



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

Appeal Number: HU/06497/2018

THE IMMIGRATION ACTS

**Heard at Cardiff Civil Justice Centre
On 25 April 2019**

**Decision & Reasons Promulgated
On 28 May 2019**

Before

**MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE GRUBB**

Between

**SHERYLL GONA SALUNDAGA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L Maggino of Queen's Park Solicitors

For the Respondent: Mr D Mills, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of the Philippines who was born on 13 February 1979. On 22 November 2014, she married a British citizen, [JG] in the United Kingdom. She was granted leave to remain as a spouse from 14 January 2015 until 14 July 2017.
2. On 21 June 2017, the appellant made a human rights claim seeking leave to remain on the basis of her family life with her spouse.

3. On 19 February 2018, the Secretary of State refused her application for leave. The Secretary of State was not satisfied that the appellant met the relevant requirements of the 'partner' provisions in Appendix FM of the Immigration Rules (HC 395 as amended). Further, the Secretary of State was not satisfied that there were any "exceptional circumstances" such that there would be "unjustifiably harsh consequences" if the appellant were not granted leave to remain.
4. The appellant appealed to the First-tier Tribunal. Judge Povey accepted that the appellant and her husband had a "genuine and subsisting relationship" even though he had been imprisoned for seven years in March 2016 having been convicted of a number of offences. It was, however, accepted by the appellant's (then) representative that the appellant could not meet the financial requirements of Appendix FM. In the light of that, the judge considered whether the appellant could succeed under the 'partner' provisions in Appendix FM on the basis that there were "insurmountable obstacles to [their] family life" continuing in the Philippines. The judge rejected the appellant's argument that her spouse's imprisonment amounted to "insurmountable obstacles" to their family life continuing in the Philippines. The judge found, as a consequence, that the appellant had not met the requirements of the 'partner' provisions in Appendix FM. Going on to consider the appellant's case outside the Rules, the judge found that there were no "compelling circumstances" sufficient to outweigh the public interest so as to make the respondent's decision a disproportionate interference with the appellant (and her spouse's) family life. As a consequence, he dismissed the appellant's appeal on human rights grounds.
5. The appellant sought permission to appeal which was granted by the First-tier Tribunal (Judge Mailer) on 22 October 2018. On 28 November 2018, the Secretary of State filed a rule 24 notice seeking to maintain the judge's decision.
6. At the hearing before us, Mr Mills, who represented the Secretary of State, indicated that he took a different view to that expressed in the rule 24 notice. He accepted that the judge had erred in law in his approach to determining, and finding against the appellant, that there were not "insurmountable obstacles" to their family life continuing in the Philippines. Further, in all the circumstances of the case and despite the continued imprisonment of the appellant's spouse, who is due to be released in September 2019, Mr Mills indicated that he accepted that the appellant had established that there were "insurmountable obstacles", such that the requirements of para EX.1 of Appendix FM were met and that, accordingly, the appellant satisfied the requirements of Appendix FM as a 'partner' under the ten-year route. He indicated that it would be appropriate for us to re-make the decision allowing the appellant's appeal under Art 8 of the ECHR.

7. In the light of the position taken on behalf of the Secretary of State, we are satisfied that the decision of Judge Povey to dismiss the appellant's appeal under Art 8 involved the making of an error of law and we set it aside.
8. We re-make the decision allowing the appellant's appeal under Art 8 on the basis that the appellant meets the requirements of Appendix FM as a 'partner' under the ten-year route and that, as Mr Mills concedes, the decision to refuse her leave is a disproportionate interference with her family life with her spouse.

Decision

9. The appeal is allowed under Art 8 of the ECHR.

Signed



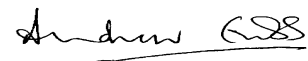
A Grubb
Judge of the Upper Tribunal

29 May 2019

TO THE RESPONDENT
FEE AWARD

As we have allowed the appeal, we consider it appropriate to make a fee award of any fee paid or payable in respect of the appellant's application.

Signed



A Grubb
Judge of the Upper Tribunal

29 May 2019

