



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/00940/2020**

THE IMMIGRATION ACTS

**Heard at Field House
On 3 December 2021**

**Decision & Reasons Promulgated
On 16 December 2021**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

**RS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K McCarthy, Counsel instructed by South West London Law Centres

For the Respondent: Mr S Walker, Senior Presenting Officer

Anonymity Order

Unless the Upper Tribunal or a court directs otherwise no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to amongst others the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND REASONS

Introduction

The appellant appeals against a decision of Judge of the First-tier Tribunal Seelhoff ('the Judge') to dismiss her appeal against a decision of the respondent refusing to recognise her as a refugee or to grant her leave to remain on human rights grounds.

The Judge's decision was sent to the parties on 15 January 2021.

By a decision dated 7 April 2021 Upper Tribunal Judge Lindsley granted the appellant permission to appeal. Judge Lindsley identified that permission was granted in respect of the article 8 ECHR grounds alone (grounds 3 and 4) but it was accepted by the representatives before me that I was not limited from considering the remaining grounds (grounds 1, 2 and 3): *EH (PTA: limited grounds; Cart JR) Bangladesh* [2021] UKUT 00117 (IAC).

I allowed the appellant's appeal, on limited grounds, at the conclusion of the hearing, to the extent of setting aside the decision of the Judge on the human rights (article 8) ground alone and remitting the appeal on that ground to the First-tier Tribunal. I now give my reasons.

Anonymity

The Judge purported to issue an anonymity direction on the front page of his decision. It is therefore a concern that at the conclusion of his decision he stated that no anonymity direction was made. This is very unfortunate.

With the agreement of the representatives, I proceeded on the basis that the Judge had made an anonymity order as per his confirmation on the front page of his decision.

Proceeding on this basis, I am concerned as to whether there has been proper consideration as to why the appellant's article 8 rights outweigh the public interest in details of these proceedings being generally disseminated; the right of freedom of expression being protected by article 10 ECHR: *Cokaj (anonymity orders, jurisdiction and ambit)* [2021] UKUT 202, at [17]-[28].

Considering the matter afresh, I observe that the refugee claim advanced in this matter was weak and is not pursued by Ms McCarthy. Nor do the appellant's health concerns automatically require an anonymity order: *Zeromska-Smith v. United Lincolnshire Hospitals NHS Trust* [2019] EWHC 552 (QB); [2019] Med LR 250.

Ultimately, I was satisfied at the hearing that there may be real concerns as to the adverse impact the publication of the appellant's personal circumstances may have upon her mental health. In those circumstances I confirmed the continuation of the order at the hearing, but the appellant was placed on notice that future judicial consideration of anonymity would be aided by relevant medical opinion.

Background

The appellant is a national of the Philippines and is presently aged 62. She has been educated to degree level in the Philippines and worked for several companies between 1981 and 2004

The basis of her claim for international protection was that she feared her ex-partner on return to the Philippines. She was in the relationship for several years, but it deteriorated and on her account she suffered domestic violence at her ex-partner's hands. She felt required to leave the country and having secured a visit visa to visit her nephew and niece she entered this country in 2015.

The appellant states that she initially intended to return to the Philippines but, as time passed, she wanted to stay in this country because of her love for her family here. She now takes care of her grandnieces.

She has a history of making unsuccessful applications for residence cards as an extended family member.

In 2018 she was served with a notice of liability for removal and detained at Yarl's Wood Immigration Removal Centre pending her removal. She submitted a human rights claim in July 2018 which was refused the following month. A day after the refusal she made further submissions on human rights (article 8) grounds and two days afterwards claimed asylum. She was interviewed by the respondent as to her asylum claim in January 2019. The respondent refused her claim for international protection by a decision dated 10 January 2020.

Her appeal was heard by the Judge sitting at Hatton Cross on 4 January 2021. The Judge dismissed the claim for international protection. It was accepted that for the most part the appellant was a credible witness, but ultimately the Judge concluded that whilst the appellant's former partner may become aware that she had returned to the Philippines, and he might ask her for money there was no real risk that he would wish to do her any significant harm. In any event, the appellant could be protected by her own children and by the authorities.

The Judge also refused the human rights (article 8) claim.

Grounds of Appeal

The appellant relies upon five grounds of appeal authored by Ms McCarthy, who represented her at the hearing before the Judge. The first three grounds are concerned with the international protection claim, in respect of both the asylum claim and article 3 ECHR. The last two grounds are concerned with the human rights (article 8) claim based upon family life.

Decision on the Error of Law

I was greatly aided at the hearing by the careful and thoughtful approaches adopted by both Ms McCarthy and Mr Walker. Ms McCarthy readily accepted that she could not sustain the challenges advanced by grounds 1, 2 and 3, recognising that the asylum and article 3 claims were weak. These grounds were not pursued before me.

In turn, Mr Walker accepted in respect of ground 5 that the Judge's consideration of article 8 outside of the Rules was flawed by a material error of law. Upon reflection he also accepted that ground 4 of the grounds of appeal, concerned with the judicial consideration of paragraph 276ADE(1)(vi) of the Immigration Rules ('the Rules'), was materially flawed in respect of a failure to consider the psychological impact of removal and the appellant's ability to integrate socially upon her return.

