Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/13787/2015**

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision & Reasons Promulgated**
On 11 April 2019	**On 8 May 2019**

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

LEONARD Y N KNIAZEFF

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Winter, instructed by Katani and Co Solicitors
For the Respondent: Mr A Govan, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of the Philippines. His appeal to the FtT was against the Secretary of State's decision refusing his human rights application for leave to remain in the United Kingdom based on his family life with Ian Maxtone, for reasons given in a letter dated 3 December 2015. The appeal was dismissed by First-tier Tribunal Handley in a decision promulgated 2 February 2017. The judge observed that the Secretary of State had accepted the appellant was in a genuine relationship and found the appellant and his partner credible however he concluded that the appellant would not face insurmountable obstacles on return. In brief the judge's reasons were that the appellant had entered into a relationship when his immigration status was of a temporary nature and he was still in contact with his family in the Philippines. He had no doubt that the appellant would be able to return to the Philippines and quickly integrate to society there with reference to his sexuality and would not face insurmountable obstacles. The judge concluded at [30] and [31]:

"30. As indicated, it is accepted that the appellant and the sponsor are in a genuine relationship. I find it is of significance that when the appellant moved to Birmingham and lived there for nearly a year the sponsor did not go with them. I had no reason to doubt that they were in regular contact with each other but it is also of some significance that the sponsor did not visit the appellant in Birmingham. The sponsor provided the appellant with some financial support when he was in Birmingham but the appellant also obtained employment in Birmingham and as far as I understand he also received some support from friends. This is not a case where the appellant was dependent on the sponsor.

31. In conclusion I accept that the sponsor and the appellant are in a relationship. I take account of the fact that the sponsor is a British Citizen. However I also take account of the appellant's immigration history and find it is significant that he remained in the United Kingdom when he had no entitlement to be here. The appellant and the sponsor were separated and did not meet each other for almost a year. There are no health issues and no children are involved. I conclude that it is reasonable to expect the appellant to return to the Philippines. It may well be the case that the separation will be temporary to enable the appellant to make an application to allow him to return to the United Kingdom. The appellant has not persuaded me that such temporary separation will interfere disproportionately with any protected rights."

2. Permission to appeal was granted by the Vice President of the Upper Tribunal in view of the observations in the joint minute endorsed by the Interlocutor of the Lord Ordinary following refusal of permission by Upper Tribunal Judge Pitt.

3. The joint minute is in the following terms:

"WINTER for the Petitioner and TARIQ for the Respondent concur in stating to the Court that the decision of the Upper Tribunal (Immigration and Asylum Chamber) dated 5th October 2017 to refuse permission to appeal to it ought to be reduced and the Petitioner's appeal remitted back to the Upper Tribunal (Immigration and Asylum Chamber) for consideration on all grounds which were before the Upper Tribunal and for the following reasons:

(i) An issue that the First-tier Tribunal ("FTT") required to consider was whether the Petitioner met the requirements of paragraph Ex.1 of Appendix FM to the Immigration Rules. This applies if:

> *"The applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, settled in the UK or in the UK with refugee leave or humanitarian protection, and there are insurmountable obstacles to family life with that partner continuing outside the UK."*

(ii) The FTT Judge in the decision dated 26th January 2017 considered whether there were insurmountable obstacles to the Petitioner returning to the Philippines. The FTT Judge failed to consider whether there were insurmountable obstacles to the Petitioner continuing his family life with his civil partner in the Philippines. The Immigration Rules Judge therefore failed to address the central issue required by paragraph Ex.1.

(iii) In its decision dated 5th October 2017 refusing permission to appeal, the UT incorrectly noted that the FTT Judge had made a finding on the issue of whether

there were insurmountable obstacles to the Petitioner's relationship with his partner continuing in the Philippines. The UT erred in law in stating that *"It was manifestly open to the FTTJ to find that the partner could be expected to relocate to the Philippines with the appellant so the Immigration Rules were not met …"*. There was no such finding in the FTT Judge's decision.

