



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/05931/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 6 June 2019

Decisions & Reasons Promulgated  
On 7 October 2019

Before

MR C. M. G. OCKELTON, VICE PRESIDENT  
UPPER TRIBUNAL JUDGE O'CONNOR

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JENNIFER AGALED TULINGAN

Respondent

**Representation:**

For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer

For the Respondent: Mr G Franco, instructed by Schneider Goldstein Immigration Law

**DECISION AND REASONS**

1. The appellant is the Secretary of State. The respondent, whom we shall call "the claimant" is a national of the Philippines. The Secretary of State appeals to this Tribunal, with permission, against the decision of a First-tier Tribunal Judge, Judge Davidson, allowing the claimant's appeal against the decision of the respondent on 30 April 2008 refusing her asylum and article 8 claims.
2. The claimant came to the United Kingdom as a student on 30 November 2009. She had further leave to remain until 30 November 2014, but it was curtailed on 29

December 2012. She applied for leave to remain in February 2013, but this was refused. She then remained without leave, claiming asylum on 23 March 2017. Her claim was that she had a well-founded fear of persecution in the Philippines on the basis of being a lesbian. She also claimed that removing her to the Philippines would be a breach of her article 8 right to a private life.

3. The judge concluded, on the basis of the claimant's evidence, that she is indeed lesbian. He decided also that she had failed to show that she was at risk of persecution as a result of her sexual orientation in the Philippines. He wrote as follows:

"43. ... Homosexuality is not illegal and, although there may be instances of violence, this is not sufficient to constitute persecution.

44. In addition, such violence is prohibited in the Philippines and she would therefore have sufficiency of protection from local law enforcement agencies who, according to the objective evidence before me, are more aware of the issues and more inclined to assist than had been the case previously.

45. I find that the Appellant has failed to provide any evidence that she would be persecuted by her ex-husband or members of his family. She is not in touch with him and does not know where he is. All her information about him is unreliable and based on rumours and I find that there is no credible threat to her. In any event, she has sufficiency of protection as her ex-husband is not a state actor.

46. I find that she would face discrimination, both at a societal level generally and in finding employment if she were to live openly as a gay woman in the Philippines. She would face having to conceal her orientation, but this would be due to societal pressures or to avoid discrimination, not to avoid persecution."

4. So far as concerns the article 8 claim, the judge had summarised the relevant part of paragraph 276ADE (1)(vi) of the Immigration Rules. Judge Davidson said that that paragraph:

"Sets out the requirements to be met by an applicant for leave to remain on the grounds of private life and applies to applicants who, at the date of the application, are aged 18 years or above, have lived continuously in the UK for less than 20 years where there would be very significant obstacles to the applicant's integration into the country to which she would have to go if required to leave the UK."

5. The judge's assessment of the article 8 claim, in full, is as follows:

"48. I go on to consider her article 8 claim under Rule 276ADE of the Immigration Rules. I find that there would be significant obstacles to her living her life as a gay woman in that she would face societal disapproval and discrimination. To this extent I find that she would face significant obstacles to integration in the Philippines as she would not be able to live as a gay woman.

49. In the light of my finding that the Immigration Rules are met, I go on to find it would be a disproportionate interference with the Appellant's right to a private life under Article 8 to remove her from the United Kingdom. The Secretary of State has set out in the Immigration Rules his interpretation of the UK's human rights obligations and UK immigration policy permits those

who comply with the rules to be given leave to remain. As I have found that the Appellant complies with those requirements, I find that the refusal to give her leave to remain is a disproportionate interruption [sic] with the Appellant's right to a private life, having taken into account the need for effective immigration controls."

Thus the judge dismissed the appeal on asylum grounds but allowed it on article 8 grounds.