For the reasons detailed below, Mr. Walker was correct to make his concessions.

Ground 4 is a reasons challenge relating to the consideration by the Judge as to whether very significant obstacles to integration would be faced by the appellant upon her return to the Philippines. The Judge's consideration of this issue was undertaken at paragraph 52 of his decision:

"52. I move on to considering Article 8 under the Immigration Rules. The appeal could succeed were I to find that there were very significant obstacles to integration on return in accordance with paragraph 276 ADE (1) (vi) of the Immigration Rules. I find that the evidence of the Appellant's children in the Philippines as to their ability to support her is limited in that both focus only on their ability to house her or support her on their own. There is a failure among the witnesses to consider the ability of the family to pool resources to support the Appellant and to offer practical help. The Appellant's niece and nephew in the UK gave evidence that they would continue to offer what support that they could. The Appellant is a national of the Philippines who has spent the vast majority of her life there. She has close family in the Philippines who can offer some support and I am satisfied that with the family pooling resources the high threshold set in the Law is not met. I am satisfied bearing in mind the guidance in *Kamara* [2016] EWCA Civ 813, that the Appellant would have capacity to participate in and operate in society in the Philippines albeit her life may not be as comfortable as it has been in the UK."

I observe the judgment of Sales LJ (as he then was) in *Secretary of State for the Home Department v. Kamara* [2016] EWCA Civ 813, at [14]:

'14. ... The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be **enough of an insider** in terms of understanding how life in the society in that

other country is carried on and a **capacity to participate in it**, so as to have a reasonable opportunity to be accepted there, to be **able to operate on a day-to-day basis** in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.' [Emphasis added].

The Judge's focus as to the potential ability of the appellant's children to support her is limited to the provision of financial support. It fails to engage with the submission advanced by the appellant that her integration upon return would be significantly hindered by the psychological impact of her removal, resulting in what the appellant identifies as a devastating loss of her family relationships in the United Kingdom, combined with her subjective fears as to her ex-partner and her PTSD. Whilst it cannot be said that the appellant is certain to succeed under paragraph 276ADE(1)(vi) of the Rules, the failure to consider the submissions is a material error in light of the appellant's accepted psychological vulnerabilities.

In those circumstances Mr Walker was correct to concede the appeal in respect of ground 4.

Ground 5 is concerned with the Judge's consideration of the full proportionality assessment, or article 8 outside of the Rules. He concluded that the appellant could not satisfy the exceptional circumstances required by Section 117B(6) of the Nationality, Immigration and Asylum Act 2002.

"54. Although it is likely that the Appellant has a close relationship to her nephew's children and niece, I am not satisfied that the evidence means I should treat it as a parental relationship for the purposes of section 117B (6) of the 2002 Act. The Appellant's nephew and his wife appear to be active and involved parents.

55. I am satisfied that there is likely to be family life in this case between the Appellant her nephew and her niece and their children. The account is certainly one of a closer-knit family than one often sees. There is an explanation as to why the Appellant is exceptionally close to her niece's children with one of them having had childhood cancer. On the other hand, for 15 years his family life has been developed in the full knowledge by all parties of the fact that the Appellant was in the UK unlawfully and for the most part whilst making no serious attempts to regularise her stay. This has to impact the weight I attach to the family life in this case. I also note that the Appellant is an adult as are her niece and nephew and her niece's children. Relationships between adults like this are well outside of the circumstances that Parliament anticipated protecting with the Immigration Rules."

Mr Walker accepted that the Judge again failed to place into the assessment the appellant's complex medical needs and so failed to adequately consider whether it would be disproportionate to the extent of there being exceptional circumstances that the appellant be separated from her niece and nephew in

this country. I am satisfied that Mr Walker was correct to make that concession.

In the circumstances, whilst the Judge's conclusions as to the asylum and article 3 claims are properly to stand, I am satisfied that the Judge materially erred in law in his consideration of the article 8 claim before him. The only proper course of action available to me is to set aside the decision of the First-tier Tribunal as to the human rights (article 8) appeal.

Remaking the Decision

The parties agreed that the human rights appeal concerned with article 8 alone should be remitted back to the First-tier Tribunal.

I am satisfied that there will be extensive fact-finding required as to the family dynamics and the appellant's mental health. Ms McCarthy indicated to me that it is the intention of the appellant to secure an updated psychological report which would be provided to the First-tier Tribunal. In those circumstances I am satisfied that the proper course is to remit the human rights (article 8) appeal to the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal involved the making of a material error on a point of law in respect of the human rights (article 8) appeal and on that ground alone I set aside the Judge's decision promulgated on 15 January 2021.

The Judge's decision in respect of the international protection and human rights (article 3) appeals stand.

I preserve the findings of fact made by the Judge at paragraphs 38 to 51.

The resumed hearing in this matter is remitted to the First-tier Tribunal sitting at Hatton Cross to be heard by any judge other than Judge of the First-tier Tribunal Seelhoff.

Signed: D O'Callaghan
Upper Tribunal Judge O'Callaghan

Date: 8 December 2021