



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/20463/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 5 February 2019**

**Decision & Reasons
Promulgated
On 04 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MRS ISABELITA ESTRICOMEN BELARMA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O Noor, counsel instructed by Kings Cross Barristers
For the Respondent: Mr T Wilding, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant a national of the Philippines date of birth 7 January 1962 appealed against the Respondent's decision, dated 11 August 2016, to refuse an application made in April 2016 for leave to remain on the basis of her private and family life. The appeal came before First-tier Tribunal Judge K Swinnerton who on 12 November 2018 dismissed the appeal both

with reference to the Immigration Rules (The Rules) and under Article 8 ECHR outside of the Rules.

2. The immigration history is clear in that the Appellant entered the United Kingdom as a visitor in 2001 and overstayed. She waited some fourteen years before making her application. After the application was made but before the decision upon the claim was dealt with, sadly her partner, Mr [M], a UK national, had died. At the hearing before the Judge the position was effectively accepted that there were real difficulties to the possibility of her succeeding at the material times under The Rules. However, what was pressed on behalf of the Appellant was a variety of personal factors, family connections in the UK, the substantive relationship which she had had with her deceased partner and the connections which she had in the UK. The Judge found the evidence of the Appellant to be credible and that there was a genuine relationship as claimed up until the time of her partner's death.
3. The Judge accepted that the Appellant did have some family members residing in the UK and whilst she did not have accommodation in the Philippines the Judge accepted that she was candid and that her financial situation was such that she would be able to provide for herself on a return to the Philippines. The Judge concluded in addressing private life provisions under paragraph 276ADE(vi) of The Rules that there would be no very significant obstacles to reintegration into the Philippines.
4. The case was essentially put to the Judge by Mr Noor in the context of the case of *Treebhawon and Others*, (NIA 2002 Part 5A - compelling circumstances test [2017] UKUT 00013 ((IAC) for there were circumstances which warranted the consideration of her claim. He also relied for the purposes of his case and its understanding of the circumstances on *TZ (Pakistan)* and *PG India* [2018] EWCA Civ 1109 and in particular the analysis by the Court of Appeal of the exercise and the

judgment that has to be made on the various factors including of course the public interest and the maintenance of immigration controls.

5. It is clear of course that in Hesham Ali [2016] UKSC 60 guidance was given as to a convenient way to carry out the analysis including listing the “pros” and “cons” in the form of a balance sheet approach which has become more widely followed.
6. Mr Wilding argued that the Judge correctly addressed the evidence, made the relevant findings of fact and in paragraph 25 of the decision effectively set out the points that weighed for and against the Appellant and her claim to remain based on amongst other things of course the impact of her having to leave the United Kingdom. Having set those matters out the Judge in relatively terse fashion said:-

“Taking account of all these circumstances in this case I do not find that the circumstances of the Appellant are compelling and I do not find it disproportionate for the appeal of the Appellant not to succeed. I would add that I make this decision with no enthusiasm given the very sad circumstances that prevail in the case.”

7. Mr Noor argued in effect that a more thorough and adequate setting out of the factors, perhaps their individual weight, should have been given to them and set out and there was an absence of adequate or sufficient reasons.
8. It is not for me to find an error of law simply because I might reach a different decision. I take into account, insofar as it is necessary to do so, the materiality of any error and whether there is any real likelihood that a different decision might have been reached by a different Tribunal fully setting out reasons in the way the law required. For my part whilst I again have no enthusiasm for the outcome of this appeal, given the impact upon

this unfortunate lady who has been caught out by the Rules and events and the needs of the case law. It seemed to me that the grounds are essentially a disagreement with an outcome rather than a reasons challenge which showed any arguable error of law in failing to address the material.

9. It was not said for example that the Judge has failed to have regard to material factors or given weight to immaterial factors and therefore made errors of law in the analysis of the issues. This appeal's outcome was as good an example of the hard edge that has been given to human rights appeals through the case law and legislation. I necessarily have to operate in that framework whatever my sympathies may be. For these reasons therefore I conclude that the Original Tribunal made no material error of law.

NOTICE OF DECISION

The appeal is dismissed.

ANONYMITY

No anonymity order is made nor is one required.

Signed

Date 22 February 2019

Deputy Upper Tribunal Judge Davey

TO THE RESPONDENT

FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 22 February 2019

Deputy Upper Tribunal Judge Davey

