



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2023-005158**  
**First-tier Tribunal No:**  
**HU/56763/2023**  
**LH/04316/2023**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 04 September 2024**

**Before**

**UPPER TRIBUNAL JUDGE LANDES**

**Between**

**LEILANI OBISPO SLADE**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr Hodson, Counsel instructed by MBM Solicitors  
For the Respondent: Ms Simbi, Senior Home Office Presenting Officer

**Heard at Field House (by CVP) on 9 August 2024**

**DECISION AND REASONS**

**Background**

1. The appellant appeals, with the permission of Judge Gumsley granted on the first ground only, the decision of Judge Gordon Lennox promulgated on 2 November 2023. The appellant had appealed, on human rights grounds, against the respondent's decision of 19 May 2023 refusing her application of 28 December 2022 for leave to enter as a spouse. Judge Gordon Lennox dismissed her appeal, finding that she did not meet the financial requirements of the immigration rules and that the decision did not lead to unjustifiably harsh consequences and therefore did not breach Article 8 ECHR.

**Permitted ground of appeal**

2. Permission was granted on the basis that Judge Gumsley was satisfied that it was arguable that the judge did not adequately consider the full circumstances of the case, and the full consequences to all those who may be affected by the

refusal decision. The grant of permission related only to the judge's finding that refusal of entry clearance would not lead to unjustifiably harsh consequences for the appellant or her family members.

3. Mr Hodson said it was paragraphs 11 – 16 of the grounds which were the heart of the matter. He submitted that there were four specific points:
  - (i) the judge applied the wrong test, at [27] using the language of necessary and desirable rather than “unjustifiably harsh”;
  - (ii) the judge did not deal with important evidence as he did not make specific findings on the serious ill health of the sponsor's father;
  - (iii) the judge did not properly assess what the consequences of the decision would be for the sponsor's father, for whom he said the sponsor was clearly the primary carer;
  - (iv) the judge's conclusion that the sponsor's sister could provide care for her father was irrational – there was a gap in the evidence and the judge had not taken into account that part of the purpose of the appellant seeking entry clearance was to assist with the care of the sponsor's father.

#### **The evidence and the appellant's case before the FTT**

4. The appellant's main case before the FTT was that the appellant met the requirements of immigration rules, specifically the financial requirements.
5. In the original skeleton argument of 17 July 2023, the general Article 8 considerations were restricted to submissions about “insurmountable obstacles”. The skeleton argument concluded on that point “*we invite the Judge to see that the S who is a British citizen is unwilling to relocate in the Philippines. We submit that the partner being required to reformulate his life in the Philippines will prima facie lead to insurmountable obstacles.*” There was no reference to the sponsor's father at all. The supplementary skeleton argument of 22 October 2023 was a response to the review and dealt only with whether the financial requirements of immigration rules had been met.
6. The appellant made a witness statement of 20 July 2023. That explained the background to she and her husband the sponsor meeting in 2002 online, meeting in 2004 in person, marrying in 2007 in the Philippines, the appellant coming to the UK with entry clearance in 2007, the couple living together for more than a year in the UK and then deciding to move to the Philippines and running a small business there. She explained that the time came when she and her husband decided to go back and live in the UK and that her husband had left first in 2019 to be reunited with her father-in-law.
7. The sponsor made a witness statement of 10 October 2023. The witness statement begins by explaining that he is writing to explain why he cannot live in the Philippines anymore. The first three reasons relate directly to him – that he is not able to get a job because he is a foreigner, that if he becomes ill, he will have to go to a private hospital which is expensive and that the cost of living is expensive so that he could not afford to stay there whilst unemployed as it would be hard for the appellant to support both of them. It is only the fourth reason which is about his family. He writes “*Fourth, I am going to miss my family, especially since I learned that my dad got sick a long time ago with leukemia and*

*is a survivor of leukemia. Since my dad is getting older and weaker, I wanted to spend time with him and look after him at the same time. Now, if my wife were able to live with us here in the UK, I would be able to focus on work while my wife would take care of my dad and fully support me."*

8. The sponsor's father wrote two personal statements which were in evidence. The first dated 8 January 2023 is very brief, and simply offers his recommendation of the appellant, who has been his daughter-in-law for 16 years. The second is dated 24 January 2023 which explains that he is prepared to support his daughter-in-law the appellant, that he loves and cares for her, and that when she was still living with them she was very helpful and good at running errands and loves to cook for them and cares and worries about the family. He writes that he hopes and prays his daughter-in-law will be back soon.
9. An excerpt from the sponsor's medical records is in evidence. They show that in 2010 the sponsor's father was in remission from leukaemia. In the summer of 2022 he was diagnosed with another cancer and in August 2022 he was due to have urgent and radical surgery for that cancer. There is no medical evidence at all after the summer of 2022, even though the hearing took place at the end of October 2023. The sponsor's father was present at the hearing but did not give evidence [13].
10. There were many "personal statements" from other friends and relatives and church officials before the judge, but they were mainly supporting and attesting to the relationship between the appellant and sponsor and do not go to the relevant issues. I was not referred to any of those personal statements.

