Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/06082/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22nd April 2015	**On 3rd June 2015**

Before

THE HONOURABLE LORD BANNATYNE
DEPUTY UPPER TRIBUNAL JUDGE FRANCES

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MARIA ALMIRA VICTORIA PRANGAN
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Ms A Everett, Home Office Presenting Officer
For the Respondent: No appearance or representation

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State for the Home Department, we shall refer to the parties as in the First-tier Tribunal.

2. The Appellant is a national of the Philippines and was born on 28th August 1993. Her application to extend her leave to remain in the UK was refused by the Respondent on 12th March 2014. Her appeal was allowed under Article 6 of the European Convention of Human Rights by First-tier Tribunal Judge Kempton on 18th November 2014.

3. The Secretary of State for the Home Department applied for permission to appeal on the basis that the judge did not appreciate that this was an out

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of country appeal and he failed to give reasons why the appeal should be allowed. Further, the decision of the European Court of Human Rights in Maaouia v France 39652/98 [2000] ECHR 455 established that Article 6 of the European Convention of Human Rights had no bearing on matters of immigration status and so the judge's unexplained reliance on it "in the interests of justice" did not constitute a proper disposal of the appeal.

3. Permission to appeal was granted by First-tier Tribunal Judge Levin on 8th January 2015 on the basis that there was no evidence to support the judge's finding at paragraph 9 of her decision that the Appellant had made her application for leave to remain prior to the expiry of extant leave and the copy of the refusal notice provided by the Respondent in support of the application asserted that neither the Appellant nor her mother, as a dependant of whom the Appellant had obtained her previous leave, had any extant leave when the Appellant made her application. The judge clearly made an error of law in allowing the appeal under Article 6 of the ECHR which on the face of it had no application to this appeal.

4. The notice of appeal was served on the Appellant and her mother on 26th February 2015 together with directions stating that the Tribunal's original file was incomplete and therefore any material upon which either party relied must be filed with the Tribunal and served on the other party no less than five working days before the hearing.

5. There was no appearance on behalf of the Appellant at the hearing on 22nd April 2015. We were satisfied that the notice of appeal was properly served and proceeded in the absence of a representative on behalf of the Appellant. Ms Everett submitted the Respondent's bundle and apologised for failing to comply with directions. No documents were submitted by the Appellant.

6. The Respondent's bundle contained the notices of decision, the notice and grounds of appeal, documents relating to the Appellant's voluntary departure to the Philippines on 16th April 2014, the Appellant's application form dated 10th February 2014, a letter dated 7th August 2013 from Emmanuel Logli, an Italian national, and a copy of his passport, a copy of the Appellant's mother's passport and residence permit valid until 8th August 2013. Pages 1 to 21 of the Respondent's bundle were already on the court file. The new documents contained in the bundle amounted to the Appellant's application form and accompanying documents.

7. At the hearing Ms Everett relied on the notice of decision dated 12th March 2014 and submitted that the Appellant had no in-country right of appeal as she had no leave to remain when she made her application. A decision to remove the Appellant was made on 8th April 2014 and the Appellant left the UK voluntarily on 16th April 2014.

8. The Appellant exercised her right of appeal from outside the UK. Ms Everett submitted that the judge failed to understand the immigration history and had wrongly come to the conclusion that the Appellant had an in-country right of appeal and that she had been deprived of it. The judge

had not dealt with the grounds of appeal substantially and allowed the appeal under Article 6 which was not open to her. It was accepted that the Home Office had failed to serve papers on the First-tier Tribunal but this did not form the basis on which the judge allowed the appeal. The decision to allow the appeal under Article 6 was not an outcome open to the judge.

9. We pointed out that there was a letter before the First-tier Tribunal Judge dated 9th August 2013 in which the Home Office acknowledged the Appellant's application to extend her leave. Her leave expired on 8th August 2013 so, on the face of it, it would appear that the Appellant had made an in-time application. This letter may well have led to the First-tier Tribunal Judge's finding that the Appellant had an in-country right of appeal.

10. We adjourned for a short time for the Respondent to obtain further information about the nature of the Appellant's application and whether her mother had leave to remain in the UK. When Ms Everett returned she informed us that when the Appellant made her application her mother did not have leave to remain. Her mother's leave expired on 8th August 2013 and her mother applied on 5th March 2014 for further leave to remain as a domestic worker which was granted until 16th March 2015. She had obtained information from the Home Office database which also showed that applications were made by the Appellant's mother but rejected as invalid. Ms Everett did not know why. She submitted that the Appellant could not succeed in the Immigration Rules as a dependent of her mother because she was over 18 years of age. She could not succeed on the basis of her private life because she had only been in the UK for two years and four months.

