



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

Case No: UI-2024-005117

First-tier Tribunal No: HU/61624/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 23<sup>rd</sup> of January 2025

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE FROMM**

**Between**

**THI MAI LOAN LAM**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Aziz, Counsel, instructed by Olives Solicitors Ltd

For the Respondent: Ms C Newton, Senior Presenting Officer (by CVP)

**Heard at Field House on 16 January 2025**

**DECISION AND REASONS**

1. The appellant appeals with the permission of the First-tier Tribunal against a decision, dated 4 September 2024, of Judge of the First-tier Tribunal Eldridge (“the judge”) dismissing the appeal brought by the appellant on the grounds that removing her to Vietnam would breach the United Kingdom’s obligations under the Human Rights Convention, with specific reference to Article 8.
2. The First-tier Tribunal did not make an anonymity order and I saw no reason to make one either.
3. The appellant is a citizen of Vietnam. Her immigration history is as follows. She entered the United Kingdom illegally on 26 December 2012. She married her partner, Mr Van-Lien Dang, a British citizen, on 2

November 2013. Her first application for leave to remain as a partner was made on 27 October 2014 and it was refused on 27 January 2015. However, on 19 May 2015, she was granted the first of three consecutive grants of 30 months' leave under the ten-year partner route. On 26 August 2023, the appellant made an in-time application for further leave under the same route and it is the refusal of her application which has led to this appeal.

4. The respondent accepted that the appellant met the suitability, relationship and immigration requirements of the Immigration Rules. However, the appellant had confirmed in her application that she could not meet the financial or English language requirements of the rules. The respondent considered she did not meet the requirements of paragraph EX.1(b) of Appendix FM of the rules, read with paragraph EX.2. Nor were the private life rules met and the decision would not lead to unjustifiably harsh consequences such that there would be a breach of Article 8. The decision stated that the appellant had previously been granted leave to remain on the basis of her relationship with her step-daughter, Katie, but she had now reached the age of 20 and was away at university.
5. At her appeal, the judge recorded the agreed issues in dispute in effect as being (1) whether the appellant met the requirements of paragraph EX.1, (2) whether the appellant met the requirements of the rules on private life grounds, and (3) whether the decision breached Article 8 outside the rules. The appellant and her husband attended and gave evidence. Katie did not attend the hearing because she was leaving on holiday to Vietnam with her boyfriend.
6. The judge made the following findings:
  - (1) The appellant and Mr Dang were married and they were in a genuine and subsisting relationship [14];
  - (2) The appellant had also been a stepmother to Mr Dang's youngest child, Katie, and they lived together until Katie went away to university[15];
  - (3) Katie has lived with her older sister for four years [15];
  - (4) Katie has graduated in criminal psychology and plans to take a Masters degree and to work for the police [15];
  - (5) Katie is living an independent life and has not lived with the appellant on a permanent basis for four years [16];
  - (6) The inability of the appellant to meet the language and financial requirements of the rules were relevant factors [18];
  - (7) The appellant's stay in the united Kingdom had always been "precarious" and her relationship with Mr Dang was established at a time she was residing here unlawfully [18], [20];
  - (8) The maintenance of immigration controls was in the public interest [18], [21];
  - (9) The appellant has family in Vietnam and visits Vietnam with Mr Dang and Katie [19];
  - (10) Mr Dang speaks Vietnamese [19];

- (11) Both Mr Dang and the appellant work as manicurists [19];
  - (12) No reason had been given why the appellant could not pass an English language test [19];
  - (13) The appellant lived in Vietnam until the age of 39 and still speaks Vietnamese [20];
  - (14) Mr Dang would not be compelled to leave the United Kingdom [20];
  - (15) The appellant could return to Vietnam and seek to return to the United Kingdom, if she chose to [20], [23];
  - (16) There was no evidence of significant health issues [20];
  - (17) Although there would be difficulties, there were not 'insurmountable obstacles' to family life continuing outside the United Kingdom [21], and;
  - (18) Nor would there be very significant obstacles to the appellant's integration in Vietnam [21].
7. Ground 1 argued that the judge had run together the tests under the rules and section 117B of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") rather than consider them separately and sequentially. Ground 2 argued that the judge misapplied section 117B of the 2002 Act by treating the test of precariousness as "binary" rather than evaluative: Rhuppiah v SSHD [2016] EWCA Civ 803, [44]. The majority of the time the appellant had developed her relationship with Mr Dang she had been here lawfully. Ground 3 argued the judge had failed to take into account the fact the appellant had been granted a series of visas based on her relationship with Katie and the fact Katie had reached adulthood and a degree of independence did not mean family life no longer continued. Ground 4 argued the judge had failed to consider, when making his assessment of whether there were insurmountable obstacles to family life continuing outside the United Kingdom, the fact Mr Dang's family was based in the United Kingdom.
8. Permission to appeal was granted on all grounds.
9. The respondent uploaded a rule 24 response opposing the appeal on all grounds. However, at the beginning of the hearing, Ms Newton stated that she had reviewed the case and she formally conceded that the judge had erred in law. It follows that nothing more needs to be said. I allow the appellant's appeal and set aside the decision of Judge Eldridge. No findings are preserved save that it is not in dispute that the appellant enjoys family life with Mr Dang to whom she has been married since 2 November 2013 and she has held leave to remain since 19 May 2015.
10. In terms of what follows, the representatives urged me to remit the appeal to the First-tier Tribunal to be heard de novo by another judge. I considered this. Applying AEB v SSHD [2022] EWCA Civ 1512 and Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC), the I carefully considered whether to retain the matter for remaking in the Upper Tribunal, in line with the general principle set out in statement 7 of the Senior President's Practice Statements. I took into consideration the history of this case, the nature and extent of the findings to be made as

well as the respondent's concession that the judge had erred in his assessment of the evidence. I consider that it would be unfair for either party to be unable to avail themselves of the two-tier decision-making process and I therefore remit the appeal to the First-tier Tribunal.

**Notice of Decision**

**The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.**

**The decision of the First-tier Tribunal is set aside.**

**The appeal is remitted, de novo, to the First-tier Tribunal to be reheard by any judge except First-tier Tribunal Judge Eldridge.**

Signed

**N Froom**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

Dated

17 January 2025