



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/17776/2013

**THE IMMIGRATION ACTS**

Heard at FIELD HOUSE  
On 15 July 2014

Determination Promulgated  
On 28 July 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

MRS PIA LORRAINE SUAREZ REGIS

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms E Greenwood (counsel)  
For the Respondent: Mr S Walker (Home office presenting officer)

**DETERMINATION AND REASONS**  
**following resumed hearing**

1. I refer to my directions and decision dated 21.2.2014 in which I found an error of law in the decision made by First Tier Judge Walters in dealing with Article 8 and

consideration of “insurmountable obstacles” to family life outside of the UK under App FM EX1(b). The undisputed background facts set out in the First tier determination at [39] were preserved together with the findings that the application for Personal Independent Payment (PIP) by Gordon Cornell was outstanding, and that the appellant had lived for the majority of her life in Philippines where she had family ties including her 5 year old daughter.

2. At the resumed hearing I heard evidence from three witnesses including the appellant, her husband Gary Cornell and his brother Gordon Cornell. I found the witnesses to be entirely credible and they gave consistent evidence as to the material issues. Documentary evidence was adduced in the form of a contract of employment for Gary Cornell , a medical note and prescription for Gordon Cornell.
3. The details of the evidence and submissions are set out in the record of proceedings which I have taken into account in reaching my decision.
4. I have referred to Sabir( AppendixFM - EX.1 not free standing)[2014] UKUT 00063(IAC), Gulshan (Article 8 - new rules - correct approach)[2013] UKUT 000640 (IAC, MF(Nigeria) and Nagre. The latter make clear that Article 8 is incorporated into the rules as a complete code as reiterated in Sabir.
5. I find that the appellant is in a genuine and subsisting relationship with Gary who is a British citizen. I find that the appellant met all the requirements of the Rules save for the financial requirements. I find that she is now unemployed and that Gary is in employment earning an income of £17,000, close to the threshold of £18,600.
6. I find that the appellant lives in a 3 bedroomed house with her husband , his brother Gordon and their elderly father aged 86 years, who has some age related health issues including forgetfulness and deafness. I find that he is prescribed Warfarin to regularise his heart and blood. Although there was no medical evidence before me I am satisfied that Gordon suffers from glaucoma, severe diabetes, deafness in both ears , a restriction of height 4’4” (which impacts on his daily living and mobility) and spinal curvature which leads to pain in his legs and back for which he requires physiotherapy. The evidence was that his application for a PIP was unsuccessful but that he had made a fresh application, based on his increasing needs as a result of disability, which remains outstanding. Notwithstanding that Gordon has not to date been awarded disability benefit, I nevertheless find that he has significant care needs including washing/showering, dressing of lower garments, cooking, shopping, mobilising and help with medication. The appellant is providing the bulk of that care for which she is not paid. Her partner is working on shifts and supports the care for Gordon when not working. I find that Gary assists his brother in managing his diabetes and keeping it under control by regular testing. Gordon is otherwise able to administer his insulin, although I find that he has suffered from occasional “hypos” which would place him in danger. This places their relationship over and above the normal family ties. I find that Gordon is able to mobilise for short distances only when unaccompanied but has fallen on occasions.

I find that he walks with an unsteady gait and has restriction of movement because of his height.

7. I find that there is family life as between the appellant and her husband and as between the appellant, Gary and his brother and father. In the event that the appellant were to be returned to Philippines I find that there would in the long and short term be insurmountable obstacles for the family members in particular, Gordon Cornell. I find that the family life between the appellant and Gary would be permanently ruptured. Gary could not travel to Philippines as he has to care for his brother and father, which I accept. I find that if the appellant were not able to provide care that Gary alone would not be able to provide adequate care in the long term and would be required to leave his employment. I heard credible evidence that other family members were unable or unwilling to provide the required level of help and support for Gordon. I find that even in the event that the appellant received a carer's allowance for looking after Gordon both she and her husband would be able to provide full care for Gordon and his father with careful organisation of working shift patterns. The evidence given by the witnesses established that the daily needs of Gordon Cornell necessitated the care of the appellant and (to a lesser extent) her partner Gary, in the long term. Indeed it was conceded by Mr Walker that the removal of the appellant would amount to a breach of the family life in the long term.
8. The respondent's guidance (Section FM 1.0 October 2013 IDI ("partner and ECHR Article 8 guidance")) states that where an applicant fails to meet the immigration rules requirements for finance and English language, the SSHD must go on to consider EX.1, if applicable. It is accepted that Ex.1 is applicable in this instance as the appellant meets EX1(b). Mr Walker conceded that in the long term there would be unjustifiably harsh consequences for the family and private lives.
9. As to the short term implications of the appellant being required to make an out of country application for entry clearance, I find that there would remain insurmountable obstacles and a significant and unjustified and high degree of hardship to the private and family lives. Insurmountable obstacles are concerned with practical possibilities of relocation. (**Gulshan [24(c)]**) I am persuaded that no legitimate purpose is met that would justify the public interest in a return to make an out of country application. EX 1 applies and the appellant has met the Rules. I conclude that a removal for the sole purpose of making an application out side of the country cannot be proportionate. There is no clear indication as to how long such applications would take and the same obstacles apply in the short and long term.
10. In summary I find that (a) The appellant's presence in the UK is necessary in the short and long term for the care of her partner's brother and to a lesser extent his father.

(b) There would be insurmountable obstacles for Gary Cornell to live in the Philippines with the appellant because there would be no care available for his family who are dependent on him over and above the normal family ties.

(c) There would be a breach of family life in the event that the appellant returned to the Philippines in the long term as Gary would not join her there and their family life would be terminated.

11. Alternatively, I consider the Guidance in paragraph 3.2.8 (cited above) and **Gulshan** [25(b)] There are good grounds for granting leave outside of the Rules by reference to Article 8 ECHR and I conclude that the factors summarised above amount to exceptional circumstances for the family who would suffer from unjustifiably harsh consequences such that the refusal is disproportionate.

### **Decision**

12. I remake the decision by allowing the appeal under the immigration rules and on human rights grounds.

Signed                      Date 25.7.2014  
GA Black  
Deputy Judge of the Upper Tribunal

No anonymity order  
No fee award.

Signed                      Date 25.7.2014  
GA Black  
Deputy Judge of the Upper Tribunal