### **The appellant's submissions on error of law**

11. Mr Hodson said that in essence his point was that the core of the decision was one single paragraph [27] and his submission was that paragraph did not adequately deal with the core matter of unjustifiably harsh consequences for the sponsor and the appellant's father. He said that it was not that the judge had missed anything very obvious but the judge had been put on notice that there was a serious issue here as the sponsor's father had leukaemia and had then been diagnosed with another cancer, this was more than just the "health issues" referred to by the judge. The sponsor had evidently been asked questions in evidence at the hearing about his father's health and it was clear the judge had enough to realise it was an issue; the appellant or a representative might overlook or not be aware as to the important issues, it was a judge's duty to do as much as possible and make proper findings of fact. Given the seriousness of the father's health issues, the judge had not done an adequate job. The parties had concentrated at the hearing on the financial issues and perhaps those trees had got in the way of the wood. Article 8 ECHR should have been properly explored and not just dealt with in passing.
12. Mr Hodson ran through the four points I have summarised at paragraph 3 above. He said that it was in the sponsor's witness statement that one of the reasons he did not feel he could live in the Philippines was his father's ill-health. The sponsor's father had been hospitalised on an emergency basis in July 2022 with cancer and that must have had consequences in respect of aftercare in terms of his long-term ill health. In relation to the judge saying that the sister could provide the care for her father, he said that there was no reference to any evidence about that and there was a lacuna, a very important gap; it could not be

a straightforward swap, the sponsor had been suffering from stress and there were clearly going to be detrimental effects for the sponsor's father. The judge had not considered that the purpose of the application was so that the appellant could join the sponsor and assist him with the care of his father and the appellant had mentioned that in her own statement.

### **The respondent's submissions on error of law**

13. Ms Simbi submitted in summary that Mr Hodson was "having a second bite of the cherry." It was for the appellant to show that there would be unjustifiably harsh consequences from the decision and the evidence needed to be put before the judge to come to that conclusion. It was not for the Home Office to cross-examine so that the evidence could be obtained; it was for the appellant to put forward what were the unjustifiably harsh consequences. There was no mention in the evidence of the sponsor providing specific critical support for his father; the relevant evidence before the judge was minimal and it was difficult to see how the judge could have arrived at any other conclusion. The sponsor's father's witness statement suggested only that he liked having his daughter-in-law around. It must have been accepted that the sponsor's father was left alone at times and at times he was looked after by the sponsor's sister; there was no evidence to suggest that the sponsor was providing everyday care to his father.

### **The relevant legal test**

14. Appendix FM, GEN 3.2 provides that where an application for entry clearance does not otherwise meet the requirements of that Appendix, the decision maker must consider whether the circumstances in sub-paragraph (2) apply. That paragraph directs the decision maker to consider "*on the basis of the information provided by the applicant, whether there are exceptional circumstances which would render refusal of entry clearance... a breach of Article 8 of the European Convention on Human Rights, because such refusal would result in unjustifiably harsh consequences for the applicant, their partner, a relevant child or another family member whose Article 8 rights it is evident from that information would be affected by a decision to refuse the application.*"
15. GEN 3.2 reflects not only the domestic case law but also the case law of the European Court of Human Rights. The Supreme Court in R (on the application of Agyarko and another) v Secretary of State for the Home Department [2017] UKSC 11 approved the test as set out in the paragraph above (at the time in policy rather than the rules themselves) and explained at [60] that the ultimate question was how a fair balance should be struck between the competing public and individual interests involved, applying a proportionality test. It was not a test of "exceptionality" but rather applying the test of proportionality to the circumstances of the individual case.

### **Analysis and conclusions**

16. Mr Hodson's first point develops paragraphs 11 and 12 of the grounds. I consider it is important to appreciate that [27] is not the paragraph where the judge takes the proportionality balance and explains his conclusions. The balance is taken at [32] and [33]. [27] is the paragraph in which the judge makes his findings. The judge finds that the sponsor and his father have lived together since the sponsor returned to the UK in 2019. The sponsor's father is elderly and has "*health issues.*" He can be and is left alone, but he has a

personal care alarm which can be used to call the sponsor or the sponsor's sister in case of emergency. The sponsor's sister has a mental health issue but that is improving and she can respond to such an alarm. The judge accepted that the sponsor would like to be in the UK to be with and support his father, but he also found that the sponsor was not the sole carer for his father and the sponsor's sister could provide support arrangements for her father. *"I find that while it may be desirable for the sponsor to be in the UK to care for his father it is not necessary for him to be so."*

