



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

Appeal Number: IA/09621/2014

THE IMMIGRATION ACTS

Heard at Field House
On 3 March 2015
Prepared 3 March 2015

Decision & Reasons Promulgated
On 27 March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MS MARIA SHEENA DE JESUS LLAO
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms C Kenny, Senior Presenting Officer
For the Respondent: Mr S Jaisri, Counsel instructed by Raffles Haigh Solicitors

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 Philippines, date of birth 30 August 1986, appealed against the Secretary of State's decision to refuse to vary leave to remain and to make removal directions under Section 47 of the Immigration, Asylum and Nationality Act

2006. Her appeal came before First-tier Tribunal Judge Lagunju (the judge), who, on 22 August 2014 dismissed the appeal under the Immigration Rules and allowed an appeal under paragraph 276ADE of the Immigration Rules. The judge did not deal with the issue of the removal directions.

3. Permission to appeal that decision was given to the Secretary of State by First-tier Tribunal Judge Hollingworth on 9 October 2014.
4. On 17 December 2014 I determined that the judge's decision contained material errors of law such that the Original Tribunal decision could not stand and the decision on paragraph 276ADE of the Rules would have to be re-made. Directions were given.
5. At the hearing on 3 March 2015 Mr Jaisri presented the Claimant's evidence by reference to her original statement dated 31 December 2013 as supplemented by her additional statement, dated 7 April 2014. In addition reliance was placed upon the statement of Benita Catibog, dated 30 December 2013, and substantially replicated but not identically in a further statement of 7 April 2014. In addition reliance was placed upon the statement of Harriet Hayes in a "To Whom it May Concern" letter dated 7 April 2014.
6. The Claimant adopted her two statements. In cross-examination the Claimant confirmed that she had entered the United Kingdom in September 2008, had at all material times lived with her aunt, had good relations with two cousins with all of whom she communicated in English. She was still able to speak Tagalog. The Claimant confirmed that her husband who had acquired British nationality was originally from the Philippines. Their marriage had broken down and there was no contact between the Claimant and her husband.
7. The Claimant said her family's objection to her marriage was such that her two brothers and sister in the Philippines and her parents and other family did not want anything more to do with her. Since being in the United Kingdom she had worked as a healthcare worker, for a single employer, Heritage Care in Aylesbury, Buckinghamshire, a residential home for elderly people.
8. The Claimant described her contact in the UK with two friends who were of Philippine origin and that essentially she was fully assimilated into life in the United Kingdom. Her friends spoke English, she ate typically English food, she did not go to Filipino restaurants and she would go out with her friends to the public house celebrating events including such matters as Christmas. The Claimant attended a C of E Church. Her own aunt had tried to maintain contact with the family in the Philippines before the marriage but then and since they were unwilling to have any contact with either the Claimant or her aunt. Family birthdays were not recognised by cards or contact.
9. The Claimant shares her interest in sport activities with her friends in the UK. She confirmed no one was dependent upon her or her repatriating money to the Philippines. The Claimant said her qualifications and training in the United

Kingdom was applicable to UK work and that she would have to re-train in the Philippines if she was to find work there. The Claimant had no contact with her husband and she did not wish to have to return to university to re-train in the Philippines.

10. First-tier Tribunal Judge Lagunju found the Claimant to be a credible and reliable witness and the Claimant's aunt gave corroborative evidence. The judge accepted that, by choosing to marry her husband contrary to the wishes of her family, the Claimant's family had severed ties with her. He also accepted that she did not maintain any social contacts with the Philippines. The Claimant's case appears to have been accepted that she had no work to return to, she could not transfer her skills and qualifications acquired in the United Kingdom and that she had nowhere to go because her family did not want her back. Implicit in the decision was that the judge found the Claimant credible on her claim that the family had rejected her and that the breakdown of her marriage would not help her position: Her family would say that they have been proven right and that the Claimant was the responsibility of her husband, who she had chosen against their wishes and was no longer their responsibility.
11. The judge also accepted that the Claimant in coming to the United Kingdom on the basis of marriage had done so with no expectation of, or intention to, return to her own country but rather intended to settle permanently in the United Kingdom. The judge also accepted that since arriving here she had built a life and created ties to the UK. Likewise her intention to permanently settle in the United Kingdom was consistent with the absence of maintaining any connections with school friends or university friends in the Philippines.
12. The Claimant expressed anxieties about returning to the Philippines where she had never lived on her own but had always been within her family.
13. The Claimant confirmed that although she had spent some 22 years in the Philippines the last six years in the United Kingdom had been the significant period in her life where she had left her family and its control over her life, got married, became self-sufficient, earned her own living, became used to the United Kingdom and the way of life she had here.
14. The Claimant believed she had lived a sheltered life within her family in her parents' home as a child and a student. She had not experienced life as an adult in the Philippines. Returning to the Philippines filled her with trepidation and anxiety about her safety.
15. It is apparent from the way the evidence was given and the Claimant's responses to questions was that she was someone who had worked, who spoke good English, who had come to live in the UK pursuant to the deceit of her husband-to-be and she had suffered domestic violence at the hands of her husband. Thus the Claimant said she had no social and family ties with the Philippines, she had a linguistic