(iv) There are compelling reasons to interfere with the decision of the UT. The UT has erred in law by operating on a misunderstanding or misapprehension of the FTT Judge's findings. The FTT Judge has failed to consider whether the Petitioner's partner could be expected to relocate to the Philippines. The Petitioner's case has not properly been considered under paragraph Ex.1 of Appendix FM of the Immigration Rules. The error of law is one that cries out for consideration (*SA (Nigeria) v Secretary of State for the Home Department* 2014 SC 1: paragraph 44).

The Petitioner and Respondent therefore crave the Court to uphold the Petitioner's third plea-in-law and to reduce the decision dated 5th October 2017 and find the Respondent liable to the Petitioner for the expenses of the process as taxed by the Auditor of Court."

4. At the outset of the hearing Mr Winter explained that the only issue under Appendix FM with reference to the partner requirements related to finance. Mr Maxtone had two jobs with the Local Authority but his hours had been recently cut and was unable to meet the financial requirements of the Rules. He and Mr Govan agreed that Judge Handley had erred in his decision.

5. Before proceeding further, I consider the parties were correct to come to that conclusion. Although Judge Handley directed himself as to the nature of the insurmountable obstacles test he proceeded to consider the case under Article 8 only and failed to reach a conclusion under Appendix EX.1 whether there were insurmountable difficulties to the family life with Mr Maxtone continuing outside the United Kingdom. Instead, he was focused on the circumstances (and obstacles) the appellant might face before reaching his conclusion in the final sentences to [31] above. Before consideration of the case under Article 8, it was incumbent upon Judge Handley to decide whether the appellant came within the exceptions in EX.1 in the light of his inability to meet all the requirements of the Rules for a partner seeking leave to remain.

6. I set aside the decision of Judge Handley at the hearing. Mr Winter relied on two new statements from the appellant and Mr Maxtone as well as a psychiatric report on the appellant by Dr Stewart Roberts to which there was no objection by Mr Govan. Mr Govan initially indicated that he had questions for the appellant and Mr Maxtone. The latter was not at court explained by commitments in respect of his father. On reflecting however he decided he had no questions for either. The appellant adopted his statement and submissions followed. By way of summary of those submissions Mr Govan referred to the apprehended difficulties by Mr Maxtone relocating to the Philippines but argued that none could constitute as obstacles and in particular there was no reason why he would be unable to learn Tagalog or why a residence permit could not be obtained. He noted the absence of evidence of his father's dependency and there was no evidence of Mr Maxtone's fear of flying that

could prevent travelling. The test was a stringent one and the case arose out of a consequence of the appellant and Mr Maxtone choosing to marry whilst the latter had "precarious" leave. There was no medical evidence as to the care provided by the appellant to his father-in-law. The psychiatric evidence indicated no history of anxiety and did not add a great deal why the appellant should remain in the United Kingdom. The expert evidence indicated a divided society in the Philippines (as to gay men) and although he did not say the parties would not experience difficulties, it did not establish that they would not be able to live together. His final point related to the grant of entry clearance if the Rules could not be met and it was not for the judge to speculate the outcome. With reference to Section 117B of the Nationality, Immigration and Asylum Act 2002 the appellant was not financially self-sufficient, however Mr Govan accepted that he spoke good English.

7. By way of response Mr Winter relied on the expert evidence and urge that matters were tipped in the appellant's favour by reference to the difficulties homosexuals might face in the Philippines. Outside the Rules, and with reference to Section 117B, the appellant had leave when the relationship was formed. Mr Winter contended delay was a relevant factor and he noted there had been no attempts by the Secretary of State to remove the appellant.

