



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/01447/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 28<sup>th</sup> August 2014

Determination Promulgated  
On 4<sup>th</sup> September 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE COATES

Between

JOEY MORALES GRANADA  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: In person  
For the Respondent: Mr G Jack, Senior Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. The Appellant is a citizen of the Philippines born on 14<sup>th</sup> January 1981. The Appellant's immigration history shows that he arrived in the United Kingdom in July 2008 with entry clearance as a student. He was granted further leave to remain in the same capacity until 24<sup>th</sup> January 2013. On 12<sup>th</sup> December 2012 the Appellant

applied for further leave to remain on the basis of his private life under Article 8 of the ECHR. His application was refused on 11<sup>th</sup> December 2013 and his appeal against that refusal was allowed by Judge of the First-tier Tribunal Malins on 30<sup>th</sup> May 2014.

2. The Respondent's representative applied for permission to appeal and permission was granted in the Upper Tribunal on 8<sup>th</sup> July 2014. Thus the matter came before me for an error of law hearing in the Upper Tribunal on 30<sup>th</sup> May 2014. The Appellant was present but was not legally represented. I noted a letter from the Appellant's representatives, Bespoke Solicitors of Wembley, stating that they would not be representing the Appellant at the hearing before the Upper Tribunal.
3. For the reasons which I will now give, I decided that the decision by the First-tier Tribunal involved the making of an error on a point of law such that it falls to be set aside.
4. The Appellant was unrepresented before the First-tier Tribunal. He submitted a witness statement which was adopted as his evidence-in-chief. It may be summarised as follows.
5. The Appellant entered the UK with a valid student visa in July 2008. He completed an NVQ in health and social care but was unable to renew his student visa due to what he describes as a change in his personal circumstances. That prompted him to submit an application based on human rights issues.
6. The Appellant's mother, who is a British citizen, is in the UK and the Appellant claims that she is the only family member in this country. The Appellant claims to have severed all family, social and cultural ties in the Philippines and would have nothing to return to in that country. The Appellant claims that his mother suffers from various medical conditions and requires his support on a daily basis. He claims to have friends in the UK and to have integrated into British society. He attends church regularly and has never claimed any benefits.
7. The First-tier Judge found the Appellant and his mother to be credible witnesses. The determination records that the Appellant had been working at a nursing home in High Barnet for nearly four years, caring for elderly people with mental health problems. He worked permanent night shifts, four nights per week. The Appellant said that he lived with his grandmother in the Philippines before coming to the UK at the age of 27. His grandmother has since died. He attended university in the Philippines and also studied in the UK. The Appellant's mother said in evidence that she had been a single mother because her husband abandoned the family when her sons were 7 and 8 respectively. She has two sisters living in the UK with their families but no family remaining in the Philippines. She claims to be in poor health but continues to work as a nurse in Salisbury. She and the Appellant meet one another about once a week and the Appellant takes her to medical appointments.
8. At paragraph 10 of the determination the First-tier Judge found that the Respondent's decision to refuse the application under paragraph 276ADE of the Immigration Rules was correct. No appeal could succeed on that basis. The First-tier Judge also stated that "The Respondent's finding that there are no grounds for a favourable decision outside the Immigration Rules is unappealable to me". I have to say that I am not entirely sure what is meant by that. In the very next paragraph the judge goes on to

conclude that there are arguably good grounds for granting leave to remain outside the Immigration Rules in the circumstances which are then described. The judge states as follows:

“Nothing in paragraph 276ADE addresses the issue of a predictable benefit to society of the Appellant remaining in the UK in his employment as a dedicated carer of old people, with mental problems, overnight. This is plainly difficult and challenging work and I have no doubt that it is poorly rewarded. The private care sector is huge and vital to society but, due to the precarious financial nature of the business, the workers upon whom it depends are lowly paid.

The points-based system which is the mechanism for dealing with leave to remain for workers necessary to the state, could never avail this Appellant – he is too lowly paid and not visibly necessary to the economy. However, in my judgment, the Appellant is a necessary presence in the UK for his small contribution to the overall welfare of one of the most vulnerable sectors of society where such persons are impossibly hard to recruit”.

9. It is unclear to me what evidence, if any, (apart from the Appellant’s own testimony) the First-tier Judge has relied on in order to make these findings. They are, in my estimation, more in the nature of an expression of the judge’s personal opinion about people who work in the care industry, usually at a low wage.
10. The judge then went on to consider proportionality but without any reference to the well-known five step process advocated in Razgar. The judge found that the Appellant’s mother, who is his only family member, is a UK citizen, the Appellant’s immigration history is unimpaired and the Appellant’s example of undertaking antisocial work for the benefit of society is desirable. On this basis the judge concluded that removal would be disproportionate.
11. The grounds submitted by the Appellant’s representative, which were adopted by Mr Jack in submissions, argue that the approach adopted by the First-tier Judge was wrong in law. The grounds point out that ME (Nigeria) [2013] EWCA Civ 1192 confirms that the Immigration Rules are a complete code but form the starting point for the decision-maker. Any Article 8 assessment should only be made after consideration under these Rules. That was not done in this case. Furthermore, it was made clear in Gulshan [2013] UKUT 00640 that the Article 8 assessment shall only be carried out where there are compelling circumstances not recognised by the Rules. In this case the Tribunal did not identify such compelling circumstances. Gulshan also makes clear that at this stage the appeal should only be allowed where there are exceptional circumstances. The decision in Nagre [2013] EWHC 720 (Admin) endorsed the Respondent’s guidance on the meaning of exceptional circumstances, namely ones where refusal would lead to an unjustifiably harsh outcome.
12. It is further submitted that the First-tier Tribunal failed to provide adequate reasons why the Appellant’s circumstances are either compelling or exceptional. At paragraph 9 of the determination the Tribunal has found that the Appellant has no ties to the Philippines but has provided no adequate reasons for this finding. It is submitted that the Appellant has spent the majority of his life there, including his youth, formative years and majority of his education. It is submitted that he would be fully familiar with the culture and customs there and would speak the language and so would have ties and could fully readapt to life there.

- 13.** I am satisfied that the First-tier Judge has failed to adopt the correct approach in assessing the Appellant's claim under Article 8 in accordance with the case law referred to above. I am also mindful of the very recent guidance given by the Supreme Court in Patel where Lord Carnwath pointed out that Article 8 is not a general dispensing power.
- 14.** I have concluded that the error of law is such that the determination falls to be set aside and re-made. In this case I have had regard to paragraph 7.2 of the Practice Statement concerning remittals. I am satisfied that this is a case which should properly be remitted to the First-tier Tribunal for the appeal under Article 8 to be reassessed by a judge other than First-tier Tribunal Judge Malins. No findings are preserved.

### **DECISION**

The making of the decision by the First-tier Tribunal involved the making of an error on a point of law. I set aside the decision and remit the matter to be reheard in the First-tier Tribunal.

No anonymity direction is made.

### **DIRECTIONS**

1. The appeal shall be heard at the Hatton Cross Hearing Centre on the first available date.
2. The appeal shall be heard by a Judge of the First-tier Tribunal other than Judge Malins.
3. No interpreter is required.
4. Time estimate is two hours.

Signed

Date 1<sup>st</sup> September 2014

Deputy Upper Tribunal Judge Coates

### **TO THE RESPONDENT** **FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 1<sup>st</sup> September 2014

Judge Coates  
Deputy Upper Tribunal Judge Coates