



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003700

First-tier Tribunal No: PA/00940/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 22 May 2023

Before
UPPER TRIBUNAL JUDGE LANE
DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

R S
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Skinner, Counsel, instructed by South West London Law Centres

For the Respondent: Mr Terrell, Senior Home Office Presenting Officer

Heard at Field House on 25 April 2023

DECISION AND REASONS

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Ripley who, in a decision promulgated on 6 July 2022, dismissed the appellant's appeal on Article 8 grounds.
2. In summary the background is that the appellant is a national of the Philippines who is now 63 years old. She entered the UK on 1 August 2005 on a 6 month visit visa and overstayed. She made three applications in 2018 for a residence card as

the extended family member of her nephew's wife, all of which were refused. The appellant was detained on 16 July 2018 and claimed asylum. She was released on 20 August 2018. Her asylum application was refused and an appeal dismissed by First-tier Tribunal Judge Seelhoff on 15 January 2021. On 8 December 2021, Upper Tribunal Judge O'Callaghan upheld the decision of Judge Seelhoff on asylum grounds but found a error of law in the Article 8 decision, he set that decision aside and remitted it to the First-tier Tribunal. Judge Ripley dismissed the remitted appeal. First-tier Tribunal Judge Elliott granted permission to appeal to the Upper Tribunal on 28 July 2022. The appellant's claim is based on her private and family life with her nephew G and her niece S and their families.

3. The hearing took place in person in Field House. We heard submissions from Mr Skinner and Mr Terrell. We reserved our decision.

Discussion

4. The appeal was advanced on five grounds which we consider in turn.

Ground 1

5. It is contended that the judge erred in failing to apply section 117B (6) of the Nationality, Immigration and Asylum Act 2002. The grounds highlight that it was argued in the skeleton argument before the First-tier Tribunal that the appellant has a very close relationship, akin to that of a mother, with her nephew G and niece S and that she has cared for both of their children from their childhood (paragraphs 71-73).
6. In the grounds and at the hearing Mr Skinner relied on the decisions in R (RK) v SSHD (s.117B(6); "parental relationship") IJR [2016] UKUT 31 (IAC) and SR (subsisting parental relationship - s117B(6)) Pakistan [2018] UKUT 00334 (IAC)) and submitted that a parental relationship may be established for the purposes of section 117B(6) by those who are not a child's blood relatives or legal guardians and that more than two people can have a parental relationship with a qualifying child. Mr Skinner submitted that the judge should have explicitly engaged with the question and that the error is therefore material.
7. Mr Terrell submitted that there is no material error highlighting that the submissions before the tribunal on this issue were limited to a few paragraphs in the skeleton argument focussing primarily on the best interests of the children (paragraph 71-73) and that there was no focus on this issue at the hearing. He submitted that the First-tier Tribunal Judge dealt with the issue of parental responsibility at paragraph 47 of the decision.
8. Mr Terrell referred us to paragraph 44 of the decision in RK where the tribunal said:

If a non-biological parent ("third party") caring for a child claims such a relationship, its existence will depend upon all the circumstances including whether or not there are others (usually the biologically parents) who have such a relationship with the child also. It is unlikely, in my judgment, that a person will be able to establish they have taken on the role of a parent when the biological parents continue to be involved in the child's life as the child's parents as in a case such as the present where the children and parents continue to live and function together as a family. It will be difficult, if not impossible, to say that a third party has "stepped into the shoes" of a parent.

