



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

Appeal Number: IA/32431/2014

THE IMMIGRATION ACTS

Heard at Field House

On 8th April 2015

**Decision & Reasons
Promulgated
On 30th April 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MRS LAURA PERADILLA GATULAYAO
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. S. Saifolahi of Counsel

For the Respondent: Mr. S. Whitwell, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of the Philippines born on 15th January 1957. She appealed against a decision of the Respondent dated 31st July 2014 to refuse to vary her leave to remain in the United Kingdom and to remove

her under Section 47 of the Immigration, Asylum and Nationality Act 2006. The Appellant argued that refusal of the application breached this country's obligations under Article 8 of the European Convention on Human Rights (Right to Respect for Private and Family Life) as she had established a family and private life in this country.

2. The Appellant entered the United Kingdom on 17th January 2009 as a visitor with leave until 27th May 2009. On 16th April 2009 she made an application outside the Rules for leave to remain to care for her sister-in-law and niece who were suffering with a neurodegenerative condition. Her application was granted and she was given leave until 18th August 2009. She made a further application in time on 12th August 2009 and was granted twelve months as a carer valid until 28th September 2010. On that day she made an application for indefinite leave to remain as a dependent relative of her brother (the husband of her sister-in-law) which was refused as she did not meet the requirements of paragraph 317 of the Immigration Rules.
3. An appeal against that decision of the Respondent was dismissed on 11th March 2011 under the Immigration Rules but allowed under Article 8 as being not in accordance with the law. The Respondent thereafter granted the Appellant discretionary leave to remain for three years until 30th May 2014 when the Appellant applied again for leave to remain on the grounds that she was needed as a carer for her brother. Her brother's wife and daughter had in the meantime sadly died from their neurodegenerative condition, his wife in July 2013 and his daughter on 16 January 2014.
4. The Respondent refused the application since following the deaths of the sister-in-law and niece the basis of the Appellant's three year discretionary leave no longer subsisted. She could not qualify under paragraph 276ADE of the Immigration Rules as she had not lived in the United Kingdom for twenty years and she still had family ties to the Philippines. The Respondent considered that there was no evidence to suggest that the Appellant was prevented from returning to the Philippines or that her brother who was also a Philippine national with indefinite leave to remain in this country could not return to the Philippines with her. Her brother had symptoms of depression and anxiety but could receive the necessary treatment whether or not the Appellant was in the United Kingdom, and there was no evidence to suggest he specifically required her presence in order to receive treatment and help for his conditions. Alternatively he could return to the Philippines if he wished to remain with her.

The Proceedings at First Instance

5. The Appellant's appeal came before a panel of two Judges sitting at Birmingham on 13th November 2014. The panel considered the determination of March 2011 (which had allowed the Appellant's appeal on Article 8 grounds) but found no evidence to suggest that the Appellant's brother was unable to care for himself. There might be some depression but there was nothing to suggest he could not look after himself and his

home. The panel had a number of short medical reports before them which they considered, together with the Appellant's evidence in her witness statement that her brother was unable to cope properly, had had a long time off work and relied on the Appellant for emotional and practical support and therefore they shared a family life. The panel were not satisfied that the Appellant's brother had had a long time off work because he said that he went back to work in the first week in February which would only have been some two to three weeks after his daughter died. They were not satisfied that the brother was currently suffering from any serious depression because it did not appear that the brother had been taking any anti-depressants for a significant period of time. He himself had said he was feeling better now and was willing to undertake counselling. It was to his late wife's aunt that he turned when he had any medical appointments or counselling rather than the Appellant.

6. The Appellant had not shown that she was a carer for her brother during the illnesses of his wife and child and the panel were not satisfied that she had shown she is a carer now. She did not enjoy Article 8 family life with her brother. She provided him with domestic support and friendship, but that no longer continued following the interval of time since the death of the brother's wife and daughter. The circumstances at the time of the 2011 appeal were considerably different to now. The Appellant could not meet the Immigration Rules, and whilst they were extremely compelling and compassionate reasons to allow the appeal in 2011 in the light of the severe ill-health of two close family members, that was no longer the position. There were no longer any compelling circumstances not sufficiently recognised under the Immigration Rules.
7. In 2011 First Tier Tribunal Judge Davis had indicated that there would be an active review at the end of a three year period of discretionary leave when the Appellant would need to satisfy the Respondent by provision of appropriate evidence that further discretionary leave was warranted. The discretionary leave that the Appellant was given in 2011 was on the basis that close relatives needed her care. That was no longer the position and the Appellant was therefore aware following the determination of Judge Davis in 2011 that her immigration status was precarious and she would need to prove at the end of the period of discretionary leave she was still entitled to it. Given that her private life had been precarious since arrival it was not such as might be expected to lead to a grant of indefinite leave to remain. The Appellant still had close family members in the Philippines to whom she could return. The appeal was dismissed under both the Rules and Article 8.

