Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/12861/2019

THE IMMIGRATION ACTS

Heard at Field House via Video	**Decision & Reasons Promulgated**
On 25 April 2022	**On 20 May 2022**

Before

UPPER TRIBUNAL JUDGE PITT

Between

MR RONEL MICHAEL PERALTA TANEDO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Hoare, Solicitor/Advocate
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision issued on 30 October 2019 of First-tier Tribunal Judge Obhi which refused the appellant's Article 8 ECHR appeal.

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2. The appellant is a national of the Philippines and was born on 21 November 1996. He is currently 25 years old.

3. The appellant's mother came to the United Kingdom in 2005 and trained as a nurse. On 12 October 2012 she was granted indefinite leave to remain (ILR). On 9 May 2013 she became a British citizen.

4. During this time, the appellant, his father and his sister remained in the Philippines. In 2012 they made an application to apply to come to the UK to join the appellant's mother. The applications were granted and on 30 December 2012 the appellant and his sister came to the UK as dependants of their mother with leave until 11 September 2015. On 28 July 2014 their father joined them in the UK.

5. On 8 September 2015 the appellant applied for further leave to remain as a dependent child. By that time he was and adult. Nevertheless, the respondent granted the appellant further leave to remain in a decision dated 16 December 2015. The decision stated that the appellant had been granted limited leave "under paragraph D-LTRC1.1. of Appendix FM". The appellant was granted leave on that basis until 9 May 2018. The appellant's father and sister were also granted further periods of limited leave to remain.

6. On 5 May 2018 the appellant, his father and his sister applied for ILR for a reason not covered by the Immigration Rules. All three were refused in decisions issued on 12 July 2019. They appealed to the First-tier Tribunal and their linked appeals came before First-tier Tribunal Judge Obhi on 11 October 2019.

7. By the time of the hearing before First-tier Tribunal Judge Obhi, the appellant's sister was pursuing an alternative basis on which to remain in the UK. She therefore did not pursue her appeal and, where it had not been formally withdrawn, it was dismissed.

8. The First-tier Tribunal found that the decision refusing leave to the appellant's father was not lawful and allowed his appeal under Article 8 ECHR. This was on the basis that the appellant's father could show that as of the date of the hearing he met the requirements of the Immigration Rules for at least limited leave to remain as a spouse. The background against which the appellant's claim had to be assessed, therefore, was that his mother, father and sister would remain in the UK and only he faced return to the Philippines.

9. The First-tier Tribunal considered the position of the appellant in paragraphs 33 to 36 of the decision. The judge found as follows:

> "33. The situation in relation to the second appellant is more complex. He is an adult who entered the UK as the dependent of his mother when he was 16 years of age. Prior to that he had lived in the Philippines with his father and his grandmother. He is now an adult. He has lived with either his mother or his father since his birth, he is now aged

almost 23 years. He is a healthy young man who is capable of living independently. Whilst he remains financially dependent on his parents, that is not unusual for adult children of his age, particularly those who are still in education. His situation is similar to that of a university or higher education student who remains financially dependent on his parents but has decided on his career path and is pursuing it. Although the third appellant's mother claimed during her evidence that she had directed which career route he should follow, that was not his evidence, but even if she had, that again is not dissimilar to the discussions that parents have with their children. It does not mean that an adult child who takes advice from his parents remains dependent on them. I accept that emotional ties do not suddenly cease when a child attains the age of 18, but from that age he is increasingly independent of the ties that he has with his parents. There are cases which (sic) that cannot happen, for example when a child is disabled or in some other way mentally incapacitated. That is not the case here.

34. I am invited to find that there is a dependency over and above that of a normal adult child with his parents. It is difficult to see how that can be the case in relation to his mother, as he has lived apart from her since he was less than 10 years of age and has been brought up by his grandmother and his father. Similar principles apply in his case, in that he does not meet the requirements of the immigration rules and therefore has to show that there are insurmountable obstacles in his case, or exceptional circumstances outside the Rules. In relation to insurmountable obstacles, he lived with his grandmother in the Philippines when his mother chose to come to the UK, and whilst his father was also there, it cannot be said that he could not survive as an adult without his father. He is capable of working and obtaining employment. The fact that he may not be able to get the job he wants or that it may be more difficult to get employment in the Philippines does not make the case exceptional.