9. In our view, this ground discloses no material error. The judge accepted that the appellant has developed a family life with her niece and nephew and their children [24, 47]. The judge accepted that the appellant has a strong bond with her extended family in the UK and that there would be a “significant deleterious effect” on her family here. The judge also accepted that it would not be in the best interests of the three children of her niece and nephew who are under 18 for the appellant leave the UK. The judge accepted that they have established a very close relationship and the children would miss the day-to-day support the appellant gives them [47]. However, the judge went on to find:

Nonetheless, as accepted by both the appellant and the witnesses, the children’s main carers are their parents. The children would remain with their parents even if the appellant had to leave. Thus, their parents would be able to provide them with support to come to terms with her absence. They would also be able to stay in touch remotely. [47]

10. In our view, the consideration given by the judge to the appellant’s relationship with the children of the extended family and her niece and nephew is sufficient to show her engagement with the issues raised in section 117B (6). The appellant’s niece and nephew are both married and, along with their partners, they are the parents and main carers for the children of the two families. It is clear in our view from the evidence and the findings made by the judge at paragraph 47, that the judge clearly considered that the appellant does not have a ‘genuine and subsisting *parental* relationship’ with a qualifying child [our emphasis]. In our opinion, the judge could not have reached any other conclusion on the evidence before her.

Ground 2

11. It is contended in ground two that the judge wrongfully took into account the appellant’s ability to re-establish family life in the Philippines. It is contended that the judge erred in the Article 8 balancing exercise in that she took into account an irrelevant factor in considering a return to the Philippines would allow the appellant to re-establish a closer relationship with her adult children and siblings there. It is contended that the balancing exercise undertaken in considering Article 8 is between the interference that removal will cause (here the separation of the appellant and her family members here in the UK) and the public interests in those matters listed in Article 8(2). It is contended that the Article 8 balancing exercise is not envisaged to engage in a balance between the interference with an individual’s family life in the UK and the apparent benefit to that individual’s private family life in the country to which it is proposed they are removed. It is contended there is no ‘public interest’ and it does nothing to further ‘proper immigration control’ that an appellant will obtain a collateral private benefit in being removed. It is contended that the judge erred in introducing an extraneous factor, namely the appellant’s family life in the Philippines. Mr Skinner submitted that the judge did not explain what weight was given to that factor therefore it could not be said that it was immaterial.
12. In response, Mr Terrell submitted that factors in a person’s home country, such as lack of support or fear of family members there, are relevant factors and that these can be and are routinely taken into account in the assessment of proportionality under Article 8 ECHR; the judge did not err by taking into account all relevant matters, including in this instance the appellant’s ability to re-establish family life in the Philippines. In any event, in his submission, the judge took this factor into account for the reason set out in the second part of the

paragraph, where she considered the distress which will be caused to the appellant as a result of the loss of her relationship with her adult children.

13. At paragraph 48 the judge said:

A factor that may be considered to support a return to the Philippines would be that it would allow her to re-establish a closer relationship with her own adult children and her siblings there. The loss of that close relationship with her adult children was, in Dr Walsh's opinion, a factor causing the appellant some significant distress.

14. We agree with Mr Terrell that paragraph 48 needs to be read in its entirety. The judge clearly weighed as a relevant factor the benefits to the appellant of being reunited with her children in the Philippines. This was a finding open to the judge on the evidence and was a relevant factor in the balancing exercise. Ground two does not disclose a material error of law.

Ground 3

15. It is contended in ground 3 that the judge erred in failing to take account of or give reasons for rejecting expert evidence about the lack of accessibility of mental health care in the Philippines and that the judge's finding that mental healthcare is accessible to the appellant is perverse. It is contended that the judge failed to take account of Professor Sidel's report, in particular paragraph 30 which dealt with difficulties the appellant would face in securing access to treatment for her medical and mental health problems should she be returned to the Philippines. It is contended that, at paragraph 35 of her decision, the judge wrongly asserts that the appellant "has not disputed that such treatment is available". The appellant contends that the judge appears to have misunderstood the appellant's position that she would not be motivated to seek medical treatment and that it would not be accessible to her. It is argued that the judge failed to take account of the appellant's claim that she would be unable to pay for private treatment or travel to private clinics. It is further contended that the judge failed to engage with Professor Sidel's report when concluding that the appellant could access mental health care in the Philippines.

