



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

Case No: UI-2024-001321

First-tier Tribunal No: HU/57150/2023  
LH/012111/2024

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 3<sup>rd</sup> June 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SAFFER**

**Between**

**ALICE CADEY YUKSEL**  
**(No anonymity order made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Richardson of Counsel  
For the Respondent: Mr Wain a Senior Home Office Presenting Officer

**Heard at Field House on 20 May 2024**

**DECISION AND REASONS**

1. The Appellant was born on 6 June 1968. She is a citizen of the Philippines. She appealed against the decision of the Respondent dated 5 October 2021 served on her on 2 June 2023, refusing her human rights claim made on 12 January 2021.
2. The Respondent refused the applications as the Appellant:

*“did not meet the immigration status requirement (E-LTRP.2.1. to 2.2.) as she was in the United Kingdom as a visitor and EX.1. (b) does not apply as there were not insurmountable obstacles to family life continuing with in the Philippines. Further, the Respondent did not consider that there would be very significant obstacles to the*

*appellant's integration on return to the Philippines in accordance with paragraph 276ADE (1) (vi)."*

3. The Appellant appeals against the decision of FTT Judge Richards-Clarke, promulgated on 2 March 2024, dismissing the appeal.

### **Permission to appeal**

4. Permission was granted by FTT Judge Lodato on 28 March 2024 who stated:

*"2. ... it is argued that the judge adopted a legally flawed approach in not giving meaningful consideration to the respondent's culpable delay in serving the refusal decision. This is because within weeks of the belated service of that decision, the appellant's British husband died. The effect of this was that the appellant was deprived of a viable Article 8 argument founded on her family life. I consider there to be force to the suggestion that this dimension of the appellant's human rights claim merited meaningful consideration and that the decision did not address this in substance in the reasons."*

### **The First-tier Tribunal decision of 2 March 2024**

5. Judge Richards-Clarke made the following findings:

*"12. ... Unfortunately, the respondent's decision dated 5 October 2021 was sent to the appellant's previous representatives and the appellant was unaware that her application had been refused until 2 June 2023. Sadly, the appellant's husband died on 7 August 2023.*

*17. ... To strike a fair balance between the competing public and individual interests involved, I adopt a balance sheet approach:...*

*(d) I weigh in the appellant's favour the fact that she was married to a British citizen and that there was a delay of around 20 months in the service of the decision to refuse her application for leave to remain on the basis of her family life. I also acknowledge that the appellant cared for her husband and that her husband died on 7 August 2023 before her appeal against this decision could be heard...*

*(sic) 13... I do take account of the delay in notification of the decision and the death of the appellant's husband; I do not find this to be sufficient to outweigh the public interest here."*

### **The Appellant's grounds seeking permission to appeal**

6. The grounds assert that:

*"10. ... in her consideration of Article 8, the FTTJ fails to consider or place any weight on the consequences of the Respondent's delay in this regard.*

11. *It is submitted that if the delay of 20 months had not taken place, the Appellant's appeal would have been heard when her husband was still alive, despite suffering from cancer.*
12. *Accordingly, her appeal would have involved a consideration of both her private and her family life.*
13. *In the Decision it is accepted that the Appellant met the eligibility relationship requirement of paragraphs E-LTRP.1.1 to 1.12.*
14. *The Decision asserts that paragraph EX.1. (b) does not apply as there are no insurmountable obstacles to her family life with Mr. Yuksel continuing in the Philippines.*
15. *However, it was submitted that Mr. Yuksel's ill-health would have prevented him from joining his wife and the requirements of paragraph EX.1. would have been satisfied.*
16. *The Respondent's delay has prevented the Appellant from relying upon her family life and paragraph EX.1. at her appeal hearing.*
17. *In the case of EB Kosovo (FC) (Appellant) v, SSHD (Respondent) [2008] UKHL 41, Lord Bingham of Cornhill stated inter alia:  
'16. Delay may be relevant, thirdly, in reducing the weight otherwise to be accorded to the requirements of firm and fair immigration control, if the delay is shown to be the result of a dysfunctional system which yields unpredictable, inconsistent and unfair outcomes....'*
18. *It is respectfully submitted that if the FTTJ had properly considered the consequences of the Respondent's delay in notifying the Appellant of the outcome of the Application, it would have been open to her to allow the appeal on the basis that there are exceptional circumstances in the Appellant's case which would render refusal a breach of Article 8, because it has resulted in unjustifiably harsh consequences for the Appellant."*