35. …

36. The Rule [paragraph 276ADE] makes provision for young adults who have been in the UK for a long time, the appellant does not meet those requirements. Considering the case outside the Immigration Rules and applying the stage by stage approach recommended by the House of Lords in the case of Razgar [2004] UKHL 27 – refusing him leave to remain will be an interference with his wish to continue living within the household of his parents but it is a proportionate decision. He is undertaking training which will give him access to work opportunities. There are other options open to him, such as returning to the Philippines and applying to return as a student to complete those studies".

10. The appellant appealed the decision of the First-tier Tribunal and in a decision dated 24 February 2020 the First-tier Tribunal granted permission to appeal to the Upper Tribunal. The appellant maintained that the First-tier Tribunal had erred in finding that he had not met the requirements of the Immigration Rules for ILR or further leave to remain as of the date of the decision. He also maintained that the finding that he did not have a

family life for the purposes of Article 8 ECHR with his parents and family in the UK was in error and that the proportionality exercise was flawed.

11. It was accepted that before the First-tier Tribunal Mr Hoare had attempted to raise a challenge that the appellant met the requirements of the Immigration Rules. Mr Hoare had indicated to the First-tier Tribunal that his submission was hampered by the respondent's failure to provide the documents showing on what basis the appellant had been granted leave between 2012 and 2018 and where there was no HOPO to assist at the hearing.

12. The basis of the appellant's case was best set out in the reply to directions submitted by Mr Hoare dated 26 February 2021. The appellant relied on having been granted leave as a dependent child on 30 December 2012 and being expressly granted further leave "under paragraph D-LTRC1.1. of Appendix FM" in the decision of 16 December 2015. That provision of the Immigration Rules provided a route to settlement for an individual who was no longer a child but had been a child when originally granted leave. Notwithstanding the diligence with which Mr Hoare set out and analysed the complex provisions of the Immigration Rules in this regard, at the hearing before me he conceded that the appellant could not meet the requisite substantive Immigration Rule, that is paragraph 298. That was because the appellant could not rely on any of the provisions of paragraph 298(i) concerning the status of his parents. Where that is so, the appellant's case that he qualified for leave under the Immigration Rules and that the First-tier Tribunal was in error in finding otherwise does not have merit.

13. The appellant also challenged the findings in paragraphs 33 and 34 of the decision of the First-tier Tribunal that he did not have a family life with his parents. The appellant maintained that the judge had taken too narrow approach in paragraph 33 finding that the fact that he had chosen his course in motor engineering rather than his parents deciding was an indicator that he was not dependent on them. In paragraph 34 the First-tier Tribunal had erred in finding that the appellant did not have a family life with his mother as he had lived apart from her from 2005 and 2012. There was no consideration of the fact that he lived with her from 1996 to 2005 and from 2012 onwards. That was well over half his life. Further, the consideration of family life failed to take into account that the appellant had lived with one of his parents for all of his life and with his father for all but two years of his life. The decision also failed to take into account the fact of the appellant's sister being likely to remain in the UK and the appellant returning to the Philippines alone and all of his immediate family remaining in the UK.

14. I found that the appellant's submissions on the assessment of family life had merit. The assessment focuses on the period during which the appellant lived apart from his mother whilst failing to take into account that he had still lived most of his life with her and had lived with his father for all but two years of his life. In addition, no consideration was given to

the fact that the appellant was facing return to the Philippines alone, having always lived with his immediate family who would be remaining in the UK. Further, the appellant's grounds identified a further error in the application of an "insurmountable obstacles" test in paragraph 34 of the decision. The case law at the time of the hearing before the First-tier Tribunal was fast moving and it was not disputed that by the time of the decision the application of a test of "insurmountable obstacles" was no longer correct in law. I found that this further undermined the assessment of proportionality under Article 8 ECHR.

15. For these reasons it was my conclusion that the Article 8 ECHR assessment of the appellant's family and private life disclosed errors on a point of law which meant that they had to be set aside to be re-made.

16. In this particular case, due to the delay between the decision of the First-tier Tribunal and this error of law decision, it is appropriate for the matter to be remitted to the First-tier Tribunal for up-to-date evidence on the appellant's Article 8 ECHR claim which is likely to evolved in the last three years.

Notice of Decision

17. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be re-made in the First-tier Tribunal.

Signed: S Pitt Date: 9 May 2022

Upper Tribunal Judge Pitt