connection, speaking Tagalog, there was no family to protect her or assist her on return and therefore ties as remained were remote and of no material value.

16. In Ogundimu [2013] UKUT 60, at paragraph 123-125, the Upper Tribunal said:

“123. The natural and ordinary meaning of the word ‘ties’ imports, we think, a concept involving something more than merely remote and abstract links to the country of proposed deportation or removal. It involves there being a continued connection to life in that country; something that ties a claimant to his or her country of origin. If this were not the case then it would appear that a person’s nationality of the country of proposed deportation could of itself lead to a failure to meet the requirements of the rule. This would render the application of the rule, given the context within which it operates, entirely meaningless.

124. We recognise that the text under the rules is an exacting one. Consideration of whether a person has ‘no ties’ to such country must involve a rounded assessment of all the relevant circumstances and is not to be limited to ‘social, cultural and family’ circumstances. Nevertheless ...”.

17. The Tribunal continued at paragraph 125:

“125. Whilst each case turns on its own facts, circumstances relevant to the assessment of whether a person has ties to the country to which they would have to go if they were required to leave the United Kingdom must include, but are not limited to: the length of time a person has spent in the country to which he would have to go if he were required to leave the United Kingdom, the age that the person left that country, the exposure that person has had to the cultural norms of that country, whether that person speaks the language of the country, the extent of the family and friends that person has in the country to which he is being deported or removed and the quality of the relationships that person has with those friends and family members. “

18. In YM (Uganda) [2014] EWCA Civ 1292 the statement set out above was accepted by Aikens LJ and he commented at paragraph 51 of the decision: “However, the exercise that had to be conducted was a ‘rounded assessment of all the relevant circumstances’, which were not to be confined to ‘social, cultural and family’ issues.” The court went on to confirm that the First-tier Tribunal was required to consider a rounded assessment whether the Claimant’s familial ties could result in support to him in the event of his return to the DRC. The court concluded that “the Strasbourg jurisprudence understands assessment of this matter to require the decision-maker to take into account both subjective and objective considerations and also to consider what lies within the choice of a Claimant to achieve. At paragraph 16 Lord Justice Aikens went on to say that the assessment of those ties has an objective as well as a subjective dimension but that the assessment must consider, as a relevant consideration, whether ties that are dormant can be revived.

19. In the case of Bossadi (paragraph 276ADE; suitability) [2015] UKUT 42 the Tribunal followed the same approach. In that case a tie between an applicant and his mother was “not a strong familial tie” but nevertheless one that could be pursued and

strengthened by the applicant if he chose a rather different factual situation to this Claimant.

20. In this case on the evidence before me I find there is no realistic prospect of a revival of the relationship between the Claimant and her family. The Claimant would, if removed, be returning to the Philippines on her own.
21. I take into account that the Claimant lived for the first 22 years of her life in the Philippines, speaks Tagalog, and had a life there. It is apparent that subjectively she does not wish to return and regards herself as having made a new life in the United Kingdom and has nothing to return to in the Philippines.
22. I find that the Claimant for good and understandable reasons broke off past ties and friendships in the Philippines simply because she came to make a new life in the UK and she had no idea that she would ever be considering a return there. I find no evidence to support the conclusion that the Claimant's assessment of her lost relationship with her family members was objectively well-founded. I have no evidence that the manner in which her aunt and herself conduct their lives is connected to life in the Philippines, for example by having access to Philippines television, radio or films. I have no evidence to suggest her diet, eating habits, music choices or indeed anything relating to any current contact in the Philippines or being influenced by life there. There was no challenge in cross-examination to the Claimant's claim that she had no family, no friends, no job, no home to return to in the Philippines.
23. It also seemed to me a material consideration in terms of the Claimant's trying to re-establish herself in the Philippines, that she is married, that marriage has failed, and that she has no protector: As such I find the likelihood is that she is more vulnerable as a woman on her own.
24. It seemed to me that if being able to speak Tagalog was determinative anyone who can speak some if not all of their national language will simply be outside of the Immigration Rules, paragraph 276ADE. I found credible that the Claimant has previously made the conscious decision to become part of the United Kingdom in terms of settling into a community, her church, with friends and acquaintances and work colleagues. I did not find the Claimant exaggerated her evidence. I found her a credible and reliable witness of fact. I accept her sincerity in wishing to have a British lifestyle.
25. Accordingly, I find the Claimant has shown that she meets the requirements of paragraph 276ADE(vi) of the Immigration Rules. In reaching that decision I have been fully aware of the relatively long period as a child and a young woman that the Claimant was in the Philippines. I too accept she does not have family to return to, there is no likelihood of reconciliation with them and she has lost contact over several years with her school, university friends. She has not been living according to Philippine cultural norms.

