



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

Appeal Number: HU/12988/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 19 October 2017**

**Decision & Reasons  
Promulgated**

**On 31 October 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MS JEANNIFFER JAMORAON MOLANO MOLANO  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr I Jarvis, Senior Presenting Officer

For the Respondent: None, No appearance by the Appellant

**DECISION AND REASONS**

1. In this decision the Appellant is referred to as the Secretary of State and the Respondent is referred to as the Claimant.
2. The Claimant a national of the Philippines, date of birth 20 June 1986, appealed against the Secretary of State's decision, dated 11 January 2016,

to refuse to grant her leave to remain on human rights grounds based on her family and private life with reference to paragraph 276ADE(1) of the Immigration Rules (the Rules) and Article 8 ECHR.

3. Her appeal came before First-tier Tribunal Judge Sethi (the Judge) whose decision (D) on 13 June 2017 allowed her appeal with reference to Article 8 ECHR on human rights grounds.
4. The Secretary of State sought permission to appeal which was granted by First-tier Tribunal Judge J M Holmes on 13 July 2017. The Judge in granting permission accepted that the first and third grounds raised by the Secretary of State raised arguable errors of law by First-tier Tribunal Judge Sethi (the Judge). It had been conceded at the appeal by counsel on behalf of the Appellant that the Claimant's claim could not succeed under Appendix FM or under paragraph 276ADE(1) of the Rules. Reliance before the Judge was solely put on the basis of Article 8 ECHR outside the Rules in respect of the Appellant's family life as an adult dependent child in the UK.
5. Notice of hearing of today's hearing was sent out to the Appellant at her home address and to her representatives Bespoke Solicitors of Harrow on 31 August 2017. With the attendance of neither I arranged for Tribunal staff to telephone the solicitors to ascertain whether or not notice of the hearing had been received by them giving today's date 19 October 10 a.m. for hearing at Field House, 15 Breems Buildings, London, EC4A 1DZ. Bespoke Solicitors said they had sent a fax to the Tribunal on 18 October 2017 in which they indicated that they were without instructions, they had no contact with their client and they would not be appearing to make any response on her behalf. There is no explanation why the Appellant was not present and nothing to indicate any reason why she did not attend or could not attend. No request had been made for an adjournment of the hearing in order to enable her to attend. The notice of hearing also states:

“If a party or his representative does not attend the hearing the Tribunal may determine the appeal in the absence of that party.”

6. At the hearing Mr Jarvis indicated to me why the Secretary of State maintained the arguments that the Judge had failed to properly consider the correct pathway under the Rules before assessing the Article 8 claim and in particular had failed to address the significance of the fact that the Appellant, because of her circumstances, as found to be in the Philippines, could not show that she could succeed under paragraph 276ADE(1)(vi) of the Rules. Rather it was clear from the Judge’s decision that whilst it would not be the same life she would be provided for with the practicalities of food and shelter and she would be able to develop her own private life in that country. Mr Jarvis pointed out the apparent contradiction between that finding [D38] of the decision of the Judge and the finding in paragraph 39 where the Judge said:

“...although the Appellant’s mother had stated the willingness to send financial remittances to the Appellant as would be required it was clear from her evidence that her real concern was for her married daughter’s wellbeing as a woman living alone in the Philippines in isolation from her parents. I find concerns to be genuine in the circumstances where the Appellant has no experience of living independently and no means of her own.”

7. I remind myself that at the material time the Appellant had entered the United Kingdom aged 23 years as a student and had overstayed after 2012 and was currently aged 27 - a mature adult. It is therefore factually to correct her describe her as the child of her parents but it is perhaps to understate her age and responsibilities as an adult let alone her abilities to manage her own affairs.
8. It did not seem to me that the Judge appreciated that the fact that a woman can live alone in the Philippines : Nor was it determinative, as the

Judge seems to think, of the impact on family life and whether Article 8 was truly engaged as one of those exceptional cases where the facts show that it did.

9. It is clear that the Appellant in the UK was not in its true sense financially independent. In the case of Rhuppiah [2016] EWCA Civ 803 the court said as to the meaning of financially independent in Section 117B(3) NIAA 2002 ‘... This is an ordinary English phrase, and the FTT gave it its natural meaning, as indicating someone who is financially independent of others. This is the correct interpretation’. The fact was that the Appellant was not financially independent as she relied upon her parents for her financial support. Accordingly the Judge’s finding of her being financially independent was misconceived. Ultimately taken at its highest the Judge concluded, although it appears to be mistyped or an error, that if the appeal had been based only on the Appellant’s private life he would have no hesitation in finding the Respondent’s decision proportionate but the Judge on the strength of what he assessed the Appellant’s family life with her parents: Bearing in mind the correct assessment is still as stated in the case of Kugathas [2003] EWCA Civ 31 that more than normal emotional ties between an adult child and its parents was required. In those circumstances being recited by the Judge simply did not get close to the kind of connection that is needed to sustain an Article 8 ECHR claim.
10. Accordingly I found, having considered the matter, that the Judge’s decision demonstrated an error of law in the manner in which he had proceeded to consider the Article 8 ECHR claim particularly when, because of her circumstances, there were no very significant obstacles to the Appellant having a private life in the Philippines.
11. Then as to the conclusion which the Judge reached that the Appellant would be returning to the Philippines to live as a single woman alone with no family support is not sustainable when as is pointed out it was accepted the Appellant had her grandfather’s home and family to return to, the

circumstances in which the Appellant lived prior to coming to the United Kingdom were plainly relevant and as such there was a material mistake of fact and law, on the evidence, that the Appellant would be alone in the Philippines as the conclusion set out [D39].

12. In the circumstances I considered that the impact of removal would lead to the Appellant's return to the Philippines, where she grew up, to the existence of family and connections with presumably school friends and adult friends before she left to come as a student to the United Kingdom: At which time of course she had the intention to return to have a life there. In the circumstances it did not seem to me that these are the kinds of exceptional circumstances that make up a case which can succeed outside of the Immigration Rules which are directly applicable to her claim.

### **NOTICE OF DECISION**

The appeal is dismissed.

### **ANONYMITY ORDER**

No anonymity order was made nor is one required or was sought for.

### **FEE AWARD**

A fee was paid but the appeal has failed and accordingly no fee award is appropriate.

Signed

Dated 25 October 2017

Deputy Upper Tribunal Judge Davey