17. When the judge took the proportionality balance and explained it, he specifically weighed in the appellant's favour *"the sponsor's father's ill-health and the desire of the sponsor and the father for the sponsor and the appellant to be in the UK to support him"* [32] [c]. It is right that in explaining the proportionality balance at [33] he also said that *"While the sponsor's father is of ill-health, he would have support in the UK if the appellant was not permitted to enter and the sponsor was to join his wife in the Philippines, it is not therefore necessary for him to remain and perform a caring role"*. The sentences must be looked at in context however. The judge was not suggesting that the appellant could not succeed unless the sponsor's presence in the UK was necessary for the care of his father. The judge had at [18] directed himself to the correct test. He recognised that the claim was about family life [19]. He recognised that it was a balancing exercise, he took the family life between the sponsor and his father into account and he explained at [33] why he considered the balance did not fall on the appellant's side, concluding with the correct test that *"the decision does not lead to unjustifiably harsh consequences"*. It was simply that as part of taking and explaining the proportionality balance, the judge found that it was not necessary for the sponsor's father to be cared for by the sponsor and care could be provided by another family member (the sponsor's sister). If a family member is in ill-health, it is relevant, indeed an important consideration, whether the decision will not only separate family members but will mean that the person with ill-health will not have a family member to care for them and will have to rely on the care of strangers.
18. Mr Hodson's second point develops paragraphs 14 and 15 grounds. In this context, it is important to consider the lack of recent medical evidence (see paragraph 9 above). Although the sponsor's father was due to have radical surgery in the summer of 2022, in October 2023, over a year later, the sponsor only referred in his witness statement to his father being a survivor of leukaemia and getting *"older and weaker"* (see paragraph 7 above). There is no reference to current acute health concerns and one would expect that to be in evidence if that were the case. It is difficult to see how the judge could make further findings in the absence of evidence. It is for an appellant to prove the facts on which they wish to rely, not for the judge to enter the arena and ask inquisitorial questions to see if one party or the other might have a stronger case which they had not yet put forward. The case of Lata (FtT: principal controversial issues) [2023] UKUT 163 (IAC) makes clear (at the end of [4] of the headnote) *"The task of a judge is to deal with the issues that the parties have identified"*.
19. Mr Hodson's third point is covered in paragraphs 13 to 15 grounds. However the judge did assess the practical consequences for the sponsor's father. He found that it was not necessary for the father to be cared for by the sponsor and the sponsor was not the sole carer. As Ms Simbi pointed out not only did the judge find that the sponsor's father can be left alone he must be left alone at times, as the sponsor goes to work (the appellant relied on a mixture of the

sponsor's employment income together with savings to assert that the financial requirements were met) and the sponsor's father has a personal care alarm. There was no evidence to suggest that the sponsor was providing everyday care to his father. The judge also considered the emotional consequences, by recognising that there was family life and that the sponsor and his father wanted the sponsor and the appellant to be in the UK to support him. The witness statements/personal statements of the sponsor and his father did not go into detail about the relationship between them, indeed the personal statement of the father did not even mention their relationship.

20. Mr Hodson's final point was also made at paragraph 16 grounds where it is said that the judge was doing little more than speculation and surmise because there was no evidence before the judge on this matter (the sponsor's sister providing care for her father).
21. Mr Hodson did not represent the appellant in front of Judge Gordon Lennox. From the terms of [27] there obviously was some evidence before the judge given at the hearing about the sister's ability to respond to emergencies with regard to her father, to the sister's mental health and her ability to care for her father and to whether or not the sponsor was the sole carer. When averring that the judge made an error of law, it is for those representing the appellant to point to the evidence given at the hearing and aver that the conclusion the judge came to was not one open to him on the evidence. This is not made out. The judge was also well aware that the appellant wanted to come to the UK not only to be with the sponsor but to support her father-in-law (see [32] [c] [i]).
22. Standing back and looking at the judge's decision as a whole, the issue raised about the sponsor's father's health and his relationship with the appellant and sponsor was one which was not raised in the skeleton arguments. It was not the main point in the witness statements and there was limited evidence about it. On that limited evidence the judge made findings about the sponsor's father's need for care from the sponsor specifically [27] and recognised in addition that there was family life and that the sponsor, the appellant and the sponsor's father all wanted to be able to live together in the UK. The judge also made detailed findings about the appellant and sponsor's ability to continue to live together in the Philippines as they had done for 10 years [25] - [26] and where they already had two businesses operating. He made findings about the sponsor's own health and his ability to be cared for in the Philippines [28]. All those findings were open to the judge. He directed himself to the correct test and he conducted a balancing exercise and explained properly at [33] why he found the balance lay on the side of the public interest. That was a conclusion which was open to him and adequately reasoned.
23. Ground one, the only ground on which permission was given, as ably developed by Mr Hodson, does not reveal that the judge erred in law.

### **Notice of Decision**

**The judge's decision did not contain an error of law and stands. The appellant's appeal is dismissed.**

**A-R Landes**

**Case No: UI-2023-005158**  
**First-tier Tribunal No: HU/56763/2023**  
**LH/04316/2023**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**23 August 2024**