



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)**

APPEAL NUMBER: IA/40972/2014

THE IMMIGRATION ACTS

**Heard at: Field House
on 1 October 2015**

**Decision and Reasons Promulgated
on 19 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

**MISS LAMOUR ANNE ALVIOR JABILE
NO ANONYMITY DIRECTION MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. The appellant is a national of the Philippines, born on 7 December 1981. Her appeal against the decision of the respondent refusing her application for leave to remain in the UK outside the immigration rules was dismissed by the First-tier Tribunal Judge in a decision promulgated on 30 January 2015.
2. On 6 May 2015, First-tier Tribunal Judge Levine granted her permission to appeal on the basis that there are no removal directions in respect of the appellant's child, albeit that there are directions under s.47 of the 2006 Act in respect of the appellant herself. Accordingly, he stated that it was arguable that the respondent's decision would potentially result in the separation of the appellant from her baby as the Judge failed to consider the best interests of the child under s.55 of the 2009 Act and that the consideration of her appeal under Article 8 was arguably flawed.

3. On 15 September 2015, the appellant's solicitors on record informed the Tribunal that the appellant requested "to go for the paper hearing" instead of an oral hearing. The appellant's appeal was also decided by the First-tier Tribunal on the papers.
4. The appellant had applied on 23 July 2014 for leave to remain in the UK outside of the immigration rules because she was pregnant. In refusing her application, the respondent stated that it was her policy to consider granting leave outside the rules only where particularly compelling circumstances existed. Such grants of leave are rare and are only given for genuinely compassionate reasons [7].
5. The First-tier Judge noted that she was due to give birth on 5 September 2014. There was however nothing in the evidence presented for consideration suggesting that the appellant was prevented from returning to the Philippines to give birth.
6. Her immigration history was set out by the Tribunal at [8]. After completing her MBA, she applied for a Tier 1 Post Study Work visa which was approved and was valid until 24 July 2014.
7. In the meantime the appellant had visited the Philippines and married Mr Kaiser Alipis on 9 December 2013. She became pregnant with an expected delivery date of 5 September 2014. A GP letter confirmed that it is not suitable for her currently to travel [9].
8. The appellant in fact gave birth on 10 September 2014. She submitted before the First-tier Tribunal that the baby had an appointment at the hospital in October 2014 and as she had just given birth, it may be difficult for her to travel to the Philippines as it is a long journey. The child would also be having an appointment for an after-birth routine check up and BCG vaccination. She requested that she be allowed to stay in the UK and that a few more months should be granted [11].
9. The Judge noted that the appellant had made no application under the Immigration Rules and that the only basis upon which she could appeal the respondent's decision is where her removal would breach her rights under Article 8 of the Human Rights Convention.
10. The Judge considered whether there were any considerations justifying a finding that on the direct consideration of Article 8, there would be a breach of her rights. However, there were no such matters set out in the evidence justifying such a finding. Whilst she has family life in the UK with her child, neither she, the child, nor the child's father are British citizens. On return to the Philippines, she will be able to enjoy family life with her husband and their child. The appellant herself submitted in October 2014 that she should be allowed to remain for only "a few more months." In the circumstances, the Judge found that her removal would not be a disproportionate interference with her family life.
11. After being granted permission to the appellant through her solicitors sought to produce a further statement dated 15 September 2015. No application had been made in compliance with the provisions of paragraph 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. In particular there has been no explanation as to why the evidence had not been submitted to the First-tier Tribunal.

12. I have had regard to the Rule 24 response. It is noted that from the determination, the baby's medical appointments were routine. There is no indication that there was any medical evidence that either the appellant or her baby would not be able to travel.
13. In particular, the Judge noted that the appellant's own request for leave to remain had been for only a few more months.

Assessment

14. I have had regard to the appellant's grounds of appeal before the First-tier Tribunal. There she submitted that she has had various appointments at the St Albans City Hospital, scheduled for the middle of October 2014. It may be difficult for her to travel to the Philippines as it is a long journey. She urged the Tribunal to consider her request to stay "back here in UK for few more months."
15. The Judge has had proper regard to the appellant's evidence, which was set out at paragraphs [8] and [9]. The Judge noted the appellant's own request that she be allowed to remain here "for only a few more months." As at the date of promulgation at the end of January 2015, she has had the benefit of those extra months.
16. There was moreover no indication of any medical evidence that either she or her child would not be able to travel.
17. Although there was no express reference to the provisions of s.55 of the 2009 Act, it is clear that the best interests of the child are to remain with the mother. The child is still very young and cannot claim to have any private life in the UK.
18. Even though there are no removal directions regarding the child, it is evident that she would be able to return with the appellant in order to resume family life in the Philippines which would include the child's father. Neither the child nor her parents are British citizens.
19. In the circumstances I find that there is no reason to suppose that the child would ever be separated from the appellant.

Notice of Decision

The decision of the First-tier Tribunal Judge did not involve the making of any material error on a point of law. It shall accordingly stand.

No anonymity direction is made.

Signed
Deputy Upper Tribunal Judge Mailer

Date 15/10/2015