



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

Appeal Number: IA/17586/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 1 March 2017**

**Decision & Reasons Promulgated
On 15 May 2017**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**MS JOCYLENE LAROYA GONZALES
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Basharat Ali

For the Respondent: Mr Kotas

DECISION AND REASON

1. The Appellant is a citizen of the Philippines born in 1978.
2. Her immigration history is that she came to the UK from Hong Kong on 14 July 2007 in possession of a visa to accompany her employer as a domestic worker. The visa was valid until 1 January 2008. On 28 October 2011 she was encountered by Immigration Officers. She was served with removal directions as an overstayer. She initiated judicial review proceedings against the removal directions but these were withdrawn after the Respondent agreed to reconsider the decision. On 26 September 2012 she submitted an application for leave to remain

under Article 8 outside the Rules on the basis that she had been in a relationship with a Polish national. This was refused on 17 October 2013 with no right of appeal.

3. On 19 February 2014 it was accepted by the Competent Authority that there were reasonable grounds to think that the Appellant was a potential victim of trafficking. However, a decision was taken by the Respondent on 23 July 2014 that she was nonetheless to be refused leave to remain. The decision was reconsidered on 7 January 2015 following the submission of further evidence but was maintained. On 5 March 2015 she was issued with removal directions. She was given the opportunity to raise any additional grounds. On 20 March 2015 further submissions were raised on her behalf. However, in a decision dated 27 April 2015 she was again refused a grant of leave. It is against that decision that she appeals.
4. The summary of her claim is that she was born and brought up in the Philippines. At the age of 19 she gave birth to her son out of wedlock. She was in an abusive relationship with the father of her son and they separated soon after the birth. The Appellant went to live with her grandmother.
5. Between 1999 and 2003 she travelled backwards and forwards to Hong Kong with leave to remain there as a domestic worker. This continued between 2003 and 2007 with a different employer. Her family in the Philippines became dependent on her earnings.
6. The family she was working for in Hong Kong did not treat her well but she felt she had no alternative but to work for them.
7. In 2007 she came with the family to the UK. She continued to be badly treated. She was not paid and was not fed properly. She was locked in the house when the family went out.
8. After a while she managed to escape. She met other Filipinos who said they would help her. She was taken to a coffee shop where she was again mistreated and sexually abused. She was made to sleep on the floor. She remained at the coffee shop for about a year and a half.
9. In 2009 she managed to escape and went to a church. There she met someone who introduced her to Mrs Alhaidary and her family who agreed to accommodate and maintain her. She has been with them ever since. She would be unable to integrate into the Philippines now due to her lack of family support there. Also, she has mental health problems. Further, her removal would amount to a disproportionate interference with the family life she enjoys with the Alhaidary family.
10. The application for leave was refused on the basis that she did not satisfy the private and family life requirements of Appendix FM and paragraph 276ADE of the Rules and her personal circumstances were not considered to be sufficiently compelling to justify a grant of leave under Article 8 outside the Rules. Although it was accepted that she had been the victim of trafficking in the past it was not considered to be

unreasonably harsh to expect her to return to the Philippines where she has relatives to whom she could return. It was not accepted that there was a further risk of trafficking it being noted that such had occurred while she was in Hong Kong and not while she was living in the Philippines. The Respondent also decided that her return to the Philippines would not breach her rights under Articles 3 and 8 of the ECHR on the basis of her mental health problems.

First tier decision

11. Following a hearing at Hatton Cross on 2 September 2016 Judge of the First-tier A Kelly dismissed the appeal under the Rules and on human rights grounds.
12. Her reasons are at paragraph [17ff].
13. Dealing first with the Rules she notes that the issue was paragraph 276ADE(vi) *“very significant obstacles to her integration into the Philippines”*.
14. She found that the Appellant spent her childhood and early years in the Philippines before going back and forth to Hong Kong for work. She keeps in touch with relatives in the Philippines and is familiar with its culture and traditions and can speak her native tongue [18].
15. Further, she has close family there, namely, her mother, son and siblings. The judge did not believe evidence that her son contacted her in June 2015 to tell her that he had re-established contact with his father and no longer wanted to have contact with her. The judge also did not believe that the Appellant had lost contact with her mother [19].
16. In addition, the judge found that if returned to the Philippines it was *“highly likely”* that the Alhaidary family who have significant means, would continue to offer financial, practical and emotional support to the Appellant as she sought to re-establish herself in her home country [20].
17. The judge then went on to consider the Appellant’s health. She accepted that she has mental health problems but found that they were not so severe as to amount to very significant obstacles to her integration. She functions reasonably well at present. She would be able, financially, to access treatment in the Philippines [21].
18. The judge accepted that the Appellant *“would miss the emotional comfort and social interaction that comes from living in a busy family home”* but did not see why she would be unable to form new friendships in the Philippines as she had done in the UK [22].
19. The judge considered that the Appellant’s comments in her statement that if returned she might feel driven to take her own life was an exaggeration by her [23]. A letter from a Consultant, Dr Shanahan was noted. He stated that the Appellant is not currently suicidal. As for her talk of committing suicide if returned he is *“unable to say whether or not she would act on her intentions”* [24].

