



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

Appeal Number: IA/25140/2013

THE IMMIGRATION ACTS

Heard at Field House

**On 24th June, 2014
Given extempore**

**Determination
Promulgated
On 21st July 2014**

Before

Upper Tribunal Judge Chalkley

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS AWJA PENAFLO

Respondent

Representation:

For the Appellant: Ms S L Ong, Senior Home Office Presenting Officer

For the Respondent: Ms N Bustani, Counsel

DETERMINATION AND REASONS

1. The appellant in this appeal is the Secretary of State for the Home Department, to whom I shall refer as “the claimant”. The respondent is a citizen of the Philippines born on 2nd June, 1985.
2. On 25th February, 2013 the respondent made application to the Secretary of State for leave to remain in the United Kingdom on the basis of her

relationship with Tracey Arthur Payne. She had entered the United Kingdom on 29th September, 2009, with leave to remain until 28th February, 2013, as a Tier 4 (General) Student. The claimant refused the respondent's application and the respondent appealed to the First-tier Tribunal.

3. Her appeal was heard by First-tier Tribunal Judge Walters at Taylor House on 3rd March, 2014. He found that the respondent succeeded under EX.1(a) and that the respondent met the requirements of E-LTRP.1.2. and 1.12. He found also that the respondent also met the requirements of E-LTRP.2.1. and he noted the submission made by Counsel that the respondent had a genuine and subsisting parental relationship with her son Tyler, who is under the age of 18, who is in the United Kingdom and who is a British citizen. The judge found those facts to be established and found that it would not be reasonable for her son to leave the United Kingdom, because the respondent's partner had never been to the Philippines, has adult children and all his relatives in the United Kingdom and is in full-time employment in the United Kingdom.
4. The judge found that it would not be reasonable to expect a child, who is a British citizen, to have to leave the United Kingdom and therefore forfeit the benefits of free education and the welfare state.
5. The claimant challenged the determination and First-tier Tribunal Judge Nicholson granted permission on the basis that the judge erred because the evidence before the judge was that the respondent and her British partner Mr Payne only started living together in May, 2013.
6. Counsel accepted that the judge had erred in law, by allowing the appeal under EX.1(b) because, the respondent did not qualify. However, she did qualify under EX.1(a) and the judge had allowed the respondent's appeal under EX.1(a).
7. Ms Ong accepted that whilst there had been an error on a point of law in the determination made by the judge, the error was not material since it appeared that the respondent was entitled to succeed in respect of EX.1(a).
8. I find that the First-tier Tribunal Judge did err in law, but that his error of law was not material. On the evidence before the First Tier Tribunal Judge the respondent was entitled to succeed in her appeal, given that she met the requirements of EX.1 (a). I uphold the decision of the First Tier Tribunal Judge, but for different reasons. The appeal is allowed. I uphold his decision to make a fee award.

A handwritten signature in black ink, appearing to read "Chalkley", with a long horizontal flourish extending to the right.

Upper Tribunal Judge Chalkley