8. My findings and conclusions are as follows. It is first necessary to consider the case under the Rules and then under Article 8 if the former are not met. As enjoined by the Senior President of Tribunal in *TZ (Pakistan)*:

> 30. A determination by a tribunal about a decision that is within the Rules may or may not involve the consideration of a requirement that possesses an article 8 element. That is because other aspects of the Rules may not be satisfied so that the appellant concerned cannot come within the Rules and the enquiry into the application of the Rules is foreshortened. That was the position so far as PG was concerned. Although in general terms it is not incumbent on a tribunal to express a concluded view about something that is either not in issue or not determinative within the Rules (unless the hearing is a one stop appeal within the meaning of the Nationality, Immigration and Asylum Act 2002, as amended, when as a matter of law all material issues will be before the tribunal and will necessitate a decision), as explained below where article 8(1) is engaged and the consideration of Article 8 outside of the Rules must follow, the tribunal should consider the insurmountable obstacles test within the Rules before considering the exceptional circumstances test outside the Rules.
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> 31. Where Article 8 is in issue within the Rules there will of necessity have to be a conclusion on the question of whether there are insurmountable obstacles to the relocation of the appellant and his or her family. That involves an evaluation or value judgment based upon findings of fact. When a tribunal goes on to consider an Article 8 claim outside of the Rules (as it will do where article 8 is engaged, see *Hesham Ali (Iraq) v Secretary of State for the Home Department* [2016] UKSC 60, [2016] 1 WLR 4799 at [80]), it will factor into its evaluation of whether there are exceptional circumstances both the findings of fact that have been made and the evaluation of whether or not there are insurmountable obstacles – that being a relevant factor both as a matter of policy and on the facts of the case to the question of exceptional circumstances.

32. In the circumstance that an FtT does not need to make an evaluation about insurmountable obstacles, the question arises: how does that tribunal or a subsequent tribunal relying on the same facts approach the question of exceptional circumstances outside the Rules? Again, the answer is to be found in *Agyarko* at [47] and [48]. By reference to *Hesham Ali* at [44 to 46], [50] and [53], Lord Reed made it clear that in striking a proportionality balance (i.e. when undertaking an article 8 evaluation outside the Rules) a tribunal must take the Secretary of State's policy into account and attach considerable weight to it 'at a general level'.

33. This means that a tribunal undertaking an evaluation of exceptional circumstances outside the Rules must take into account as a factor the strength of the public policy in immigration control as reflected by the Secretary of State's test within the Rules. The critical issue will generally be whether the strength of the public policy in immigration control in the case before it is outweighed by the strength of the article 8 claim so that there is a positive obligation on the state to permit the applicant to remain in the UK. The framework or approach in *R (Razgar) v Secretary of State for the Home Department* [2004] UKHL 27, [2004] 2 AC 368 at [17] is not to be taken to avoid the need to undertake this critical balance.

34. That leaves the question of whether the tribunal is required to make a decision on Article 8 requirements within the Rules i.e. whether there are insurmountable obstacles, before or in order to make a decision about article 8 outside the Rules. The policy of the Secretary of State as expressed in the Rules is not to be ignored when a decision about article 8 is to be made outside the Rules. An evaluation of the question whether there are insurmountable obstacles is a relevant factor because considerable weight is to be placed on the Secretary of State's policy as reflected in the Rules of the circumstances in which a foreign national partner should be granted leave to remain. Accordingly, the tribunal should undertake an evaluation of the insurmountable obstacles test within the Rules in order to inform an evaluation outside the Rules because that formulates the strength of the public policy in immigration control '*in the case before it*', which is what the Supreme Court in *Hesham Ali* (at [50]) held was to be taken into account. That has the benefit that where a person satisfies the Rules, whether or not by reference to an article 8 informed requirement, then this will be positively determinative of that person's article 8 appeal, provided their case engages article 8(1), for the very reason that it would then be disproportionate for that person to be removed.

