



Upper Tribunal

**(Immigration and Asylum Chamber)
HU/12420/2019 (P)**

Appeal Number:

THE IMMIGRATION ACTS

Decided under rule 34 (P)

**Decision & Reasons
Promulgated**

On 21 September 2020

On 24 September 2020

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

MELANIE DANO

(NO ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Representation (by way of written submissions)

**For the appellant: Mr C M Mahfuz of Counsel, instructed by
Ashfield Solicitors**

For the respondent: No submissions received

Background

1. This appeal comes before me following the grant of permission to appeal by First-tier Tribunal Judge Kelly on 26 March 2020 against the determination of First-tier Tribunal Judge S Lal, promulgated 4 November 2019 following a hearing at Harmondsworth on 31 October 2019.

2. The appellant is a Filipino national born on 22 May 1973. She appeals against the respondent's decision of 2 July 2019 to refuse her application for leave to remain as the unmarried partner of a British national. They had met in the Philippines in November 2018 following an online relationship of a few months. After he returned to the UK, she came to visit him in December 2019 and again in February 2019. Her application was made in May 2019.

3. The appellant's case was that her partner could not live in the Philippines because of various health conditions and because he cared for his elderly mother. Further, as she had not been able to annul her marriage, their relationship would be viewed as adulterous and be frowned upon.

4. The appellant was unrepresented when the appeal came before the First-tier Tribunal. Judge Lal heard oral evidence from the appellant and her partner. He accepted that the relationship was genuine and subsisting and that the appellant met the language requirements. He was not satisfied however that very significant obstacles had been shown to the continuation of family life outside the UK. He further found that the appellant had failed to show private and family life capable of engaging article 8 and considered that she could make an entry clearance application from the Philippines. Accordingly, the appeal was dismissed.

5. The appellant then obtained legal representation and sought permission to appeal on seven grounds (i) that the judge failed to recognise that the burden was on the respondent under article 8(2); (ii) that it was not necessary to show that the relationship had been subsisting for at least two years; (iii) that he did not adequately consider EX.1 and applied the wrong test when doing so; (iv) that he failed to assess all the relevant evidence including the sponsor's ill health and also that in requiring the appellant to return to seek entry clearance, he had failed to follow the guidance in Chikwamba [2008] UKHL 40; (v) that no weight was attached to the considerations in s.117B, no consideration whether the appellant was less of a burden on the tax payer or whether she was financially independent; (vi) that there was no consideration of paragraph 276ADE (1)(vi); and (vii) that the proportionality assessment was inadequate. Permission was granted on the last three grounds.

Covid-19 crisis

6. Normally, the matter would have been listed for hearing after the grant of permission, but due to the Covid-19 pandemic and need to take precautions against its spread, this did not happen. Instead, directions were sent to the parties by Upper Tribunal Judge Bruce on 3 July 2020. They were asked to present any objections to the matter being dealt with on the papers and to make any further submissions on the error of law issue within certain time limits.

7. Mr Mahfuz's submissions for the appellant were received on 14 July 2020 but no reply has been received from the respondent. I am satisfied that the directions were properly served. I now proceed to consider the matter.

8. In doing so I have regard to the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Rules), the judgment of Osborn v The Parole Board [2013] UKSC 61, the Presidential Guidance Note No 1 2020: Arrangements during the Covid-19 pandemic (PGN) and the Senior President's Pilot Practice Direction (PPD). I have regard to the overriding objective which is defined in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as being "*to enable the Upper Tribunal to deal with cases fairly and justly*". To this end I have considered that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues (Rule 2(2) UT rules and PGN:5).

9. I have had regard to the submissions made and to all the evidence before me before deciding how to proceed. The appellant has objected to the matter being determined on the papers but no good reasons have been given. There is no need for the appellant to see Counsel go through the grounds with the judge. They have been clearly put and can be properly assessed without the need for further submissions. There are no matters arising from the papers which would require clarification and so an oral hearing would not be needed for that purpose. The respondent has been directed to provide her submissions on the matter but has not done so. I am satisfied that I am able to fairly and justly deal with this matter on the papers before me and I now proceed to do so.

Submissions

10. Mr Mahfuz expands upon the grounds in his submissions. He submits that there was a substantially inadequate consideration of paragraph 276ADE(1)(vi) and that this impacts upon the consideration of the article 8 assessment. It is submitted that there are very significant obstacles the appellant's reintegration on return because she would have to leave behind her partner. If he accompanied her he would find it difficult because of his ill health and he would have to leave behind his 99 year old

mother. The fact that he and the appellant would not be able to live together legally on account of the appellant still being married was also a matter that had not been considered. It is submitted that there was no consideration of s.117B. The appellant commenced her relationship when she was lawfully present in the UK.

Discussion and conclusions

11. The appellant was not assisted by the fact that she was a litigant in person and that extremely limited documentary evidence in support of her appeal was presented. She may consider the benefits of legal representation for future proceedings.

12. Although Judge Kelly refused permission on the insurmountable obstacles point, I agree with Mr Mahfuz's submission that this impacts on the proportionality assessment of the article 8 claim and as that was arguably found to be inadequate, I consider that ground 4 also has merit.

13. The assessment of the evidence is, indeed, brief. Whilst often there is merit in brevity, that is not the case on this occasion. The findings seem to me to consist of conclusions without any reasoning.

14. The judge finds, for example, that the appellant had failed to show that there would be very significant difficulties for her and the sponsor to live in the Philippines but gives no reason for why or how this conclusion was reached (at 11). He confirms that he has had regard to s.117B (at paragraph 13) but nowhere does he apply the facts to the various factors for consideration. The determination is silent on matters such as whether the appellant would be a burden on the tax payer, whether she is financially independent and her status when the relationship was established. At paragraph 14 the judge finds that the appellant has not provided evidence of a private or family life capable of engaging article 8 but this contradicts his earlier acceptance of a genuine and subsisting relationship (at 12) and there is no assessment whatsoever of the nature of the claims the appellant put forward. In considering article 8 outside the rules, there is no consideration of whether the circumstances put forward in oral evidence were exceptional or, if not, why. Indeed, it is a mystery as to what facts are accepted by the judge (other than the relationship) and what are not accepted. It is also unknown what position was taken by the respondent as there are no submissions recorded in the determination from the Presenting Officer.

15. The judge appears to have relied solely on the fact that the appellant would be able to apply for entry clearance to dismiss the appeal but in reaching that conclusion he gave no consideration to the Chikwamba principles. As the appellant was a litigant in person, she could not have been expected to put forward any arguments in that respect and it was for the judge to assist her ensure that her case was fully put. There is

nothing to suggest that the procedure was explained to her or that she was given an opportunity to make any submissions.

16. This is an extremely brief determination with scant, if any, reasoning and not what one should have to accept from the Tribunal. I have no hesitation in setting it aside in its entirety. The appellant is entitled to know why her appeal was dismissed and regrettably the determination does not make that clear. The matter is remitted to the First-tier Tribunal for a fresh hearing and for a decision to be made by another judge.

Decision

17. The decision of the First-tier Tribunal contains errors of law and it is set aside. It is remitted to the First-tier Tribunal for a fresh hearing and a decision to be made on all issues.

Anonymity

18. There has been no request for an anonymity order and I see no reason to make one.

Directions

19. Directions shall be issued by the First-tier Tribunal in due course.

Signed

R. Kekić
Upper Tribunal Judge

Date: 21 September 2020