



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/16491/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 17 June 2015**

**Decision & Reasons
Promulgated
On 1 July 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**MRS MATEA BERDOS GOSSAGE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Chipperfield, (Counsel instructed by Bespoke Solicitors)

For the Respondent: Mr Nigel Bramble, (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an error of law hearing to consider whether or not there is an error of law in the determination promulgated on 7 November 2014 by First-tier Tribunal (Judge Cohen) (FtT) in which he dismissed the appellant's appeal against the decision of the respondent to refuse further leave to remain and to issue removal directions.

2. The appellant is a citizen of the Philippines and her date of birth is 21 April 1968. She initially entered the UK on 9 September 2004 with a visit visa. An application for further leave to remain as the spouse of Mr Andrew Gossage , a person present and settled in the UK, was refused. The appellant did not lodge an appeal and as of 3 September 2005 she remained in the UK unlawfully. On 28 September 2012 the appellant made an application for further leave to remain on the grounds of family and private life.
3. The respondent refused the application in a detailed letter dated 20 March 2014 and having regard to the Immigration Rules dealing with private and family life together with Article 8 ECHR and considered whether or not there were compelling or compassionate circumstances outside of the Rules.

FtT Decision

4. In a decision the FtT set out the appellant's claim and the respondent's response together with details of the evidence given by the appellant and her sponsor. The FtT considered family and private life under the Rules and concluded that she did not meet the Rules on the basis of the marriage/partner route and neither did she meet the requirements under EX.1. She did not meet the Eligibility criteria as she remained unlawfully in the UK since 2005 [22]. The FtT found that the appellant had not lost all links with the Philippines where she has mother, brother and sister [17]. The FtT found that she left the Philippines in order to work to provide financial support for her family.
5. The FtT found there was family life in the UK and private life in the UK such that the removal would cause an interference with Article 8 rights [21]. The issue before the FtT was proportionality. It placed weight on the appellant's poor immigration history (overstaying for seven years prior to making any application) and the contradictory evidence given by the appellant and sponsor as to why an application was not made at an earlier stage [22].
6. The FtT took into account that the appellant was financially supported by the sponsor in the UK. It considered the language barrier to be an invalid reason for not relocating to the Philippines. The FtT relied a personal visit to the Philippines in concluding that the vast majority of the population speak "perfect English". It rejected the evidence that it would be impossible for the sponsor to find employment there. It was accepted that the sponsor has an elderly father living in Norwich who he visits regularly, but found that his brother could provide support for their father. There was no evidence of family ties beyond the normal level. The appellant and sponsor would be able to continue their involvement in church in the Philippines. There were no insurmountable obstacles preventing the sponsor relocating to the Philippines where they could continue family life. Alternatively the FtT found that the appellant could return to the Philippines from where she could make an application for entry clearance

to return to the UK based on her marriage notwithstanding that at present the parties would not meet the financial requirements of the Immigration Rules.

7. The FtT placed weight on the fact that the sponsor entered into a relationship with the appellant knowing her precarious immigration history, that she faced removal and had no continuing right to remain in the UK.
8. In the decision at [25] the FtT concluded as follows;

“in light of my findings above, I find that the family and private life that the appellant has established in the UK is sufficiently serious to warrant her exclusion from the UK as being disproportionate. I find that the appellant’s case is one of the small minority of cases that it was anticipated would be allowed under Article 8 in cases including **Huang** and **EB (Kosovo)**”.

9. At the end of the decision at [26] & [27] the FtT placed weight on the public interest in removal because of the appellant’s immigration history and failure to comply with the law and Immigration Rules over a significant period of time. The FtT dismissed the appeal on human rights grounds.

Grounds of Application

10. It was argued that the FtT made factual errors material to its consideration of EX.1 and Article 8. It referred to visits to the sponsor’s father “monthly” when in fact the evidence given was that he visited his father “once a week” and helped with chores. The second factual error at [18] was reference to the appellant’s “teenage children”. The appellant has no children. The error was material as it reflected on links with the Philippines.
11. The FtT failed to consider relevant factors including that; the appellant worked in the Philippines for three years only between the ages of 17 and 22, she left the Philippines aged 23 in 1991 and worked in Spain prior to coming to the UK. She had been outside of the Philippines for some 23 years and last visited for a wedding in 2004, the crucial role of the church, her husband’s role in the church and as a support worker, their ages, the lack of experience of working or living in the Philippines and the effect of the separation between father and son.
12. It was argued that the Tribunal Judge ought not to have taken into account his own personal knowledge of language in the Philippines.
13. The inclusion [25] showed a lack of consideration of relevant matters as the conclusion set out in that paragraph cannot be reconciled with the findings made and decision to dismiss the appeal. In summary the factual errors and lack of consideration amounted to a failure to apply anxious scrutiny to the appellant’s claim.