6. The Secretary of State's grounds of appeal, on the basis on which permission was granted, take issue with those two paragraphs. The grounds raise three points. First, they argue that the judge's conclusion that the claimant would face significant obstacles in the Philippines is wholly unreasoned and appears to contradict his finding in relation to the asylum claim a few paragraphs above. Secondly, although earlier he stated the correct test, including the need to show "very significant obstacles" to integration, in paragraph 48 he applies a lesser test, looking only for "significant obstacles". Thirdly, the Secretary of State argues that as the article 8 conclusion is based solely on the conclusion that the claimant met the requirements of the Immigration Rules, it is flawed for the same reason.
7. Before us, Mr Clarke expanded on the grounds. He drew attention to the fact that the judge had not cited any of the authorities on the meaning of the phrase "very significant obstacles". In SSHD v Kamara [2016] EWCA Civ 813, Sales LJ said this in the context of the deportation of a foreign criminal, where the same phrase appears in the Rules:

"14. In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a Court or Tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it so as to have a reasonable opportunity to be accepted there, to be able to operate on a day to day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

8. In Khalida Parveen v SSHD [2018] EWCA Civ 932, a case concerned with paragraph 276ADE, Underhill LJ after citing that passage from Kamara, and indicating that it had not found the dicta of this Tribunal in Treabhawon v SSHD [2017] UKUT 13 (IAC) very useful, said that:

"The task of the Secretary of State, or the Tribunal, in any given case is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as "very significant".

9. Mr Clarke reminded us that when dealing with this test, the learned Lords Justice refer always to the phrase found in the rule “very significant”. So far as concerns the judge’s reasoning, it is clear from the phrase “in that she would face” in paragraph [48], that the “societal disapproval and discrimination” were the “significant obstacles” which the judge found allowed her to meet the requirements of paragraph 276ADE. The judge had made no finding on whether the claimant would or would not live openly as a lesbian, and there has been no consideration of the level of the discrimination that she would find in either case. In Mr Clarke’s submission, the judge’s reasons were simply inadequate to support the conclusions. Mr Franco accepted that the judge had made no finding on what the claimant would do in terms of her openness: he told us that there was indeed no evidence on that point, because the claimant did not indicate what she would do in the circumstances. He argued that the word “very” in the phrase in question adds nothing of substance to the test; and he queried whether it was right to apply the words of Kamara to a case that did not involve deportation of a criminal.
10. We regard Mr Franco’s submissions on the interpretation of paragraph 276ADE as wholly unsustainable in the light of the authorities. The task of a decision-maker is to apply the tests found in the rules, not some other test. That is amply demonstrated by the way in which the Court of Appeal approach the issue in both Kamara and Parveen, as Mr Clarke pointed out. If higher authority were needed, it can no doubt be found in paragraph 23 of KO (Nigeria) v SSHD [2018] UKSC 53, where Carnwath LJ, with whom all other members of the Court agreed, gives an exegesis of the phrase “unduly harsh” in s 117C(5) and paragraph 399 of the Immigration Rules: it is clear that the Supreme Court also regards the actual wording of the rules as incorporating the test to be applied.
11. Mr Franco’s submission based on the fact that Kamara was a case about deportation ignores the decision in Parveen.
12. In our judgment, Judge Davidson’s decision has the defects attributed to it by the Secretary of State’s grounds. Although the appropriate test is correctly set out earlier in the decision, in paragraph [48] a less stringent test is set out, twice, and the claimant’s circumstances are said to meet that less stringent test. As there is no other reason given for the finding either that the claimant met the requirements of the Rules, or that her appeal should consequently be allowed on article 8 grounds, that would be sufficient in itself to show that the judge’s decision contained an error of law.
13. We consider also, however, that the grounds are made out in their assertion that the judge’s conclusion is not sufficiently reasoned. The judge had before him a considerable bundle of documents: the part of the bundle marked “Country Evidence” runs to about 180 pages. Particular parts of the evidence were specifically relied upon by the claimant, as the written skeleton argument shows. The judge’s decision does not refer to any of that material save at the very highest level. He says that there was before him “objective country evidence”, and he records submissions such as that made on behalf of the appellant that “there is significant discrimination against homosexuals”. It is not easy to detect whether the judge looked at the country evidence at all. What is clear is that there was considerable dispute before him about the impact of the country evidence. He records submissions by the respondent, in