20. Finally, in respect of the Rules the judge considered the contents of an expert report by Professor Sidel. She rejected his conclusion that the Appellant would be at significant risk of trafficking if returned to the Philippines where it is a significant problem. The judge found that the professor's conclusion was based on the premise that she would be returning as a lone female with no financial or other support. The judge again noted her finding that Mrs Alhaidary would continue to support the Appellant financially and emotionally. Also that her son, mother and other family members would be there [26].
21. The judge concluded, taking "*all of the Appellant's circumstances into account... that notwithstanding the trafficking that she has suffered in the past, there are no very significant obstacles to her reintegration into the Philippines.*"
22. Judge Kelly then went on to consider Article 8 outside the Rules. Although she accepted that the Appellant enjoyed a close relationship with the Alhaidary family she found that such did not amount to family life although it was a significant part of her private life.
23. In considering proportionality the judge found the Appellant's failure to meet the Rules and her poor immigration history counted against her. She gave little weight to private life established when her status was precarious. She considered the best interests of the Alhaidary's children and concluded that their best interests are served by their continued residence with their parents. As for her own child it was in his best interest to re-establish a relationship with her in the Philippines.
24. The judge ended by considering the Appellant's mental health in the context of Articles 3 and 8 and concluded that the Appellant could not succeed on either.
25. She sought permission to appeal which was granted on 25 January 2017.

Error of law hearing

26. At the error of law hearing before me Ms Ali's first point was one of procedural unfairness. The judge erred in finding (at [19]) that the Appellant had misrepresented her family links and (at [28]) that she continues to maintain contact with her family in the Philippines. The unfairness was that the oral evidence on this point by the Appellant was never directly challenged in cross-examination and the judge did not ask her any questions about this. If she had concerns about that evidence she ought to have clarified it.
27. I do not agree with that submission. The Respondent's reasons for decision notes the claim that if removed she would lose the only family she has. Such was not accepted it being noted by the Respondent that she has immediate family living in the Philippines including her son, her mother, and siblings.

28. The oral evidence was that, subsequently, her son had dropped contact with her and re-established a relationship with his father. The fact that the Presenting Officer may not have challenged her on that matter is irrelevant. It is clear from the record of proceedings that there was no concession on that matter. It was for the judge to assess the new evidence given at the hearing. She did not believe it and gave cogent reasons for reaching that conclusion. There was no procedural unfairness.
29. Ground 2 was that the judge failed to make a clear finding of fact in respect of the Appellant having been trafficked. Such undermined the decision as a whole. I do not find merit in that submission either. At [26] she found that *"notwithstanding the trafficking that she has suffered in the past..."* At [30] *"Whilst it is accepted that she may have been the victim of past trafficking..."* At [32] *"... even making due allowance for the fact that the Appellant appears to have been a victim of trafficking in the past..."* Whilst the phrasing may vary slightly it cannot be read that the judge doubted that the Appellant had been trafficked. It is in any event in light of her other findings, immaterial.
30. Mr Ali's next point was that the judge had erred by considering separately the mental health problems [at (21)] and the emotional and social support (at [22]). It was, in his submission, a mechanistic, artificial approach, compounded by taking the Appellant's current status in a safe and loving environment as being a factor that supported the decision to remove. Being torn from that environment needed careful assessment which was not carried out.
31. I disagree. It is a complaint of form not substance. The judge dealt with all relevant issues. She accepted that the Appellant would *"miss the emotional comfort and social interaction that comes from living in a busy family home"* but found she had grown in confidence and that with financial and emotional support from the Alhaidary family and support from her family in the Philippines, such would help her reintegration including accessing medical treatment. Her approach to the evidence shows no error of law. She gave adequate reasons for her findings.
32. Mr Ali's remaining points in respect of assessment under the Rules relate to the judge's treatment of the medical and country experts. On the medical evidence she had not taken proper account of the assessments and had *"put the cart before the horse"* by making a finding of fact about the suicide risk before analysing all the medical evidence.
33. Again I do not agree. It is clear that the judge looked at the medical evidence in the round and not as an afterthought. The judge accepted that the Appellant has mental health problems. There was no requirement to refer to every medical item. She referred to the most recent, the two page letter by Dr Shanahan where he states that although she talks of suicide he could not say whether she would act on it. The judge also made findings that she would be able to access and

afford appropriate medical treatment. Whilst the comment that the judge suspected the Appellant to be exaggerating her suicide risk seems to me to be speculative it does not detract from the doctor's comments. In any event, as the judge noted, a high threshold is needed to establish a breach of her human rights. There is nothing in any of the comments of the doctor including those not specifically referred to by the judge which come anywhere near satisfying that threshold.

34. Nor do I find merit in criticism of the judge's consideration of the country expert's report. She made findings which were open to her noting that the report indicating a risk of re trafficking was premised on the basis that the Appellant would be returning as a lone female with no emotional or financial support, she having found that such would not be so.
35. Turning to Article 8 outside the Rules, I do not see merit in the submission that the judge failed to consider and to make findings of fact in relation to emotional dependency between the Appellant and the Alhaidary family. Having found for cogent reasons that the relationship did not amount to family life she went on to find that there was a close relationship and that the bonds were a "*very significant part of the private life*" that she had established, and that her removal would interfere with that private life.
36. As for criticism of an incorrect approach to Section 117B in that she should have given greater than "little weight" to a private life established when the Appellant's status was precarious (per **Rhuppiah v SSHD [2016] EWCA Civ 803**), the judge did not find that, apart from the emotional bonds, these were particular strong features of the private life to make this an exceptional case such that giving it little weight should be overridden. Such a conclusion was open to her.
37. A further criticism that the judge should have considered the best interests of the Alhaidary children at an earlier stage in her analysis under Article 8 has no merit. The judge clearly looked at the issue as a primary consideration. She gave detailed analysis of that matter and reached conclusions which, again, were open to her.
38. Looked at as a whole the judge's consideration shows a careful analysis of material matters and her conclusions were ones she was entitled to reach on the evidence for the reasons she gave. The submissions amount to little more than a disagreement. The decision shows no material error of law.

Notice of Decision

The decision of the First-tier Tribunal shows no material error of law and that decision dismissing the appeal stands.

No anonymity direction is made.

Signed

Date 12 May 2017

Upper Tribunal Judge Conway