35. I suggested at [19] that there exists a structure for judgments in the FtT where Article 8 is engaged. That was referred to by Lord Thomas in *Hesham Ali* at [82 to 84] and recommended by him. I strongly endorse his recommendation. Although there is no obligation in law for a tribunal to structure its decision-making in any particular way and it is not an error of law to fail to do so, the use of a structure in the judgments in these appeals would almost certainly have avoided the appeals, given that the ultimate conclusion of the tribunals was correct. To paraphrase Lord Thomas: after the tribunal has found the facts, the tribunal sets out those factors that weigh in favour of immigration control – 'the cons' – against those factors that weigh in favour of family and private life – 'the pros' in the form of a balance sheet which it then uses to set out a reasoned conclusion within the framework of the test(s) being applied within or outside the Rules. It goes without saying that the factors are not equally weighted and

that the tribunal must in its reasoning articulate the weight being attached to each factor."

9. The financial requirements that Mr Winter accepted the appellant fell foul of required at E-LTRP.3.1. a gross annual income of at least £18,600 unless EX.1. applies.

10. EX.1 (relevant to this case) is as follows:

> "EX.1 This paragraph applies if –
>
> …
>
> (b) the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British citizen, settled in the UK or in the UK with refugee leave or humanitarian protection, and there are insurmountable obstacles to family life with that partner continuing outside the UK.
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> EX.2. For the purposes of EX.1.(b) "insurmountable obstacles" means the very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner."

11. EX.2. reflects the judgment of Lord Reed in *R (Agyarko) v SSHD* [2017] UKSC 11 in which at [43] *ff*:

> "43. It appears that the European court intends the words "insurmountable obstacles" to be understood in a practical and realistic sense, rather than as referring solely to obstacles which make it literally impossible for the family to live together in the country of origin of the non-national concerned. In some cases, the court has used other expressions which make that clearer: for example, referring to "un obstacle majeur" (*Sen v The Netherlands* (2003) 36 EHRR 7, para 40), or to "major impediments" (*Tuquabo-Tekle v The Netherlands* [2006] 1 FLR 798, para 48), or to "the test of 'insurmountable obstacles' or 'major impediments'" (*IAA v United Kingdom* (2016) 62 EHRR SE 19, paras 40 and 44), or asking itself whether the family could "realistically" be expected to move (*Sezen v The Netherlands* (2006) 43 EHRR 30, para 47). "Insurmountable obstacles" is, however, the expression employed by the Grand Chamber; and the court's application of it indicates that it is a stringent test. In *Jeunesse*, for example, there were said to be no insurmountable obstacles to the relocation of the family to Suriname, although the children, the eldest of whom was at secondary school, were Dutch nationals who had lived there all their lives, had never visited Suriname, and would experience a degree of hardship if forced to move, and the applicant's partner was in full-time employment in the Netherlands: see paras 117 and 119.
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> 44. Domestically, the expression "insurmountable obstacles" appears in paragraph EX.1(b) of Appendix FM to the Rules. As explained in para 15 above, that paragraph applies in cases where an applicant for leave to remain under the partner route is in the UK in breach of immigration laws, and requires that there should be insurmountable obstacles to family life with that partner continuing outside the UK. The expression "insurmountable obstacles" is now defined by

paragraph EX.2 as meaning "very significant difficulties which would be faced by the applicant or their partner in continuing their family life together outside the UK and which could not be overcome or would entail very serious hardship for the applicant or their partner." That definition appears to me to be consistent with the meaning which can be derived from the Strasbourg case law. As explained in para 16 above, paragraph EX.2 was not introduced until after the dates of the decisions in the present cases. Prior to the insertion of that definition, it would nevertheless be reasonable to infer, consistently with the Secretary of State's statutory duty to act compatibly with Convention rights, that the expression was intended to bear the same meaning in the Rules as in the Strasbourg case law from which it was derived. I would therefore interpret it as bearing the same meaning as is now set out in paragraph EX.2.

