IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-005015

First-tier Tribunal No: HU/55354/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 21st of January 2025

Before

UPPER TRIBUNAL JUDGE LOUGHRAN
DEPUTY UPPER TRIBUNAL JUDGE LAY

Between

ROSALINA PANTOJA
(NO ANONYMITY ORDER MADE)

Appellant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr T Hodson, in-house Counsel at MBM Solicitors
For the Respondent: Ms J Isherwood, Home Office Presenting Officer

Heard at Field House on 8 January 2025

DECISION AND REASONS

Procedural background

1. The Appellant is a 48-year-old Philippines national who entered the UK in 2006 and has overstayed since 2007, a period of 18 years. She subsequently made an application to remain in the UK on the basis of Article 8 ECHR, leading to the Respondent refusing the human rights claim on 16 August 2022. She exercised her right of appeal to the First-tier Tribunal.

2. There followed a Case Management Review Hearing in front of FTJ Kudhail [CB: 67] on 2 May 2024 because the Appellant had in the interim made a claim for asylum which remained under consideration by the Secretary of State. While the Appellant wished her Article 8 ECHR appeal to be adjourned pending the asylum claim so that the two could be heard together, the Tribunal directed that an

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indefinite stay would not be appropriate and that the Article 8 ECHR appeal should proceed, stating that "it would not be determining the asylum claim, as it did not have jurisdiction. It would simply consider the same facts and determine if they amounted to very significant obstacles."

3. Following an oral hearing on 8 July 2024, First-Tier Tribunal Judge Abebrese (hereafter "the FTJ") promulgated a determination on 14 July 2024, dismissing the Appellant's appeal under Article 8 ECHR.

4. In an application dated 27 July 2024, the Appellant sought permission to appeal against the determination on three grounds. Permission was granted on all grounds in a decision dated 30 October 2024.

5. At the error of law hearing, there was a 118-page composite bundle. Bundle references in this determination are in the format as follows: [CB: XX]: [Composite Bundle: page number].

The grounds of appeal on which permission had been granted

6. The grounds of appeal were as follows: (1) that the FTJ had erred in failing to make adequate findings of fact as to the relationship between the Appellant and an elderly woman for whom she has cared for an extended period of time (Ms Powell), for the purposes of Article 8 ECHR, under either family or private life; (2) that the Appellant's evidence/complaints about the alleged misconduct of her former solicitors was not taken into account by the FTJ when adverse credibility findings were relating to inconsistent statements/representations; (3) that the FTJ did not have any, or any adequate, regard to evidence presented as to the Appellant's claimed problems were she to return to Philippines, including the ill-health of her father and a debt accrued in meeting his medical expenses.

Submissions & concessions

7. On behalf of the Appellant, Mr Hodson focused his submissions on Ground 3, arguing that "the most significant error" was the FTJ overlooking "one, or perhaps two" witness statements when evaluating the evidence relevant to Article 8 ECHR and whether the Appellant would face "very significant obstacles to integration" in Philippines, owing to her father's illness, debts and the threat of imprisonment as a debtor who had issued a "bounced cheque". He submitted the FTJ plainly had the statements since parts of them are referenced elsewhere in the determination and was wrong to conclude that the Appellant had failed to mention the issues in her written evidence. He submitted that paragraph 17 of the determination "makes no sense" in light of the witness statements before the FTJ At paragraph 17 the FTJ had stated that "the A adopted her witness statement but she gave evidence which in that most part had never been mentioned before regarding having to borrow money from a lending company and the fact that she could not affords to pay the money back. All this evidence could have been admitted into her witness statement to provide some notice to the R's. The A could not provide a plausible reason as to why it had not been".

8. As to Ground 1, Mr Hodson submitted that the FTJ was obliged to provide an express finding as to whether or not there existed "family life" between the Appellant and Ms Powell for the purposes of Article 8 ECHR and there is silence in the determination on that issue.

9. On Ground 2, Mr Hodson submitted that the Appellant had, in her written and oral evidence, complained of misconduct by her former solicitors in 2021 and that the FTJ had not taken this into account when considering purported inconsistencies in the evidence.

10. On behalf of the Respondent, Ms Isherwood argued that the determination contained no material error of law: addressing Ground 3, she argued that on the face of the determination the FTJ read and considered the three witness/ "personal" statements, he considered the photographs of the Appellant's father (referenced at paragraph 14), and the FTJ provided reasons at paragraphs 17 & 18 for finding the Appellant's evidence to be unpersuasive in the round. Even if the FTJ incorporated an irrelevant consideration (at paragraph 17) as to the timing and/or contents of the witness statements, this was not material to the outcome given the broader adverse findings made.

11. Ms Isherwood further submitted, on Ground 1, that there was little to no evidence of family life save the Appellant's oral evidence on the day of the appeal, the Appeal Skeleton Argument made no reference to it and it was not capable of making a difference to the outcome. She also submitted that Ground 2 showed no material error: the complaints about the solicitor were referenced at paragraph 10 of the determination – "she claims that FA Legal did not show her any of the statements" – and the FTJ had regard to the complaint, which was in any event peripheral.

Our conclusions

12. We indicated at the close of the oral hearing that we had found Ground 3 to be made out, on the basis that there had been no rational consideration by the FTJ of the evidence presented by the Appellant with regard to the issue of her father's illness in Philippines, her debt and the claimed obstacles she would face on return, all of which were plainly central issues in the appeal, as also made clear by the CMRH held on 2 May 2024. In particular, at paragraph 17 of the determination, the FTJ made an adverse credibility finding against the Appellant on the basis of a mistake of fact. The Appellant had indeed provided evidence about the debt in her "Personal Statement" on 2 August 2023 [CB: 44] and again in a further statement dated 18 September 2023 [CB: 51]. This was mistake of fact and/or a mishandling of the evidence that was plainly material since it formed part of the basis of the FTJ's approach to the Appellant's credibility. It was capable of making a difference to her contention that she would face significant challenges in Philippines on return (paragraph 18) and was a central issue in the appeal.

13. We also conclude that Ground 1 is made out. There is no finding in the determination about the purported relationship with Ms Powell, notwithstanding that oral evidence was heard on the matter (paragraphs 6 & 16 of the determination). After noting the submission on the issue at paragraph 16, the FTJ has not elsewhere provided a finding on the matter. Even if family life were not engaged, it would and should have constituted a relevant consideration in the private life assessment. It is therefore a material error.

14. However, we reject Ground 2. It is apparent from the determination as a whole that the FTJ was at least aware of the Appellant's issues with the former solicitor, no further evidence was provided (for example, a formal complaint against the firm) nor was it made plain which parts of the former representations were

accurate and which were being denied. It was open to the FTJ to consider, and deprecate, the complaint and instead focus on the evidence as it stood at the hearing – albeit, as we have found, material errors were then made in doing so.

15. Given the nature of the two errors of law we have found, and since the FTJ's approach to the key evidence was flawed, we do not consider it appropriate or proportionate to preserve any of the findings made in the determination.

Notice of Decision

The decision of the First-tier Tribunal is set aside for error of law and we direct that the appeal be remitted to the First-tier Tribunal to be heard afresh, for the consideration of any Judge except FTJ Abebrese. Given that, as of 19 September 2024, the Appellant's asylum/protection claim has also been refused by the Home Office, and a notice of appeal has since been lodged with the FTT (PA-71257-2024), it may be appropriate for a CMRH to be listed in the first instance so that consideration can be given to linking the asylum and Article 8 ECHR appeals.

Taimour Lay

Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 January 2025