The Onward Appeal

8. The Appellant appealed against that decision in onward grounds of appeal that first set out a chronology before arguing that permission to appeal was sought on the basis that the panel had placed too much emphasis on the fact that the Appellant's sister-in-law and niece were now deceased and had not taken sufficient account of the situation regarding the

Appellant's brother and his need to have the Appellant with him. Discretionary leave was not to be extended where there has either been serious misconduct (not relevant in this case) or the basis of the grant of discretionary leave has ceased to be (which the Respondent argued was the case here). The Appellant had led an exemplary life in the United Kingdom and although the primary reason for the grant of discretionary leave was the need to care for the Appellant's sister-in-law and niece, it was also to benefit the Appellant's brother as he was in need of support. By caring for her brother and his family the Appellant saved the United Kingdom considerable sums of money which otherwise would have been spent on social services care.

9. The Judge had not dealt with the evidence given by Mrs Joy Morag, the aunt of both the Appellant and of her brother, save in one respect to acknowledge that the aunt accompanied the brother to medical appointments. The aunt's other evidence was to the effect that the Appellant had been an invaluable help to her brother since she came to the United Kingdom and he would not have been able to cope without her. He still relied on the Appellant to provide him with the support he needed. He became very distressed after the death of his wife and had to take time off work. The Appellant took care of his home and the effect upon the brother would be disastrous if the Appellant had to leave the United Kingdom.
10. The willingness of the brother to see a counsellor did not mean that he was not in need of the Appellant's emotional and physical support. Mrs Morag lived too far away to provide the Appellant's brother with the full emotional and physical support that he needed and which the Appellant provided. The panel had placed too much reliance on their interpretation of the word "carer" without looking at the actual needs of the brother for the Appellant to provide emotional support as well as physical tasks. The panel had misapplied the case of **Gulshan** which did not impose a threshold test for Article 8 outside of the Rules. The fact that the Appellant had family members outside the United Kingdom did not prevent her from forming a family life within the United Kingdom. Living for five years with her brother and his family constituted family life.
11. The application for permission to appeal came on the papers before First-tier Tribunal Judge Hodgkinson on 27th January 2015. In granting permission to appeal he wrote:

"Much of the content of the grounds appears to amount to no more than a disagreement with the findings of the panel and makes assertions out with the context of the decision as a whole. However there is arguable merit in the contention that the panel failed adequately or at all to take into account the evidence of Mrs Joy Morag whose evidence is arguably relevant to findings of fact arrived at within the decision. It is noted that, although not referred to in the grounds, the panel did not consider the viability or otherwise of the Appellant's brother relocating to live in the Philippines although this

was raised by the Respondent in the refusal letter. For the reason indicated it is considered that there is an arguable error of law in the panel's determination. Although the remaining grounds are of less immediately identifiable arguable merit, the decision in **Ferrer (limited appeal grounds; Alvi) [2012] UKUT 00304 (IAC)** is followed and permission granted on all grounds pleaded."

12. The Respondent replied to this grant of permission on 3rd February 2015 opposing the Appellant's appeal. The Respondent wrote:

"The panel in a comprehensive determination considered all the facts and arrived at conclusions open to them by giving adequate reasons. Ms Morag's [evidence] could not have materially added to the evidence given and considered as facts were clear. Paragraph 25 of the determination makes it clear that the panel were not satisfied that there were any longer any compelling reasons not sufficiently recognised under the Rules".

The Hearing Before Me

13. In consequence the matter came before me to decide in the first instance whether there was a material error of law, such that the determination fell to be aside. If there was not then the determination would stand. Counsel for the Appellant argued that the panel had limited the scope of their assessment of Article 8 on the grounds that the Appellant's brother did not need a carer and the circumstances for the original grant of discretionary leave were no longer in place. The panel had found there was no requirement for significant support and care for the Appellant's brother because there was a marked improvement in his condition. In doing so the panel had overlooked the evidence of Mrs Morag that the brother was reliant upon the Appellant and in turn he supported her. The panel had ignored key evidence when finding there were no compelling or compassionate circumstances. Their findings on the level of assistance required was not supported by the medical evidence or the evidence of the witnesses. Although the panel assumed that things had improved with the passage of time the Appellant still gave invaluable assistance to her brother who was suffering from depression.
14. In response the Presenting Officer argued that the panel had considered the matter outside the Rules and there was nothing to disturb the panel's findings. It was accepted that the Appellant's brother suffered from depression, but as paragraph 9 made clear, the Appellant's brother was now working, he was not on anti-depressants and he was seeing counsellor. The previous appeal was allowed to enable the Appellant to help her brother care for the brother's wife and daughter, but those circumstances no longer existed. There were adequate reasons to say that there was no family life between the Appellant and her brother. The panel had not made any irrational findings. The grounds of onward appeal were no more than a disagreement with the result.