16. In response Mr Terrell highlighted that Upper Tribunal Judge O'Callaghan reserved a number of findings made in the earlier decision by Judge Seelhoff, in particular paragraph 51. In his submission, the judge dealt with this matter adequately at paragraphs 33 to 36, 38 and 44 to 45.

17. We note that one of the findings reserved by Judge O'Callaghan was set out in paragraph 51 of Judge Seelhoff's decision as follows:

The Home Office has provided some evidence of the availability of treatment of treatment in the Philippines. The report includes a link to a list of 113 facilities offering treatment for mental health. This is indicative of the availability of treatment. As I have noted above I have not accepted that there will be a need to flee the Appellant's ex-partner in the Philippines and accordingly I consider that treatment is likely to be available wherever the Appellant lives in the Philippines. I am not satisfied that the evidence in the round shows that the Appellant's removal would result in a deterioration in the Appellant's mental state such as might require Article 3 protection.

18. Judge Ripley acknowledged that the entries in the GP notes, although limited, supported the submission that the appellant may become suicidal "at times of acute stress" [29]. The judge examined the current evidence as to the appellant's mental health concluding paragraph 34:

Thus, in conclusion, although the appellant has benefitted from the security of continuing to remain away from ex-partner and in a supportive environment in the UK with her niece and nephew, she nonetheless suffers from severe depression but is managing to function without medication.

19. The judge did consider the report of Professor Sidel, referring to it at paragraph 38 of the decision. The judge accepted that those who suffer from mental health disorders are likely to face a degree of stigmatisation. The judge also noted that the appellant had not disputed that mental health treatment is available and that her argument is that she would not be motivated to seek it and that she would need to pay for it [35]. We agree with Mr Terrell's submission that this is a reasonable summary of the conclusions of the expert report at paragraph 30.
20. The judge went on to find that the appellant has maintained a close relationship with her adult children and her sister in the Philippines and that they would seek to support her if her mental health deteriorated on return and if she became suicidal again and that they would support her to access mental health treatment should this be necessary [35]. This was a finding going to the practical aspects of accessing mental health treatment. It is clear also that the judge made her findings in relation to the appellant's access to mental health treatment in the Philippines in the context of the finding that 'although the appellant suffers from severe depression, she has continued to manage without medication and continues to care for [her nephew's] children as well as herself.'
21. The judge undertook an assessment of the financial support likely to be available to the appellant from relatives in the UK and in the Philippines and concluded at paragraph 44 that the appellant's economic circumstances would not be so difficult that they would lead to a significant deterioration in the appellant's mental health so as to adversely affect her ability to integrate.
22. In our view, it is clear from these findings, that the judge considered that the appellant would be returning to the Philippines as someone managing her condition without treatment and that she would have support to access treatment if necessary. It is clear that the judge did not accept that a return to the Philippines would lead to "acute stress" with the potential for a risk of suicide.
23. We find that the judge took account of the evidence and the submissions as to the availability and accessibility of medical treatment for mental health issues in the Philippines and reached findings open to her on the evidence. Ground 3 does not disclose a material error of law.

Ground 4

24. It is contended in ground 4 that judge erred in her finding that the appellant's nephew and niece could provide her with financial support upon her return to the Philippines. The grounds highlight that the appellant's nephew, G, gave oral evidence and was found to be credible. The grounds highlight the witness statement of G where he said that without the help of the appellant either him or his wife would have to stop working and this would have a financial impact. He said that financial circumstances are difficult and that they are struggling to pay bills; if one of them had to stop working, he did not know how they would pay the bills. It is contended that it was unfair for the judge not to have raised the matter of their ability to support the appellant upon her return to the Philippines at the hearing. It is contended that the judge's finding is wholly speculative and was not

open to her. It is further contended that the judge applied the wrong standard of proof at paragraph 41.