## **Rule 24 notice 5 April 2024**

7. The Respondent asserts that:

*"4. The grounds assert at paragraph 10 that the FTTJ fails to place any weight on the issue of delay. However, the respondent draws the Upper Tribunal's attention to paragraph 12(d) which states:*

*5.*

*12 (d) I weigh in the appellant's favour the fact that she was married to a British citizen and that there was a delay of around 20 months in the service of the decision to refuse her application for leave to remain on the basis of her family life. I also acknowledge that the appellant cared for her husband and that her husband died on 7 August 2023 before her appeal against this decision could be heard. That said, I am to consider the circumstances at the date of the hearing.*

*6. This is clearly part of the FTTJ's article 8 assessment and the grounds of appeal are incorrect to assert that the FTTJ has failed to place any weight on the issue. The FTTJ has weighed the factor in the appellant's favour and then given their reasoning at [13] as to why*

*those factors do not outweigh the public interest. Weight is a matter for the Tribunal Judge Durueke (PTA: AZ applied, proper approach) [2019] UKUT 00197 (IAC). The Secretary of State submits that ground one amounts to nothing more than a mere disagreement with the FTT's decision.*

*7. The ASA before the FTT which was uploaded to HMCTS CCD on 3 November 2023 does not raise this argument as part of the submissions as to why the appeal should be allowed under Article 8.*

*8. It is also noted that the Subject Access Request was made on 26 September 2022 and that request fulfilled on 31 October 2022. There is no explanation as to why the current legal representative did not notice the decision had been served till May 2023. Furthermore, it appears as per the address on the RFRL dated 5 October 2021 and our records that the decision was also served to the address of 50 Teeswater Court, Mangold Way, Erith, Kent.*

*9. The primary submission of the Secretary of State is that the FTTJ has considered the issue of delay as part of the overall Article 8 proportionality assessment, attached appropriate weight to the factor and set out adequate reasoning which is not an argument raised in the grounds in any event as to why the factors raised on behalf of the appellant do not outweigh the public interest."*

## **Oral submissions**

8. Mr Richardson submitted that the Appellant made the Judge aware of the impact on her of the delay through her statement of 21 February 2024 at [5]:

*"... The refusal letter dated 16th October 2021 was mistakenly sent to my previous legal representatives instead of my current ones. This was surprising, as my current legal representatives had diligently informed all relevant parties of the change in representation. Consequently, I remained unaware of the refusal until my current legal representatives made enquiries on my behalf and uncovered it in May 2023. This mistake has had a profound impact on my life. If the refusal had been sent to the correct address, the appeal could have been initiated on time, allowing my late husband to be by my side during that period."*

9. Whilst the Judge plainly considered the delay within the Article 8 assessment as this is mentioned in [12(d)] and [13], a more nuanced approach was required. There should have been a greater inspection of the consequences of the delay. The Judge ought to have properly considered the loss of opportunity. Had the decision been served in a timely manner she would have been married. The Sponsor was extremely ill but alive and she had every prospect of showing there was a very strong relationship and showing there were insurmountable obstacles in him going to the Philippines and family life continuing. It would have been a strong and compelling case. The decision was received 2 months before he died. At that time there were bereaved partner provisions to

enable her to obtain Indefinite Leave to Remain. She could have applied under GEN 1. The consequence of the Respondent's delay was that she could not rely on their relationship. She was deprived of the right to settle as a bereaved partner. The Judge should have considered the loss of that route.