15. In conclusion Counsel argued that the panel was wrong at paragraph 19 of their determination to say they were not satisfied that the Appellant had shown she enjoyed Article 8 family life with her brother. That was contrary to the evidence given by the Appellant's aunt. Consideration of that evidence would have made a material difference to the outcome. Without consideration of that evidence it was at present unclear on what basis they had come to their conclusion at paragraph 19. There was evidence that the Appellant's brother had anxiety attacks.

Findings

16. The Appellant was granted three years discretionary leave in order to help her brother look after her brother's wife and daughter. Sadly they died which meant that at the end of the three year period of discretionary leave the original reason for the grant of discretionary leave no longer applied. In allowing the Appellant's appeal in 2011 which led to the grant of the three year discretionary leave Judge Davis had made it clear that there would be an active review at the end of the three year period when the Appellant would need to satisfy the Respondent that further discretionary leave was still warranted.
17. What the Appellant was arguing at first instance was that the Appellant's presence was still needed but this time to care for her brother. The argument was necessarily premised on the assumption that the Appellant's care for her brother was at the same level of intense support as she had shown towards her sister-in-law and niece. The panel having carefully considered the evidence before them found that that was not the case. The situation had moved on. The brother's emotional upset had improved, he was back at work, he was not on anti-depressants. The panel found as a fact that whilst the Appellant provided her brother with significant support immediately following the death of his wife and daughter that significant support no longer continued following the effluxion of time and the brother's clear improvement in mood. Importantly the panel found that the support the Appellant provided was not over and above the support that any sibling might expect following such tragic events from a close family member.
18. The Appellant's argument in this case and the basis on which permission to appeal was granted was that the panel appeared to have overlooked the evidence of the Appellant's aunt, Mrs Joy Morag, which was to the effect that the Appellant's brother still relied heavily on the support provided by the Appellant. However, the passages from Mrs Morag's evidence cited in the grounds do not upon careful analysis undermine the general findings of the panel. Mrs Morag said that the Appellant had been an invaluable help to her brother ever since the Appellant came to the United Kingdom. At paragraph 19 the panel agreed that the Appellant had provided her brother with significant support in the past but the Appellant's brother was no longer in need of a carer. In the final analysis

the impact of the Appellant's removal to the Philippines on her brother was a matter for the panel to assess. The brother was able to work and the point made by the panel at paragraph 9 was that there was no evidence to suggest that he was unable to care for himself. The extracts from Mrs Morag's evidence cited in the grounds of appeal did not contradict that and it cannot be said that the panel overlooked material evidence which would otherwise have made a material difference to their conclusions.

19. It is not of course necessary for a Tribunal to set out each and every piece of evidence that they have received. In this case the panel did set out the relevant evidence in some detail and thoroughly analysed it and gave cogent reasons for their conclusions. The panel were aware of the aunt's evidence which they summarised at paragraph 15 of their determination saying:

“We noted that although the Appellant referred to herself as [her brother's] carer and as being the person who supported him it is to his late wife's aunt whom he turns when he has any medical appointments or counselling and she gave evidence that she always accompanies him to any such appointments and keeps an eye on him and reminds him when to go and so on”.

20. There is a misprint in the following paragraph 16 where the panel state that they were not satisfied that the Appellant was in need of a carer, that should of course read the Appellant's brother. The panel continued that it may well be that the Appellant provides moral support and companionship and acts as his housekeeper, but those are not matters covered by the carer policy and there was insufficient medical evidence to justify the claimed assistance. The evidence they had was of some care available in the form of moral support with medical appointments attended by the aunt.
21. In those circumstances it was clear that the panel had in mind the relevant evidence in this case. They directed themselves correctly on the test to be applied. The case of **MM** cited in the grounds of onward appeal states that in carrying out the proportionality assessment under Article 8 outside the Immigration Rules the Tribunal must pay due attention to both the United Kingdom and Strasbourg jurisprudence. This the panel did. The grounds are a mere disagreement with the result.
22. The grant of permission to appeal noted that the panel had not considered the viability or otherwise of the Appellant's brother relocating to live in the Philippines in the event that the Appellant returns there. However given the fact that the panel found that the Appellant could return to the Philippines and that the effect on the brother was not such as to amount to a disproportionate interference with his life, the case did not get that far and there was therefore no error in the panel's failure to consider the point.

Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision of the First-tier Tribunal to dismiss the Appellant's appeal.

Appeal dismissed.

I make no anonymity order as there is no public policy reason for so doing.

Signed this 28th day of April 2015

.....
Deputy Upper Tribunal Judge Woodcraft

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed this 28th day of April 2015

.....
Deputy Upper Tribunal Judge Woodcraft