particular in paragraphs [12] – [14], [18] and [20] and on behalf of the claimant in [25], and [29] – [30]. This was a case in which it is clear that in order to give to the parties an indication of why the decision was made in the way it was, it was necessary to identify, and express clear judicial views on, the evidence going to this contested issue. The failure to do so amounts to a further error of law.

14. The determination cannot stand and we set it aside.
15. We turn to remake the decision. There is no rule 24 notice, and no cross-appeal. There has been no application to adduce further evidence. The only question therefore remains whether the claimant, having failed in her asylum claim, is entitled to succeed under article 8, on the basis of the evidence before the Tribunal. The claimant’s own oral evidence was accepted by the judge, no issue arises about it. The issue is the extent to which the evidence adduced demonstrates that the claimant would face “very significant obstacles to her integration” in the Philippines, and, if not, whether there is any other reason why her removal there would be disproportionate.
16. Mr Franco relied on the country evidence, although he indicated that he preferred us to read it for ourselves in order to discover whether there was anything that might support his case. Mr Clarke drew specific attention to what he regarded as defects in it. In these circumstances we have done our best to assess the overall impact of the evidence.
17. We assume that it is represented at its strongest in the skeleton argument prepared for the hearing before the First-tier Tribunal. That relies on a number of documents, as follows. First, it is said that the claimant’s contention that there is societal discrimination against LGBT groups is supported by Human Rights Watches “World Report 2018”. Two passages are then set out. The first indicates that in late 2016 Human Rights Watch documented a range of abuses against LGBT students in secondary school. Second is that:
 

“In September [2018] the House of Representatives passed House Bill 4982, a proposed law against discrimination based on sexual orientation and gender identity and expression.”
18. Next, the skeleton argument refers to the Freedom House Report on the Philippines for 2018. The sole relevant paragraph in that report appears to have been as follows:
 

“LGBT (Lesbian, Gay, Bisexual and Transgender) face bias in employment education and other services, as well as societal discrimination. In a landmark unanimous vote in September, the House of Representatives passed the Sexual Orientation and Gender Identity and Expression equality (SOGIE) Bill, which if passed by senate would formally protect the rights of the LGBT community against gender based discrimination.”
19. The skeleton argument then refers to an International Gay and Lesbian Human Rights Commission Report and says that the examples it gives are supported by that of a report by the Rainbow Rights Project. We have looked at those reports. The Rainbow Rights Project Report is based on interviews undertaken in 2011 to 2012. The other report does no more than rely on the same results.

20. Finally, the skeleton argument relies on a report from a body called OutRight Action International. We have read that report, which is not so far as we can see dated, although it refers to events as late as 2016, but, on the other hand, some of the references show websites accessed in 2012. The main task of the report is to report and assess equality training delivered to police officers in the Philippines in 2013 to 2014. There are “quote boxes” scattered through the text, indicating positive and tolerant views following training, for example:

“My religion may not approve of your lifestyle and I have let this affect how I treat your group but now as a Police Officer I will work and protect your rights as citizens in our community.”