45. By virtue of paragraph EX.1(b), "insurmountable obstacles" are treated as a requirement for the grant of leave under the Rules in cases to which that paragraph applies. Accordingly, interpreting the expression in the same sense as in the Strasbourg case law, leave to remain would not normally be granted in cases where an applicant for leave to remain under the partner route was in the UK in breach of immigration laws, unless the applicant or their partner would face very serious difficulties in continuing their family life together outside the UK, which could not be overcome or would entail very serious hardship. Even in a case where such difficulties do not exist, however, leave to remain can nevertheless be granted outside the Rules in "exceptional circumstances", in accordance with the Instructions: that is to say, in "circumstances in which refusal would result in unjustifiably harsh consequences for the individual such that refusal of the application would not be proportionate". Is that situation compatible with article 8?"

12. The history of the appellant's presence in the United Kingdom is more relevant to an Article 8 consideration outside the Rules since EX.1. is solely concerned with the enquiry whether there are insurmountable difficulties to his family life continuing outside the United Kingdom but nevertheless this is a useful point on which to set out that history.

13. The appellant arrived in the United Kingdom on 6 July 2006 with entry clearance as a student until 31 October the following year. An application for further leave to remain, after an initial rejection was granted on 1 December 2007 until 31 November 2009. A further application for leave to remain as Tier 4 Student was rejected on 17 February 2010. The appellant however successfully appealed against that decision which resulted in a further grant of leave until 12 October 2012. On 12 October 2011 however that leave was curtailed, a further appeal was lodged but was ultimately unsuccessful. This led to an application on 6 July 2012 for leave to remain as a civil partner. It was refused without a right of appeal, however, the appellant succeeded on judicial review leading to the decision dated 3 December 2015 which is under appeal.

14. Turning to the facts of the relationship, the uncontested evidence by the appellant explains that he first met Mr Maxtone in July 2008 leading to a decision to live together in March the following year when they entered into a civil partnership on 24 April 2009.

15. At the time the appellant's leave was curtailed the appellant had been subject to homophobic abuse from a neighbour where he lived with Mr Maxtone in Falkirk and decided it would be a good idea to be with his Philippine friends in Birmingham. According to Mr Maxtone's evidence that led to a difficult period but they did not split up and the appellant moved back to Falkirk to live with him again. He acknowledges that both had faced racial and homophobic abuse and their neighbours had even made false allegations against the appellant. Those neighbours finally moved.

16. Mr Maxtone works as a literacy tutor for Sterling Council and is also a community learning and development support worker for Falkirk Council. He has set up a project called "The Write Angle" to help people in society who has literacy issues, mental health issues or any other people who felt they were not accepted. Both he and the appellant volunteer in this project through which Mr Maxtone has made many friends and for which the appellant volunteers as a photographer.

17. Mr Maxtone's father is 84 years old and suffers from angina. He is also prone to migraines which impairs his functions and suffers from a medical condition which causes an overproduction of red blood cells. This causes him to be extremely tired and also at risk of blood clotting. The appellant sees him once a week where he helps around the house. He also takes him out swimming to keep him active.

18. The appellant refers in his statement to his partner's severe phobia over flying. He has only travelled abroad once which was in the early 1990s and has been unable to do so again due to stress and anxiety. Mr Maxtone explains in his statement that his last trip abroad had been in 1994 and he had no intention of doing so again. He has suffered for long periods of anxiety and depression in the past and the years it has taken for him to rebuild his life. He does not want to find himself in a "dark place" again.

19. The psychiatrist report reveals an opinion that there was no evidence of the appellant having or ever having any psychiatric illness. Dr Roberts considered it highly likely that he would suffer an "unpleasant adjustment reaction" if he had to move to the Philippines but he did not predict the development of a psychiatric illness. He refers to the appellant's strong relationship with Mr Maxtone and the high level of separation anxiety if he had to move to the Philippines which would make any adjustment reaction more distressing.