25. We find that this ground is not made out. The matter of the provision of support by the family in the UK was clearly in issue, it was raised in the respondent's review. The judge noted the evidence of the two witnesses at paragraphs 9 to 12. The judge accepted that the appellant's nephew is likely to be worse off if he will need to pay for childcare or he or his wife will need to reduce their hours. However the judge did not accept that this does not mean that they would not have any spare income to help support the appellant. The judge further noted that she did not have details of their current financial circumstances and she did not know if they have substantial savings [40].
26. The judge went on to consider the financial circumstances of the appellant's niece noting that she works in a professional role, she has been able to afford to travel to the Philippines on five occasions and bring her parents to the UK on three occasions and that she supports two of her own siblings. The judge further noted that she had not been provided with details of the appellant's niece's income and expenditure. The judge also took account of the fact that the appellant has supported her niece and nephew for the last 16 years in the UK [41].
27. Given that that this matter was clearly in issue in the appeal and that the burden is on the appellant to prove her case, it was open to the judge to remark on the lack of overall evidence as to the financial circumstances of the appellant's niece and nephew in the UK without having to raise anything further at the hearing. There is no unfairness in the judge's approach.
28. Mr Skinner submitted that the judge applied the wrong standard of proof at paragraph 41 where she found it "reasonably likely" that the appellant's niece would be able to provide some financial support to the appellant on return to the Philippines, and "reasonably likely" that the appellant's niece and nephew will do their utmost to support her if she had to return. On the other hand Mr Terrell submitted that this is not a material error in light of the overall findings.
29. In our view, the judge's use of the expression "reasonably likely" at paragraph 41 does not amount to a material error in this case. The judge highlighted that she had not been provided with details of her niece's financial circumstances but took into account the evidence before her as to her niece's circumstances and the fact that the appellant had provided her niece and nephew with significant support. It was reasonable for the judge to find on this evidence that the appellant's niece and nephew would try to support her if she had to return to the Philippines. This is evident from the judge's consideration elsewhere as to the nature of the relationship between the appellant and her niece and nephew and as to her view that they would continue to help the appellant if she returns to the Philippines. We find that, faced with the same evidence, it is inconceivable that the judge would have reached different conclusions had she explicitly applied the standard of proof of the balance of probabilities.
30. The grounds do not establish that the judge acted unfairly in reaching her conclusions in this matter. It has certainly not been established that the judge's findings reach the high threshold of perversity.

Ground 5

31. It is contended in ground five that the judge reached perverse conclusions in her assessment of Article 8. In his submissions, Mr Skinner recognised that there is a high hurdle to cross the threshold of establishing perversity. However in his submission this is one of those rare cases where, on the basis of the findings, there was only one rational conclusion on the evidence which was that the decision was disproportionate. He highlighted the judge's findings that the appellant has been in the UK for 18 years; that she has significant mental health issues and there is a risk of suicide deriving from her history of domestic violence in the Philippines; that she would suffer a deterioration in her mental health if removed; that she would be unable to work on return to the Philippines and would be forced to rely on the support of family members; that she has a strong bond with her family members in the UK and more than normal emotional ties with her adult family members here; and that it would not be in the best interests of the children, with whom she has a very close relationship, for her to be removed. It is contended that in the exceptional circumstances of this case, it is a perverse conclusion that the appellant's removal would not breach her Article 8 rights.
32. We disagree with that submission. In our view, for the reasons cited above, the judge was entitled to reach the findings she did based on the evidence before her. Whilst the judge accepted that the appellant had a strong bond with her family members, including children, in the UK, she weighed the relevant factors in the public interest in accordance with section 117B at paragraph 46. Taking into account the factors in the appellant's favour, the judge went on to conclude that the interference with the appellant's private and family life was not disproportionate when weighed against the public interest. This was a conclusion open to the judge based on her findings and the evidence.
33. For the reasons set out above we find that the appellant has not established that there is a material error of law in the decision of the First-tier Tribunal Judge.

Notice of Decision

For the foregoing reasons our decision is as follows:

- **The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law and we do not set aside the decision but order that it shall stand.**

A G Grimes
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 April 2023