10. Her statement of 24 October 2023 was before the Judge where she set out the advice received from her previous solicitor about the type of application to apply for namely a visit visa as opposed to a spouse visa, her devastation at leaving the place where he is resting in peace, how her departure will cause her health to worsen, and how she cannot leave people she considers lifelong friends.
11. The Judge was aware that in addition to prostate cancer, at his death he was also found to have a duodenal carcinoma. The refusal letter noted that his *"condition does not appear to be immediately life-threatening."*
12. When I asked Mr Richardson what evidence was before the Judge of the Appellant through her Solicitors chasing up the delay in deciding the application I was pointed to the subject access request of 26 September 2022 which was responded to on 31 October 2022 and noted the application as having been refused on 16 October 2021. Mr Richardson was not aware of any correspondence or Judicial Review proceedings to seek to speed up the making of a decision of the application.
13. Mr Wain submitted there the grounds are a challenge to the weight the Judge placed on the evidence. It is not being argued that the deliberations were inadequate. The Judge weighed the delay factors in the Appellant's favour.
14. There is not a case of an historic injustice of the type considered in EB (Kosovo) for the reasons given in Patel (historic injustice; NIAA Part 5A) [2020] UKUT 00351 (IAC) that:  
  
*"There is nothing inherently "historic" about the respondent's failure to give an individual the benefit of a particular immigration policy, however important that failure may be to the individual concerned. The same is true of gross delay in reaching a decision and in making an assessment about an individual's conduct that turns out to be incorrect. Each of these failings may have an effect on the individual's Article 8 case. But, as can be seen, the ways in which this may happen differ from the true "historic injustice" category."*
15. The Appellant's representative was aware of the outcome through the subject access response and took no cation. The effect of the delay was considered.

16. The application in on the premise that the Appellant would have succeeded on an application under the bereaved partner rules. That was not however argued before the Judge. As explained in Lata (FtT: principal controversial issues) [2023] UKUT 00163 (IAC) in the headnote:

*“7. Unless a point was one which was Robinson obvious, a judge's decision cannot be alleged to contain an error of law on the basis that a judge failed to take account of a point that was never raised for their consideration as an issue in an appeal. Such an approach would undermine the principles clearly laid out in the Procedure Rules.*

*8. A party that fails to identify an issue before the First-tier Tribunal is unlikely to have a good ground of appeal before the Upper Tribunal.”*

17. This was not a clear and obvious point.

18. Mr Richardson replied that the issue is the failure to consider the obvious consequence of the delay. It is not the weight to be attached to the evidence, but the failure to consider a material consideration.

## Discussion

19. There is no material error of law for these reasons.

20. The Judge noted the delay and found that it weighed in the Appellant's favour. The weight to be attached to that was a matter for the Judge (see Durueke).

21. The Judge was not told about the consequence of losing a potential avenue to grant leave through the bereaved partner route as explained in Lata. In addition, that is not a Robinson point as at the time of the Respondent's decision, the Appellant's partner was still alive and therefore leave at that time could not be granted through that route.

22. The Appellant's representative was aware of the outcome of the application as early as 31 October 2022 which is only 12 months after the adverse decision and 8 months before the Appellant's partner sadly died, and appears to have done nothing about it either by way of correspondence or Judicial Review proceedings. That 12 month period of delay is not of itself lengthy in the context of an application where there was no evidence of the urgency of the application being highlighted at any stage. The Respondent was not put on notice that there was a change of potential circumstances in that the Appellant's partner's health had deteriorated, it always being open to the Appellant to provide fresh information. It has not been argued that the delay has been shown to be the result of a dysfunctional system which yields unpredictable, inconsistent and unfair outcomes, and no evidence was adduced at any stage to support such an assertion.

23. There is nothing inherently “historic” about the Respondent’s failure to give the Appellant the benefit of the bereavement policy, particularly as here where he was never notified that bereavement was imminent, however important that failure may be to her as explained in Patel.

**Notice of Decision**

24. The Judge did not make a material error of law.

*Laurence Saffer*

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
22 May 2024