21. The report is a difficult document to read. On page 19 it records two examples (in 2015 and 2016) of strong disciplinary action being taken against officers who discriminated against or took advantage of LGBT citizens. On the next page it appears to treat circumstances in 2013 as though they were still, at the writing of the report, entirely current. In contrast to that again, as we have indicated, the report appears to indicate that the 34 training sessions, including 2,035 Police Officers, were successful. We find it impossible to read the report as supporting the contention in the skeleton argument that, at the present time, a lesbian in the Philippines will suffer such abuse from the police as to amount to very serious obstacles to her integration. So far as concerns the other reports, it seems to us that the evidence is both on the one hand scattered and anecdotal, and on the other hand rather old. In particular, it predates both the legislation to which reference has already been made, and the election of a publicly transgender politician to the Lower House, Geraldine Roman, who said, at her election in 2016, that she will be a champion for LGBT rights.
22. Even apart from that, the documentation to which we have been referred does not appear to show that any difficulties being suffered by LGBT people even at the time of the relevant research was uniform throughout the Philippines. In particular, the IGLHRC Report of 2015 says that the family is the most common source of violence for LGBT people, and a very high proportion of the examples are of discrimination and violence within the family. The Rainbow Rights Report, whilst setting out such difficulties as it has been able to document, also says as of 2013 (or thereabouts) that:
- “While negligence characterizes national-level response to SOGIE-related issues, some state agencies and local-level governments have implemented policies aimed at formalizing protections for LGBT people.... Local anti-discrimination ordinances are now in place in Quezon City, Cebu City and Davao City, and will soon be enacted in Bacolod City. In addition, the Civil Service Commission issued a memo on the inclusion of SOGIE in government eligibility examination requirements.”
23. As we have said, there is no evidence on whether the claimant would choose to be openly lesbian in the Philippines or not. It seems to us that even if she was entirely open about her sexuality, there is no real reason to suppose on the evidence that there would be very significant obstacles to her integration into her own country. There is no ground at all for supposing that she would be other than “enough of an insider in terms of understanding how life in society [in the Philippines] is carried on and a

capacity to participate in it". Although there is some outdated anecdotal evidence of discrimination in some parts of the Philippines, it appears that in any rate in a number of major cities there is legislation protecting diversity, and that national legislation follows the same trend. But even if she were able to base herself on the situation in the Philippines as it was in 2013, the effective date of much of the evidence she has produced, it does not appear to us that it would be sufficient to negative the proposition that she would have "a reasonable opportunity to be accepted there to be able to operate on a day-to-day basis in that society and to build up within a reasonable time of variety of human relationships to give substance to [her] private or family life". This means that interpreting the evidence in the way most beneficial to the claimant, by assuming that she would be open and assuming (contrary to the facts) that the situation has not changed in the last five years or so, the claimant would not be able to meet the requirements of paragraph 276ADE.

24. The only remaining issue is whether it would be disproportionate to remove the claimant if she cannot meet the requirements of the rules. The only specific factor urged on her behalf in this context is an undated letter from a person who describes herself as a counsellor, with no known qualifications. That letter says that on the basis that she has a fear of persecution in the Philippines, and, in particular, a fear of abuse in her own village, that "forcing [the claimant] to return to the Philippines will hinder her recovery [from depression] and therefore possibly increase the risk given her suicidal ideations". The letter concludes as follows:

"Ms Tulingan tells me she will have a better chance of recovery and be safer in an environment where she can live without fear of retribution by her husband or persecution from other villages".

25. It is impossible to tell how much of the opinion in a letter merely repeats the claimant's own statement of her case, which was for the most part rejected by the judge; it is also impossible to tell whether any opinions of the writer of the letter are entitled to respect as derived from expertise. In our judgment the contents of that letter are wholly insufficient to show that the claimant has a right to be in the United Kingdom despite not meeting the requirements of the immigration rules. If she needs treatment for depression, she can no doubt get it in the Philippines; the fears that she expresses are not substantiated; and (in the case of those focused on her own village) related to risks she will readily avoid as an educated person making her way in the Philippines today.
26. For the foregoing reasons our conclusion is that the claimant has not made her case. Having set aside the judgment of the First-tier Tribunal for error of law, we substitute a decision dismissing the claimant's appeal.

C. M. G. OCKELTON  
VICE PRESIDENT OF THE UPPER TRIBUNAL  
IMMIGRATION AND ASYLUM CHAMBER  
Date: 30 September 2019