



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/23442/2013

THE IMMIGRATION ACTS

Heard at Bradford
On 14 January 2014

Determination Promulgated
On 18 February 2014

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

NOMILYN JAVIER

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not present or represented

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Nomilyn Javier, born on 3 October 1983 and is a female citizen of the Philippines.
2. The appellant had appealed to the First-tier Tribunal (Judge Callow) against a decision of the respondent refusing her further leave to remain in the United Kingdom as a Tier 4 (General) Student Migrant. The decision of the respondent is dated 23 May 2013 and the determination of the First-tier Tribunal, dismissing the appeal, was promulgated on 18 October 2013.

3. The grounds of appeal (apparently drafted by the appellant herself without legal assistance) are prolix and, as both Designated Judge Baird (in the First-tier Tribunal) and Upper Tribunal Judge Chalkley observed, identify no error of law on the part of the judge. However, Judge Chalkley added this when granting permission:

However, the appellant is not represented in the United Kingdom and reading the judge's determination I believe that it is properly arguable that the judge *may* have erred by dismissing the appellant's Article 8 human rights appeal and then purporting to make a 'recommendation' to the Secretary of State for the Home Department. Arguably, rather than making a recommendation he should have allowed the Article 8 appeal. I grant permission.

4. At the appeal hearing on 14 January 2014, the appellant did not attend nor was she legally represented. In the absence of any excuse/explanation from the appellant (whom I find was duly served with notice of the hearing by first-class post on 19 December 2013), I proceeded with the hearing in her absence.
5. With respect to Tribunal Judge Chalkley, I do not agree with the basis upon which he has granted permission. A recommendation by a First-tier Tribunal Judge lies wholly outside his or her role to determine appeals under the provisions either of the Nationality, Immigration and Asylum Act 2002 and his or her obligations under the Human Rights Act 1998. There is no obligation upon a judge to make a recommendation nor is there any obligation upon the Secretary of State to have any regard to such a recommendation. I simply do not see how the judge's decision to make a recommendation in this instance in any way undermines or may be inconsistent with his analysis and decision in respect of the appeal on Article 8 ECHR grounds. In essence, the judge found for, entirely proper reasons which the grounds fail to show are arguably wrong in law, that the Article 8 ECHR appeal should be dismissed but, having some sympathy for the appellant's position, decided to make a recommendation to the Secretary of State, no doubt being well aware that she was very unlikely indeed to act upon it. The determination of the Article 8 appeal and the making of the recommendation are two entirely separate judicial acts. I can identify no error of law either in the Article 8 ECHR analysis or the determination of the appeal under the Immigration Rules.

DECISION

6. This appeal is dismissed.

Signed

Date 11 February 2014

Upper Tribunal Judge Clive Lane