20. As to life in the Philippines, Mr Maxtone explains in his statement that it would be unreasonable for them to do so as they had spent their life together in the UK. Both were close to his family where Mr Maxtone has a lot of family ties such as his mother's grave which he visits for comfort. He considers that he would struggle to adapt to life in the Philippines as he does not speak the language nor does he know its culture, in addition to the concerns previously expressed over his flying phobia.

21. An expert report by Dr Vina Lanzona previously provided to the First-tier Tribunal is relied on. She explains that she is an Associate Professor in the Department of History with specialisation on the Philippines and South-East Asia at the University

of Hawaii at Manoa. She is also a native of the Philippines where she was awarded her BA Degree. Her report has three headings:

(i) A general and brief treatment of the rights of LGBTQs.

(ii) The general status of LGBTQs.

(iii) Cases of actual treatment of homosexuals in the country.

22. In respect of (i) she states that Philippine laws and policies uphold LGBTQ rights in theory with reference to the country's 1987 Constitution. While same sex relationships are not legally recognised a number of laws mentioned sexual orientation or address same sex relations. Despite these developments, LGBTQs and their communities are not always fully supported by the state. Civil laws have been reportedly used by unscrupulous law enforcers to extort from and harass LGBTQ people in particular a provision in the penal code which allows police to raid venues frequented by homosexuals who are then arrested for offending "against decency or good customs" or by engaging in "highly scandalous conduct". She reports that the police are given a broad discretion for its implementation. There is no intention to pass national anti-discrimination laws that exclusively seek to protect LGBTQ people. Instead protection is included in proposed laws against discrimination based on race, ethnicity and religion. In the absence of national legislation, sub-ordinances and local government units "mandate protection" from discrimination on the basis of SOGI. She refers to the most important legislation being an anti-discrimination bill that prohibits discrimination based on sexual orientation and gender identity that was introduced in Congress in 2000 but has languished in the Chamber for many years. This Act will criminalise anti-LGBTQ, discriminatory hiring and employment practices. There is no guarantee when the Bill will be passed into law.

23. In respect of [ii] Dr Lanzona reports that the Philippines "has somehow gained a reputation of being Asia's most gay friendly country" with reference to a Pew Research Center Report published in 2013. She refers however to the findings in another Pew Survey which revealed that Filipinos seem intolerant and even homophobic when it comes to questions of morality with nearly two thirds surveyed saying homosexual reality was immoral and only a quarter found that morally acceptable.

24. As to employment Dr Lanzona refers to a USA/UNDP Report from which she quotes:

> "LGBT(Q) individuals face challenges in employment both on an individual level and as members of the community that is subject to discrimination and abuse."

25. This is illustrated by reference to further studies and the indication that many incidents go unreported. Under a heading, Social Standing and Reputation reference is made to the Philippine Catholic Church's blatant campaign against LGBTQ persons and to the USA/UNDP Report that mainstream media is also responsible for the discrimination of the LGBTQ people by way of sterotyping.

26. As to (iii), Dr Lanzona accepts that it is undeniable there are indeed positive developments in terms of the acceptance, tolerance and recognition of the rights of LGBTQ persons but in general the Philippines is very much behind other countries in terms of treatment of homosexuals. A number of examples are given of difficulties encountered. She expresses in her conclusions that the Philippines is a country of "intense contradictions" describing the country as a tolerant and accepting society with a deep sense of religiosity and adherence to Catholicism as well as being deeply conservative and resistant to change apparent in the treatment of LGBTQ. She quotes from a Human Rights Committee Report which the footnote indicates was in 2012:

> "Widespread and systematic human rights violations on the basis of sexual orientation, gender identity and homosexuality persists in the Philippines."

Dr Lanzona concludes with the observation that although changes could be seen, "… there is still a long way to go for the LGBTQs in the Philippines to feel safe, accepted and therefore recognise their worth and contribute as valuable members of society".

