



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-001936

First-tier Tribunal No: HU/52463/2022
LH/00652/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 16 August 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

Ms LALAINA MORENO SALONO

Respondent

Representation:

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer
For the Respondent: Mr H Kannangara, counsel, instructed by Eastman solicitors

Heard at Field House, on 2 August 2024

DECISION AND REASONS

1. The Secretary of State for the Home Department brings this appeal but, to avoid confusion, the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Bunting promulgated on 11 March 2024.

Background

2. The appellant is a citizen of the Philippines born on 18 November 1964. The appellant arrived in the United Kingdom on 01 July 2012 with entry clearance as a Domestic Worker that was valid until 15 December 2012. The appellant made three more successful applications for leave to remain as a Domestic Worker. The respondent extended leave to remain until 18 May 2016.

3. On 05 May 2016 the appellant made an application for further leave to remain in the UK which the respondent refused on 6 July 2016.

4. The appellant applied for leave to remain as the partner of a British Citizen on 23 August 2021. The respondent refused that application on 30 March 2022.

The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Bunting ("the Judge") allowed the appeal on Article 8 ECHR grounds.

6. The Respondent lodged grounds of appeal and on 28 May 2024 Upper Tribunal Judge Kamara granted permission to appeal, stating

The appellant is an overstayer who formed a relationship in the United Kingdom with a British citizen. In view of the judge's finding that there were no very significant obstacles to the appellant's integration, no insurmountable obstacles to family life continuing in the Philippines and that any separation while the appellant sought entry clearance would be temporary, it is arguable that there was a failure to provide adequate reasons for concluding that the decision refusing leave to remain was disproportionate.

The Hearing

7. For the Respondent, Mr Walker moved the grounds of appeal. He said that there is a conflict in the Judge's findings of fact. When considering paragraph EX.1 of the immigration rules, the Judge finds that there are no insurmountable obstacles to the continuation of family life outside the UK. When the Judge turns to an article 8 ECHR assessment, he gives weight to those specific factors and proceeds to allow the appeal on article 8 ECHR grounds.

8. Mr Walker asked me to allow the appeal by setting the decision aside and substituting my own decision dismissing the appellant's appeal.

9. For the appellant, Mr Kannangara resisted the appeal. He said that the decision does not contain errors of law, material or otherwise. He told me that between [52] and [84] the Judge carried out a flawless article 8 proportionality assessment and manifestly adopted a balance sheet approach. He asked me to dismiss the appeal and allow the Judge's decision to stand.

Analysis

10. The respondent's position until the date of the First-tier Tribunal hearing was that the appellant was not in a genuine and subsisting relationship with a British citizen. At [17] of the decision, the Judge records that (at the hearing before the First-tier Tribunal) the respondent accepts that the appellant and her British citizen spouse were married in 2022. The respondent now accepts that the relationship is genuine and subsisting.

11. The Judge's findings of fact are found between [28] and [34] of the decision. There, the Judge finds that the appellant has been in a relationship with her now husband since at least 2016; that the appellant's husband is a British citizen who has never been to the Philippines, and who is employed in the UK. The Judge finds that if the appellant returns to the Philippines to apply for entry clearance from there, it will take at least six months for a decision to be made.

12. Between [35] and [42] the Judge considers paragraph 276 ADE of the immigration rules, and finds that there are not very significant obstacles to the appellant's reintegration into the Philippines.

13. Between [43] and [51] the Judge considers appendix FM and paragraph EX.1 of the immigration rules. The Judge finds that if the appellant returns to the Philippines her husband will not go with her, but their separation will be temporary; separation will cause hardship, but hardship is not the same as insurmountable obstacles to the continuation of family life.

14. The Judge gives clear and unchallenged reasons for finding that the appellant does not meet the requirements of the immigration rules before turning to a separate article 8 ECHR analysis between [52] and [84] of the decision.

15. The Judge considers section 117B factors, and then correctly takes detailed guidance from Alam & Anor v Secretary of State for the Home Department [2023] EWCA Civ 30 and Younas v SSHD [2020] UKUT 129.

16. At [75] the Judge embarks on an article 8 proportionality assessment. Between [77] and [79] the Judge adopts a balance sheet approach. Having done so, the Judge finds that, notwithstanding the importance of the public interest in immigration control, there are sufficient factors to tip the balance in the appellant's favour.

17. What this appeal really comes down to is an argument by the respondent that the Judge's decision is unduly generous. The decision is one that the

respondent does not like, but it is not a decision which contains a material error of law.

18. In AE (Iraq) v Secretary of State for the Home Department [2021] EWCA Civ 948, Warby LJ said :

Commonly, the suggestion on appeal is that the FTT has misdirected itself in law. But it is not an error of law to make a finding of fact which the appellate tribunal might not make, or to draw an inference or reach a conclusion with which the UT disagrees. The temptation to dress up or re-package disagreement as a finding that there has been an error of law must be resisted.

19. A fair reading of the decision demonstrates that the Judge applied the correct standard of proof. The Judge carried out a holistic assessment of each strand of evidence. There is nothing unfair in the procedure adopted nor in the manner in which the evidence was considered. There is nothing wrong with the Judge's fact-finding exercise. The respondent might not like the conclusion that the Judge arrived at, but the correct test in law has been applied. The decision does not contain a material error of law.

20. The decision does not contain a material error of law. The Judge's decision stands.

DECISION

21. The appeal is dismissed. The decision of the First-tier Tribunal, dated 11 March 2024, stands.

Signed **Paul Doyle**
August 2024
Deputy Upper Tribunal Judge Doyle

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