasons given in the grant of permission to appeal. I accept that concession for the following reasons.

9. The grounds as pleaded are that the Judge failed to consider whether there are "exceptional circumstances" in this case. However, leaving that submission aside, the grounds also set out (as reflected in the grant of permission) that there were documents relied upon referring to the Appellant's relationship with [R]. There were letters from [R] and her brother which the Judge had failed to take into consideration.

10. As Mr Clarke also pointed out and as is noted in the grant of permission, there is reference at [16] of the Decision to the Appellant having care of a "17-years old child". That in and of itself raises not only an issue whether the Appellant has family life with that child but also what are the best interests of the child.

11. The Judge dealt with Article 8 ECHR outside the Rules at [29] of the Decision as follows:

> "In respect of Article 8, the starting point for an assessment outside the Immigration Rules is the case of **R (Razgar) v SSHD [2004] UKHL 27** in which the House of Lords set out 5 steps. I do not accept that the facts of the case support a finding of any exceptional circumstances that would render refusal a disproportionate breach under Article 8 ECHR."

12. That paragraph, as Mr Clarke accepted, contains insufficient reasons for the finding there made. There is no recognition of the Appellant's case that she had relationships with others in the UK which might amount to family life or, even if they did not, what would be the level of interference with her private life. There is no reference to section 117B Nationality, Immigration and Asylum Act 2002 ("Section 117B"). Even if the factors in Section 117B would probably not avail the Appellant, there is no indication that any balancing assessment has been carried out between the interference with the Appellant's private (and if appropriate, family) life and the public interest.

13. For those reasons, I accepted at the hearing that it was appropriate to set aside [29] of the Decision and the conclusion dismissing the Appellant's Article 8 claim based on her family and private life in the UK.

14. Ms Atas very fairly accepted that there was only one ground of appeal which did not challenge the dismissal of the appeal on asylum, humanitarian protection or Article 3 ECHR grounds. Nor is there any challenge to [28] of the Decision which is the Judge's rejection of the claim that there would be very significant obstacles to integration in the Philippines.

15. Accordingly, there being no challenge on any of those grounds, I preserve the findings at [18] to [28] of the Decision.

16. As the issue which remains is a very narrow one which does not require any extensive fact-finding, I retain the appeal in this Tribunal. I gave directions at the hearing for a resumed hearing as set out below.

NOTICE OF DECISION

The Decision of First-tier Tribunal Judge K Swinnerton dated 31 August 2023 involves the making of an error of law. I set aside [29] of the Decision and the dismissal of the appeal on Article 8 ECHR grounds (only in relation to the Appellant's family and private life in the UK). I preserve the findings at [18] to [28] of the Decision and the dismissal of the appeal on asylum, humanitarian protection/ Article 3 ECHR grounds and the finding that there are no very significant obstacles to the Appellant's integration in the Philippines. I make the following directions for the rehearing of this appeal:

DIRECTIONS

17. By 4pm on Friday 5 January 2024, the Appellant shall file with the Tribunal and serve on the Respondent any further evidence on which she seeks to rely in relation to the issue which remains.

18. The re-hearing of this appeal is to be listed before UTJ Smith for a face-to-face hearing on the first available date after Monday 5 January, time estimate 2 hours. A Tagalog interpreter is required for that hearing.

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 December 2023