Discussion and Conclusion

11. We find that the Immigration Judge made an error of law in allowing the appeal under Article 6 which on the face of it had no application to this appeal. Whilst there was evidence to support the judge's finding that the Appellant had made her application for leave to remain prior to the expiry of any extant leave, namely the letter dated 9th August 2013, the fact remained that the Appellant had exercised her right of appeal from outside the UK and it was incumbent on the judge to substantively deal with the Appellant's appeal under the Immigration Rules and any human rights grounds raised. Accordingly we set aside the judge's decision to allow the appeal under Article 6 and re-make it as follows.

12. We have taken into account the notice of decision dated 12th March 2014 which states that the Appellant submitted an application on 27th January 2014 which was clearly out of time. The application form submitted in the Respondent's bundle was dated 10th February 2014. The Appellant was notified of the need to provide documentation to the Tribunal but she has failed to do so. It would therefore appear on the evidence before us that the Appellant had no in-country right of appeal and she has properly exercised her appeal from outside the UK.

13. In considering the substantive matters the Respondent's position is as follows. The Appellant's mother did not have any valid leave at the time that the Appellant made her application and therefore her application as her dependant failed. Further, the Appellant was now 20 years old and not eligible to apply as a dependent child. The Appellant had provided evidence that she was working in the UK and receiving financial support from a partner, an Italian national, Emmanuel Logli, although there was no evidence before the Respondent that the relationship was genuine or subsisting.

14. The Respondent was of the view that this supported the position that the Appellant was not wholly dependent on her parents and was leading an independent life. As she was 20 years old there was no reason why she could not continue to enjoy her private life and work to support herself in the Philippines. The Appellant had provided no evidence to suggest that she was suffering from any health or other wellbeing issue that would make her return to the Philippines unreasonable. The Appellant had established her relationship with her partner and family in the UK whilst her immigration status was only temporary and she had no legitimate expectation to remain here indefinitely. The Appellant had entered the UK to join parents and siblings, however at present her family members were in the UK illegally.

15. The Respondent's view was that the Appellant could maintain her family life with her family in the Philippines. Alternatively, her parents could support her financially from abroad if their current applications were granted. The Appellant's latest partner was not a British citizen and the Appellant was not claiming that they lived together. It was therefore not accepted that the Appellant's return to her home country would breach her Article 8 rights.

16. There was no evidence from the Appellant save for her grounds of appeal to the First-tier Tribunal in which she states that she applied for an extension of her leave to remain as a dependant of my mother who was working as a domestic helper. She submitted her application in time before her leave expired and she attached the confirmation letter from the Home Office. She believed that her status here in the UK would remain the same while she was waiting for the decision of her application for the extension of her leave. The Home Office refused the application and refused to give her an opportunity to appeal. She decided to leave the UK in accordance with the Home Office decision and avoid further problems with Immigration. She voluntarily left the UK on 16th April 2014. She did not plan to overstay in the UK and remained to attend an interview scheduled by the Home Office.

17. Accordingly, on the evidence before us, the Appellant is over 18 and her application to remain as a dependant of her mother could not succeed under the Immigration Rules.

18. There was little evidence of the Appellant’s relationship with an Italian national and she did not claim to live with him. She had been living in the UK for two years and four months. Therefore, the Appellant’s application could not succeed under Appendix FM or paragraph 276ADE of the Immigration Rules.

19. Considering the five stage test in Razgar the Appellant’s mother’s leave expired in 2015. She did not attend the hearing. The Appellant had failed to establish family life in the UK. Her private life was based on living in the UK temporarily for two years and four months with her family. We are of the view that the refusal of leave and the Appellant’s removal from the UK would not interfere with her right to family life since she has lived separately from her mother. We are of the view that the refusal to vary leave to remain and the Appellant’s departure from the UK did not interfere with her right to family or private life as this could continue in the Philippines. Notwithstanding the decision to refuse to vary leave was in accordance with the Immigration Rules and necessary in the interests of immigration control.

20. Taking into account all the circumstances of the case and given the lack of evidence, the refusal of leave and the Appellant’s removal was not disproportionate in all the circumstances. Accordingly, the Appellant’s appeal against the refusal to extend her leave and to remove her from the UK is dismissed.

Notice of decision

The Respondent’s appeal to the Upper Tribunal is allowed.

The Appellant’s appeal is dismissed under the Immigration Rules and on human rights grounds.

No anonymity direction is made.

Signed Date 1st June 2015
Deputy Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

We have dismissed the appeal and therefore there can be no fee award.

Signed Date 1st June 2015

Deputy Upper Tribunal Judge Frances