27. Mr Govan is correct that there was no medical evidence in relation to Mr Maxtone Senior's needs. A social worker's report or something akin would have been reasonably obtainable. Nevertheless there is no challenge to the credibility of the evidence on this aspect and there is no evidence that there is anyone else who could step in to provide care. This is the most compelling aspect of the domestic obstacles why Mr Maxtone would be unable to accompany the appellant. I accept that were he to leave the United Kingdom he would lose his close connections and contact with family but I am not persuaded these aspects of themselves, whilst unreasonable, would constitute serious difficulties. People are able to adapt and form new friendships at most ages elsewhere. Mr Maxtone's phobia of flying is something that can be addressed through psychological counselling. Although an obstacle, it is one which can be reasonably addressed.

28. I have greater concern about the difficulties that Mr Maxtone would face in endeavoring to continue his family life with the appellant in the Philippines. I do not see any support for Mr Govan's submission that he would be able to obtain a residence permit. There is no evidence of Philippine migration law before me but if same sex partnerships are not recognised, Mr Maxtone would be unable to rely on his civil partnership to achieve immigration status. This case must be considered in the real world and an important question is whether there is any real prospect of Mr Maxtone obtaining suitable employment in the Philippines using his skills set. There is an evidential vacuum in this regard but nevertheless I have real doubts that he will be able to do so. Whilst I accept it may be possible for him to acquire sufficient Tagalog to form and develop friendships, realistically he will only be able to function socially outside his relationship with members of an Anglophonic expatriate community.

29. Taking all these matters into account coupled with Mr Maxtone's reference to a previous depressive illness, I think on balance that he will be unable to adjust satisfactorily to life in the Philippines which would impact negatively on his

relationship and functioning as a social human being. The factors considered cumulatively point towards very serious difficulties for him and in my judgment amount to insurmountable obstacles to the strong family life which he has enjoyed since 2008 with the appellant continuing in the Philippines. It is a society which has some way to go in accepting same sex relationships. The report of discrimination and difficulties faced by gay people is an aspect that has a role of some force in the equation. Whether or not the appellant would succeed in obtaining entry clearance to return to the United Kingdom is not for me to decide but in truth it is one that will face a real hurdle in the light of the financial threshold on the current evidence.

30. The ability of the appellant to demonstrate that he meets the requirements of the Rules as a consequence of EX.1 being made out nevertheless requires consideration of this case under Article 8 since that is the ground available to the appellant is under the Human Rights Convention.

31. Part 5A of the 2002 Act sets out public interests considerations in relation to Article 8. The provisions of s.117B applicable to this case are in the following terms:

> **"117BArticle 8: public interest considerations applicable in all cases**
> (1)The maintenance of effective immigration controls is in the public interest.
> (2)It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
> (a)are less of a burden on taxpayers, and
> (b)are better able to integrate into society.
> (3)It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
> (a)are not a burden on taxpayers, and
> (b)are better able to integrate into society.
> (4)Little weight should be given to—
> (a)a private life, or
> (b)a relationship formed with a qualifying partner,
> that is established by a person at a time when the person is in the United Kingdom unlawfully.
> (5)Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
> …"

32. The appellant is competent in English. He is not financially independent but has a skills set which should enable employment. His relationship with a qualifying partner (Mr Maxtone being a British citizen) was established at a time when he was in the United Kingdom lawfully and that relationship continued for some four years during lawful presence.

33. The public interest is indicated in the Rules by reference to a threshold of insurmountable obstacles in a case of this kind. This, taken with the provisions of s. 117B that the appellant positively meets indicates that the public interest in maintaining immigration control is to be given reduced weight by virtue of the appellant being able to meet the requirements of the EX.1 and the positive aspects of s.117B that are in play. Accordingly, in my judgment it would be a disproportionate interference with the appellant's right to his family life should he be required to leave the United Kingdom.

NOTICE OF DECISION

The appeal is allowed.

No anonymity direction is made.

Signed Date 2 May 2019

UTJ Dawson

Upper Tribunal Judge Dawson