



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

Appeal Number: PA/07594/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 16 February 2018**

**Decision & Reasons
Promulgated
On 15 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MS EDITHA VALENZUELA
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr T Melvin, Senior Presenting Officer

For the Respondent: Ms C Jaquiss, Counsel, instructed by Bespoke Solicitors

DECISION AND REASONS

1. In this decision the Appellant is referred to as the Secretary of State and the Respondent is referred to as the Claimant.

2. The Claimant, a national of the Philippines, date of birth 27 April 1969, appealed against the Respondent's decision, dated 1 August 2017, to refuse an asylum and protection claim and to refuse to allow the Appellant to remain by virtue of a claim to a private life in the United Kingdom under the Immigration Rules and Article 8 ECHR. The appeal against that decision came before First-tier Tribunal Judge Herbert, who allowed the appeal under the Immigration Rules and under Article 8 ECHR. The Judge dismissed the appeals in relation to the need for asylum, Humanitarian Protection and under Articles 2 and 3 ECHR. It is clear that no case was being run under either Article 3 or Article 8 ECHR in relation to the Appellant's physical or mental health as a basis on which she should remain in the UK. The Secretary of State raises a significant number of different points of attack against the decision of the Judge and I do not set them all out because quite simply there is no need to do so.
3. I follow the approach that it is inappropriate for the Upper Tribunal to intervene in a decision simply because it might have reached a different decision. What is required of course is a careful consideration of the evidence and a proper application of the law to it. In this case I find that the Original Tribunal set out much of the evidence which is of the most general kind concerning the nature of concerns anyone who has lived in the United Kingdom for many years may fear whether relocating to the Philippines or elsewhere. Naturally there are the inevitable consequences of being uprooted from familiar circumstances, returning to the home country on one's own in many cases, a lack of employment, housing and various other matters that flow from those difficulties.
4. In this case the Claimant's position is that she has been in a longstanding partnership with a Mr [S F], a national of the Philippines, date of birth 20 April 1962, therefore a few years older than the claimant. Their relationship, the Judge accepted, was genuine, significant and that they are emotionally very close. Similarly the Judge accepted that the Appellant's partner has a disability in that he is blind in one eye and has a

limp in his right leg. In fact, the Judge did not address the limp but I assume since he accepted the other evidence that the same applies. However, the Judge also noted and does not seem to have balanced it with that finding the fact that the claimant's partner works six days a week as a cleaner and therefore the extent of his dependency upon the Claimant, let alone the extent of the disability being significant, does not really seem to have been scrutinised or at least explained.

5. Ultimately, the Judge having recited a good deal of the law in relation to considerations that may arise in relation to very significant obstacles to return, insurmountable obstacles to return or, as he puts it, in other ways serious difficulties in making a life for themselves and serious hardship or unduly harsh consequences. Nevertheless the judge failed to give any real reasoning as to why he reaches the conclusions that he did. The findings on the key areas are made but no analysis of why they might truly amount to insurmountable or very significant obstacles. The matter is illustrated, for example, by the reference to the implications of protracted delay in effecting removal rather depends on the Secretary of State knowing where the overstayer is.
6. In this case it is quite clear from the immigration history, which Ms Jaquiss helpfully took me to, that the Claimant was determined to be in the United Kingdom for many, many years unlawfully and sought and failed on a number of occasions late on to try and regularise her status, all of which have failed. It therefore seemed to me harsh to somehow say those failures and the lack of active steps to physically find the Claimant and remove her from the basis of protracted delay which has caused some measure of disadvantage and prejudice to the Claimant. On the contrary, such time as there has been has been is relied upon as reasoning for why she should not now be removed.
7. The Judge also failed to give any proper analysis of why Mr [F] cannot return to the Philippines with his partner nor why to do so would be, given

his physical health and abilities, unduly harsh or insurmountable in terms of obstacles to him finding work in his home country.

8. I conclude therefore that the Original Tribunal failed to give proper and adequate reasons sufficient to explain the decision how the appeal could succeed under the Rules because quite simply making the finding that there are insurmountable obstacles is not sufficient. A party is entitled to know with reasons why a decision has been reached, which applies both to the Secretary of State and to an Appellant.

- 9 The Original Tribunal's decision stands in relation to the asylum, humanitarian protection and Articles 2 and 3 ECHR. There was no cross appeal on those findings. I form the view that the Original Tribunal's decision simply does not contain sufficient and adequate reasons and as such is an error of law. For these reasons the original Tribunal's decision cannot stand in relation to the application of the Immigration Rules/Appendix FM of the Immigration Rules and in relation to Article 8 ECHR.

10. DECISION.

11. The appeal of the Secretary of State is allowed to the extent that the private life claims will be remade in the First-tier Tribunal.

12. DIRECTIONS.
 - 1) list two hours;
 - 2) issues claim under the Rules and whether or not Article 8
 - 3) List, not before F-t T Judge Herbert nor before Deputy Upper Tribunal Judge Davey.
 - 4) Any further documentation relied upon in support of the Article 8 ECHR claim to be lodged not less than fourteen days before the further hearing.
 - 5) No anonymity order.

No anonymity direction is made.

Signed

Date 6 March 2018

Deputy Upper Tribunal Judge Davey