Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/00276/2014**

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 21 October 2014	**On 22 October 2014**

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MISS RENDY DUE PAGLOMUTAN
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr T Wilding, Home Office Presenting Officer
For the Respondent: Miss S Haji, Counsel
(instructed by Greenfields Solicitors)

DETERMINATION AND REASONS

Introduction

1. The Appellant (the Secretary of State) appealed with permission granted by First-tier Tribunal Judge Page on 1 September 2014 against the determination of First-tier Tribunal Judge M Symes who had allowed the Respondent's appeal against the Appellant's decisions dated 29 November 2013 to refuse to grant the Respondent further leave to remain on Article 8 ECHR private life grounds and to remove her. The determination was promulgated on 8 August 2014.

2. The Respondent is a national of the Philippines, born on 5 April 1986. She had entered the United Kingdom as a Tier 4 Student on 9 November 2009, which leave had been varied to Tier 1 (Post-study Worker) Migrant and extended until 2 November 2013. On 29 October 2013 the Respondent made her application for further leave to remain based on her private life.

3. Permission to appeal to the Upper Tribunal as sought by the Appellant was granted by Judge Page because he considered that it was arguable that the judge had failed to follow the approach set out in Gulshan (Article 8 – new rules – correct approach) [2013] UKUT 00640 (IAC). The judge had not identified compelling circumstances not sufficiently recognised under the Immigration Rules.

4. Standard directions were made by the Upper Tribunal.

Submissions – error of law

5. Mr Wilding for the Secretary of State relied on the grounds of onwards appeal and submitted that this was a clear case of legal error in relation to the Article 8 ECHR claim, as the grant of permission to appeal indicated. No exceptional circumstances had been identified by the judge. Insufficient weight had been given to the public interest and to the Immigration Rules. Gulshan (above) had not been followed, nor Haleemudeen [2014] EWCA Civ 558. There had been an impermissible "freewheeling analysis". Patel v SSHD [2013] UKSC 72 showed that there was no "general dispensing power". The determination should be set aside and remade.

6. Miss Haji for the Respondent relied on her skeleton argument. It has always been accepted that the Respondent could not meet the Immigration Rules. Counsel submitted that the judge's findings had been open to him and were based on the proportionality assessment which remained a requirement. There were a number of compassionate factors. There was the Respondent's contribution to society. These were factors which the judge had been entitled to factor into the balancing exercise. His findings and ultimate decision were open to him. The determination should stand.

The error of law finding

7. At the conclusion of submissions, the tribunal indicated that it found that the judge had fallen into material error of law. The judge had singularly failed to identify any matter of sufficient significance or weight on the facts he found which justified a departure from the Immigration Rules. No sufficient case for special treatment of the Respondent was identified. The Respondent's case was based wholly on her private life, and not on any familial relationships in the United Kingdom. The Respondent works in the caring professions but it is matter for the elected government what labour and skills requirements may exist from time to time within such professions, executive policy decisions which will (if the government chooses) be reflected in the Immigration Rules. With all respect to the judge, conditions which the Respondent might face in her home labour market are not matters which the tribunal is able to take into account, save to the extent that Refugee Convention or Article 3 ECHR issues arose (which was not suggested applied in the present appeal).

8. Sections 117A-D of the Nationality, Immigration and Asylum Act 2002 are intended to ensure that courts and tribunals adequately weigh public interest considerations when Article 8 ECHR issues arise. These sections do not do more than codify the existing Article 8 ECHR jurisprudence and create no new rights. While the judge was entitled to take into account the Respondent's contribution to society, family circumstances in the Philippines and local circle of friendship, those factors were, for the reasons identified above, far from sufficient to show that they amounted to a

compelling circumstance. There was, for example, no evidence to show that the Respondent did more than maintain the high standards expected from her profession. The Respondent was in effect no different from any other young migrant workers in the United Kingdom, enjoying living in a cosmopolitan country and earning far in excess of her home country's level of wages. The Article 8 ECHR decision of the First-tier Tribunal was set aside for material error of law. The decision had therefore to be remade. No further submissions were required for such purpose.

Discussion and fresh decision

9. There was no dispute of fact in this appeal and the original findings of fact stand unchanged. For convenience and clarity the tribunal will refer to the parties by their original designations in this section of the determination.

10. Nasim and Others (Article 8) [2014] UKUT 00025 (IAC) applies to the Appellant's private life in the United Kingdom, which is of modest duration and falls far short of the requirements of paragraph 276ADE of the Immigration Rules, as was accepted. Her intention was in due course to return to the Philippines to join her family who live there and to whose support she contributes or provides. There was no factor in the Appellant's private life which the tribunal considers was such as to require the Secretary of State to consider the exercise of her discretion outside the Immigration Rules. There was no express consideration in the reasons for refusal letter of paragraph 353B of the Immigration Rules (which deals with representations received against removal) but that was not raised as a ground of complaint at any stage and is not in any event a basis for an appeal to the tribunal. There is no reason why the Appellant cannot maintain contact with the circle of local friends who provided letters of support. That aspect of her private life will not necessarily be affected by her removal.

11. The Appellant's pessimistic views about her prospects of finding employment on her return to the Philippines were not supported by any objective evidence and must be regarded as speculative. In any event, any such difficulties are immaterial given that they were not argued to invoke any of the United Kingdom's international obligations.

12. The fact that the Appellant meets factors listed in section 117B of the Nationality, Immigration and Asylum Act 2002 does not create a right for her to stay in the United Kingdom. They are merely factors which must be taken into consideration, and the tribunal has done so. The Appellant failed to show any reason to depart from the Immigration Rules in her case.

13. If that were a mistaken or incomplete view for any reason, the live issue applying the Razgar [2004] UKHL 27 tests is proportionality. The legitimate objective is immigration control, which embraces many related matters. An important aspect of immigration control for the purposes of the present appeal is that the decision as to which non citizens are permitted to settle in the United Kingdom is not a matter of private choice, whether or not there will be any measurable cost or indeed potential economic benefit from such settlement. There has to be a rule, democratically determined, which applies to all: see Patel v SSHD [2013] UKSC 72.

14. In the tribunal's view, the proportionality balance is against the Appellant. She was unable to meet the Immigration Rules which apply to everyone. Her removal to her home country cannot be regarded as unreasonable nor will it create consequences which can sensibly be considered as unduly harsh for her.

15. Thus, however the Appellant's appeal is analysed, it must fail.

16. There was no application for an anonymity direction and the tribunal sees no need for one.

DECISION

The making of the previous decision involved the making of an error on a point of law. The tribunal allows the onwards appeal to the Upper Tribunal, sets aside the original decision and remakes the original decision as follows:

The appeal under Article 8 ECHR is dismissed

Signed **Dated**

Deputy Upper Tribunal Judge Manuell 21 October 2014

TO THE RESPONDENT
FEE AWARD

The appeal was dismissed and so there can be no fee award

Signed Dated

Deputy Upper Tribunal Judge Manuell 21 October 2014