Permission to Appeal

14. Designated Judge McClure refused permission on 31 December 2014. He stated that the factual errors would not have been determinative or had a significant effect on the case taking account of all the evidence. There was sufficient evidence to conclude that there were no insurmountable obstacles to family life in the Philippines. The Tribunal was entitled to take into account the appellant's immigration history and finding the appellant had continued ties in the Philippines. The Tribunal considered all the circumstances under Article 8 and was entitled to conclude that the decision was proportionately justified.

Renewal application for permission

15. An application for permission to appeal was renewed to the Upper Tribunal and granted by Deputy Upper Tribunal Judge Doyle on 23 April 2015. Judge Doyle considered that [25] of the decision was contradictory and found there was sufficient in the grounds to make out an arguable case that there was an error in the approach to the appellant's Article 8 argument. Directions were made for the matter to be heard do novo.

Rule 24 Response

16. The respondent opposed the appeal. Read as a whole the determination was clear and the judge accepted the appellant built up a significant and lengthy family life worthy of respect. However, weight was placed on the disregard of the Immigration Rules and immigration history. The respondent considered the grant of permission to be a mistake as no error of law was established.

Error of Law Hearing

Submissions

17. Mr Chipperfield submitted that the appellant could have no confidence that the FtT considered her appeal with the appropriate level of anxious scrutiny having regard to the factual errors, the erroneous inclusion of [25] which may or may not have occurred from the FtT using a template format and failing to edit the determination properly. Mr Bramble realistically accepted that the determination read as a whole appeared confused and rushed. However, he submitted that clear findings of fact showed that it engaged with all of the relevant evidence. Whilst not the best structured decision, it was undoubtedly apparent what the FtT's view of the appellant's claim was and the decision reached, as set out in the final paragraph. Mr Bramble submitted that [25] was an obvious cut and paste error; it failed to reflect the tenor of the bulk of the determination.

Discussion and decision

18. My focus is on whether or not there was an error of law in the decision and whether or not that error was material to the outcome of that decision. There are no concerns raised as to the conduct of the FtT during the hearing. It is not suggested that there was unfairness or bias towards the

appellant. In essence the appellant argues that the FtT has been careless in its preparation and consideration of her claim. Mr Bramble realistically acknowledged the same. That said I need to consider whether or not the carelessness manifested in the two factual errors and the inclusion of [25] are of such significance as to lead me to conclude that the appellant did not have a fair hearing. I have in mind the guidance in **ML (Nigeria) [2013] EWCA Civ 844**. I take the view that for a fair hearing the FtT needs to ensure that adequate attention is paid to the evidence and the record of evidence, and that no significant errors arise procedurally such as to amount to unfairness to the appellant.

19. I find that the two factual errors are of no significance. The FtT found that the appellant's links in the Philippines were to her mother, brother and sister [17]. As to the sponsor's father, whether or not the visits were monthly or weekly, is of little significance in my view given that the FtT has clearly taken into account and engaged with that evidence at [23] and found that there was a brother who could care for their father. As to the inclusion of [25] I am satisfied that this is clearly an error arising from careless use of cut and paste. I find nothing at all in the decision to indicate that the FtT intended to allow the appeal. All of the findings, discussion and conclusions support the decision made in [26] and [27] to dismiss the appeal on human rights grounds.
20. I now consider whether the totality of the concerns raised by the appellant in her grounds are such that she did not have a fair hearing. It is clear that there has been a degree of carelessness by the FtT in its consideration and preparation of the decision and reasons. However, the findings made are entirely sustainable on the evidence before the FtT. It is not disputed that the appellant is not able to meet the requirements of the Immigration Rules with regard to family and private life. The FtT's consideration under Article 8 ECHR and its conclusions as to proportionality are entirely sustainable on the evidence. In particular weight was placed on the facts that the appellant entered into a relationship at a time when her immigration status was precarious, she remained in the UK unlawfully for a significant period of time, she has continuing links in the Philippines and there were no reasons why the sponsor could not either join her in the Philippines and continue family life there or that the appellant could return to the Philippines from where she could make an application for entry clearance based on her marriage. The FtT found no exceptional circumstances and none have been put to me to indicate that there are grounds for consideration of leave outside of the Rules.
21. Accordingly I have decided that there is no material error of law in the Tribunal decision. The decision shall stand.

No anonymity direction is made.

Signed

Date 29.6.2015

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 29.6.2015

Deputy Upper Tribunal Judge G A Black