



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

Case No: UI-2024-002005  
First-tier Tribunal no. HU/54919/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 22<sup>nd</sup> of January 2025

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**EVANGELINE KINOMIS BAGUISTA  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Ms Atas

For the Respondent: Mr Terral, Senior Presenting Officer

Heard at Field House on 3 September 2024

**DECISION AND REASONS**

1. The appellant is a female citizen of the Philippines born on 17 April 1977. She made a human rights (Article 8 ECHR – private life) application for leave to remain which the Secretary of State refused on 4 April 2023. The appellant appealed to the First-tier Tribunal which dismissed her appeal. She now appeals to the Upper Tribunal.
2. There are three grounds of appeal. First, the appellant asserts that the judge erred in law by stating that there was no evidence that Ms Cachero, for whom the appellant claims to provide care, could not care for herself. Secondly, the appellant complains that the judge was wrong to find that the appellant had been a significant burden on the NHS as ‘no issue had been taken on this by the Respondent in the refusal letter.’ Thirdly, the

judge had underestimated the obstacles which the appellant, as an older woman, would face on return to the Philippines.

3. Granting permission to appeal, Upper Tribunal Judge Owens wrote:

It is arguable that the judge erred in finding at [24] that there was *no* evidence to support Ms Cachero's evidence that she can no longer cook, clean, go shopping or attend to her personal care and that all of her evidence was undermined. It is also arguable that it was unfair to rely on the appellant's use of the NHS in the proportionality exercise when this had not been raised by the respondent and that arguably the judge failed to take into account the evidence of the difficulties for the appellant finding employment in the Philippines because of her age and gender. The appellant will need to address materiality at the error of law hearing.

4. The Secretary of State has filed a Rule 24 reply:

The grounds are limited to 1 ground surrounding paragraph 24 of the determination where it is stated the FTTJ erred in finding there was no evidence that the witness can no longer cook, clean and go shopping for herself and that all her evidence was undermined.

The FTTJ in his determination at para 24 is entitled to make the finding that there was no evidence in the bundle to assert that the witness was unable to carry out her everyday tasks. The evidence provided in the bundle is a list of appointments at her GP, her medication and indeed what conditions she has. The FTTJ is absolutely correct in stating there was no evidence to support she could not undertake these everyday tasks. The FTTJ is entitled to make that finding as there is no independent evidence to corroborate the statement made by the witness.

The FTTJ in their finding stated that the evidence of the witness was undermined the FTTJ is entitled to make this finding as it was found the witness was making a choice rather than a necessity to utilise the services of the appellant. The FTTJ did not go as far as stating it was all very convenient

given the Appellant had been providing care for Mr. Willock in her WS dated 1/1/24 but she states she has been providing care for the witness since November 2023 yet failed to mention this in her WS on 1/1/24. Given the lack of independent evidence the FTTJ made a finding on what he had heard in cross examination and was entitled to do so.

5. Ms Atas, for the appellant, submitted that the witness statement of Ms Cachero had been unfairly ignored or discounted by the judge. GP evidence indicated that Ms Cachero suffered from 'hypertension, type 2 diabetes, osteoarthritis, and significant past problems of gout.' In his assessment of very significant obstacles to the appellant's return at [32], the judge had not considered the issue of age and gender discrimination.

6. Mr Terral, for the Secretary of State, submitted that the judge at [24] had clearly not intended to say that there was literally *no* evidence but rather

that there was no evidence capable of discharging the burden of proof on the appellant. It was obvious that the judge had considered the medical evidence regarding Ms Cachero because at [23] he refers in detail to her 'physical health problems, the most significant of which results in mobility problems.' At [24] the judge follows his statement that there is 'no evidence to support' the claim that Ms Cachero 'could no longer cook, clean, go shopping or attend to her own personal care' by noting that '[Ms Cachero's] abbreviated GP medical records have been produced but these do not assist. I found Ms Cachero to be prone to exaggeration. Despite the fact that the Appellant has only been living with her for 3 months, she claimed that the Appellant is like a daughter to her and she would not be able to survive without her. I find this entirely incredible. If the Appellant does carry out the tasks stated these are mainly through choice and convenience, not necessity. This undermines all of Ms Cachero's evidence.' Mr Terral submitted that it made no sense to claim, as the grounds of appeal seek to do, that the judge overlooked evidence which, had he considered it, may have led to a different outcome. On the contrary, the judge found that the appellant's key witness, Ms Cachero, was simply not reliable. As regards the remaining grounds of appeal, these were not material in any event. It was for the appellant to prove that her qualifications for work would be outweighed by gender/age discrimination; plainly, she had failed to do so, given the outcome of the appeal. Further, the judge was bound by section 117 of the 2002 Act to consider the financial circumstances of the appellant, including her reliance on the NHS. In support of these submissions, Mr Terral relied on *Volpi* [2022] EWCA Civ 464 at [2]:

- i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
  - ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
7. I agree with the submissions of Mr Terral in their entirety. This was not a case in which the judge has ignored important evidence; he simply found that the evidence which the appellant had adduced did not discharge the burden of proof. Otherwise, the citation of *Volpi* is entirely apt. This was a weak appeal brought by a long-term overstayer who failed to persuade the judge that her private life in the United Kingdom should outweigh the public interest in her removal.
8. The appeal is dismissed.

**Notice of Decision**

The appeal is dismissed.

**C. N. Lane**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Dated: 7 January 2024**