



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001120
First-tier Tribunal No:
HU/58219/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 15 August 2024

Before

UPPER TRIBUNAL JUDGE LANE

Between

MPA
(ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Ms Atas

For the Respondent: Ms McKensie, Senior Presenting Officer

Heard at Field House on 2 May 2024

DECISION AND REASONS

1. I shall refer to the appellant as the respondent and to the respondent as the appellant as they appeared respectively before the First-tier Tribunal. The appellant is a female citizen of the Philippines, born on 20 July 1971. She appeals against a decision of the respondent dated 14 June 2023 to refuse her application for asylum, humanitarian protection and permission to stay on the basis of her family and private life, or discretionary leave. The First-tier Tribunal, in a decision promulgated on 28 February 2024, allowed the appeal on Article 8 ECHR grounds but dismissed it on asylum and humanitarian protection grounds. The Secretary of State now appeals to the Upper Tribunal in respect of the Article 8 ECHR decision. There is no cross appeal regarding asylum and humanitarian protection.
2. The grounds challenge the decision of the First-tier Tribunal on the ground that the judge attached excessive weight on the appellant's family and private life in

the United Kingdom and failed to give weight to the fact that the appellant's private life had been established at a time when her immigration status was precarious and/or unlawful. No or inadequate weight had been given to the appellant's financial independence. The appellant's ability to satisfy the Immigration Rules had been given inadequate weight whilst no unjustifiably harsh consequences had been identified.

3. At the initial hearing, Ms McKensie, for the Secretary of State, submitted that the application of the factors under Section 117B of the 2002 Act was not 'balanced'. The judge should, in the absence of a Presenting Officer, have intervened in order to clarify the evidence (see *MN(Surendran guidelines for Adjudicators) Kenya* * [2000] UKIAT 00005). The judge could 'have put forward his concerns' about inconsistencies in the appellant's evidence. Had he done so, then the answers he received may have cast doubt on the genuineness of the appellant's relationship which, in turn, may have led the judge to find that Article 8 ECHR was not engaged.
4. At [14-15], the judge wrote:

14. However, I accept that her claim should succeed under Article 8 ECHR on the basis that it would be disproportionate for her to return to the Philippines after being in the UK for 18.5 years. According to written and oral evidence she has been in a committed relationship with a British citizen, [SD], since 2009 - though her replies in the AIR 67-69 states that the relationship ended two years previously - but they do not live together on a permanent basis, only at weekends. In the absence of a Presenting Officer, this contradiction as to the claimed relationship was not therefore challenged by the respondent. I accept that her partner has health issues (as shown in the sickness certificates), and in any event could not relocate to the Philippines, because he has never lived there, does not speak the language, and is not fit to work. I also accept that there appears to be some age discrimination in respect of the appellant herself if she attempted to seek employment in the Philippines.

15. Section 117B(4) and (5) of the Nationality, Immigration and Asylum Act 2002, states that little weight should be given to any private life enjoyed in the UK while the appellant's status was precarious or illegal. It is doubtful whether she speaks English (Section 117B(2)), as claimed in the skeleton argument (paragraph 19) as she required an interpreter for today's hearing. However, I take into account that the appellant has been in the UK for a considerable length of time, and has a claimed long-standing relationship with a British citizen, and it would be disproportionate and a breach of her Article 8 ECHR rights for her claim to be refused.

5. The application of the *Surrendran* guidelines (which provide that it is legitimate *inter alia* for the judge to ask questions of an appellant in the absence in court of the Presenting Officer in order to clarify his or her understanding of the evidence) has not been raised in the grounds of appeal and consequently I shall not deal with that part of Ms McKensie's submissions. The judge found that apparent inconsistencies in the appellant's evidence regarding her current relationship had not been challenged and he therefore accepted the appellant's evidence. I accept that such a finding was available to him. As regards the

factors in section 117 to which the judge was obliged to have regard, I find that the judge's analysis, albeit brief, is adequate. The judge does not record his findings as regards the appellant's financial independence but equally there was nothing in the evidence that she is in receipt of state funds. It was open to the judge to give weight to the length of the appellant's relationship (15 years) and the length of the appellant's residence (18.5 years). The judge did note, as he was obliged to do, that section 117(4) and (5) state that little weight should be given to relationships formed whilst an individual's immigration status is precarious.

6. I asked Ms McKensie whether the appeal on the undisputed factual matrix in this case could be successful. She acknowledged that it could but submitted that the judge had followed 'the wrong process.' In my opinion, the judge has not erred in law to the extent that his decision should be set aside. Arguably, he could have dealt in greater detail with the Section 117 factors but what he has said is sufficient given the facts and I am satisfied that the judge had regard to all the statutory factors including those to which he does not refer in terms. Given that the *Surrendran* issue has not been pleaded, I reject the submission that the judge would have reached a different outcome had he questioned the appellant.
7. In the circumstances, the Secretary of State's appeal is dismissed.

Notice of Decision

The Secretary of State's appeal is dismissed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 2 July 2024