26. I have I believe reached a rounded assessment of the Claimant's connections to the Philippines. I remind myself that the relevant requirement is that the Claimant be over 18 years and above, have lived continuously in the United Kingdom for less than twenty years but has no ties (including social, cultural or family) with the country to which she would have to go if required to leave the United Kingdom. The Secretary of State's view is that there must be a loss of all significant ties and in the event that they have not been lost the Secretary of State adds a further gloss of an ability to re-assimilate to life in the Philippines.
27. It seemed to me that the length of time a person has spent in the Philippines and retained its language are points of contact but they are not necessarily ties in terms of the ability of a person to return. Rather in this case the accepted disowning of the Claimant by her family, the breakdown of her marriage, the lack of anyone to have recourse to for protection let alone the lack of work or accommodation seems to me to be relevant to the impact on return to the Phillipines. Accordingly, I find that this is one of possibly those few cases, where an adult being over the age of 18 but still clearly, until she decided to marry against their wishes, was very much under the influence of family and parents. She had not been exercising the kind of free will and decision-making both in terms of where she lived, who she associated with and the parental expectations upon her.
28. In terms of cultural norms the Claimant plainly seeks to live her life in the United Kingdom as if she was British born. It does not seem to me that anyone who has lived in their home country until the age of 20 ever entirely leaves behind an understanding of cultural matters arising from their country of origin. Plainly what is relevant to their life and how they live their life will change over time, particularly if living away from their country of nationality. I do not find the Claimant has remained living in accordance with cultural norms in the Philippines nor does the Secretary of State identify how she is or may do so.
29. I find no evidence to support the general proposition that the Claimant can re-kindle past friendships if there had been those of such strength those would have been maintained: There is no evidence of her doing so or knowing the whereabouts of them. There is no evidence of contact with her family by email or telephone or at all.
30. I have also considered because the issue was raised the basis of a claim founded upon Article 8 ECHR grounds. It is clear and not argued before me that the Claimant has a private life in the United Kingdom and the effects of removal would be significant. It also appears to be accepted by both sides that the Secretary of State's decision is lawful in making removal directions and serves purposes arising under Article 8(2) of the ECHR.
31. It is a matter of judgment as to the proportionality of the Secretary of State's decision. In considering that matter I fully take into account and apply Sections 117A and 117B of the Immigration Act 2014, amending the NIAA 2002. I find that the Claimant has always been at any material time either a student or later employed, she has been lawfully in the United Kingdom. Her immigration status has never been precarious

at any material time. The Claimant has skills in healthcare, care home assistant skills which are needed in the United Kingdom, she has participated within her community and settled into the United Kingdom. No element of public interest has been identified which shows any harm to it. The Claimant's continuing presence in the United Kingdom is a benefit to the UK. The Claimant has also through employment and paying her taxes contributed to her presence here, she is entirely self-sufficient and represents no likelihood of being a burden upon the UK taxpayer. In these circumstances I give considerable weight to the public interest but I do not find on the facts that the circumstances militate against the Claimant remaining. The Secretary of State's decisions are disproportionate.

32. The requirement for removal under Section 47 IANA 2006 is also not made out. I allow the appeal against both of the Respondent's decisions, dated 4 February 2014.

NOTICE OF DECISION

33. The appeal on immigration grounds is allowed.
34. The appeal on Article 8 ECHR grounds is allowed.
35. The appeal against removal directions is allowed.

ANONYMITY ORDER

No anonymity order is necessary or appropriate.

Signed

Date 23 March 2015

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

The appeal has succeeded on the basis of much information that was not before the Secretary of State in the form that it now is. In the circumstances I find that this is not a case where it would be appropriate to make a fee award.

Signed

Date 23 March 2015

Deputy Upper Tribunal Judge Davey