



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU 12905 2015

THE IMMIGRATION ACTS

Heard at FIELD HOUSE
On 16th January 2018

Decision and Reasons Promulgated
On 24th January 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE
G A BLACK

Between

MISS N R G
ANONYMITY ORDER MADE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Magsino (Queens park solicitors)

For the Respondent: Mr P Nath (Home Office Presenting Officer)

DECISION AND REASONS – resumed hearing

1. This is a resumed hearing following my decision on 14th November 2017 that there was an error of law in the decision the First-tier Tribunal (Judge B. Morron), which was set aside.

Background

2. The appellant is a citizen of Philippines. She entered into a gay relationship with her sponsor and they lived together in the UK. The respondent refused the application on the grounds that the parties had not been living together for two years prior to the application being made on 22.9.2015. The respondent accepted that the couple were in a gay relationship and had lived together since November 2013. No other grounds for refusal under the rules were identified but the FTJ went on to consider finance and accommodation issues after the hearing. The respondent considered paragraph 276ADE.
3. At the hearing before me the representatives identified the following issues for determination. The appellant relied on the immigration Rules arguing that there was sufficient evidence to show that the parties lived together for the two year period prior to the application being made. The tenancy agreement had been corrected and confirmed that the parties were renting a property together. The evidence of finances met the level required. The evidence as to finances needed to be considered and the question as to whether the couple were in fact cohabiting at the material time. Alternatively, was Article 8 outside of the rules engaged? The respondent accepted that the parties were now married and had since November 2013 been together for three and a half years.

Submissions

4. Mr Nath raised concerns as to the financial evidence to the extent that the P 60 produced was for the tax years 2016/2017 but acknowledged that this would cover 2015. Whilst accepting that the evidence showed that the £18,600 threshold was met, he was suspicious because the evidence reflected the exact figure. Mr Nath argued that Article 8 was not engaged as the couple could continue their relationship through "modern means" and that the decision was proportionate given that the appellant had lived for only a short time in the UK and could return to the Philippines to make an out of country application.
5. Mr Magsino relied on his detailed skeleton argument and submitted that the issue of finances had not been raised in the refusal letter. In any event there was documentary evidence such as payslips and P60 to show that the requirements were met at the relevant date. Ex 2 applied in the light of the difficulties faced if the couple had to live in Philippines where there was no protection from discrimination (as evidenced in the background material - LGBT in Asia and articles). He submitted that the public interest was outweighed by the private interest of the appellant and that there was no reason to justify why she should have to return to the Philippines to make an out of country application.

Findings and reasons

6. I heard evidence from the appellant and her partner/sponsor which I found to be entirely credible and reliable. In addition I heard evidence from a number of witnesses as to the nature of the relationship between the parties (which was not contested), namely that they were in a lesbian relationship and had now married. There were also letters of support from friends, relatives and the partner's employer which I took into account. The oral evidence given by the witnesses was reliable and credible. There was no major challenge by Mr Nath to any of the oral evidence. One of the issues he raised was cohabitation; the appellant's partner worked as a nanny/housekeeper and that involved over night stays at her employers. I heard consistent evidence from the appellant, her partner and landlady. I was satisfied that for the majority of the time the parties were living together in a relationship and that it was only occasionally that the partner stayed overnight at her employers for whom she had worked since 2013. As to the length of the cohabitation I rely on the oral evidence and find that they were in a lesbian relationship living together since 20th October 2010. Although there was no documentary evidence produced in support I was satisfied that the oral evidence was reliable. The appellant also produced some documentary evidence to show cohabitation since November 2013 and a joint tenancy agreement since 2015.
7. The appellant, her partner and two witnesses gave evidence of discrimination and harassment towards gay people in the Philippines. The appellant and her partner stated that their families did not approve of the relationship, they would not be able to live openly as a lesbian couple and they would face discrimination in employment.
8. I find that the appellant entered the UK in December 2009 by way of entry clearance valid until February 2012, as a fiancée of a British citizen. The relationship broke down and the appellant formed a relationship with her now wife in October 2010. They lived together as a couple in one room since 20th October 2010 and remain living together as a married couple since December 2017. I find that the appellant and her partner are lesbians. I find that the appellant's partner is a British Citizen and she is employed as a nanny/housekeeper and has earned £18,600.00 per annum since 2013. I have evidence of payslips, bank statements and P60. The application was made on 22.9.2015 under Appendix FM.
9. In terms of the Rules I am satisfied that the appellant has met the Suitability requirements in S-LTR of R-LTRP1.1 and that she meets the Eligibility requirements as a partner as defined in Gen 1.2, namely that they were living together in a relationship akin to marriage for at least two years prior to the date of application. I am satisfied that she meets the English language requirement. At the time of the application the appellant had no lawful leave to remain in the UK as she had overstayed and accordingly she fails to meet the requirements under E- LTRP 2.2. Ex.1 (b) applies where the parties are in a genuine and subsisting relationship and there are "insurmountable obstacles" to family life continuing outside of the UK. The latter is defined in EX 2. Whilst gay relationships are not illegal in Philippines I

am satisfied that the appellant and her partner would experience significant difficulties in continuing their relationship outside of the UK because of discrimination towards gay people generally, in employment and in legal terms the marriage would not be recognised under the law (see page 103 Appellant's bundle "Being LGBT in Asia"). I accept the evidence that their families disapprove of the relationship and that they would not be able to live openly in Philippines as a lesbian couple. All of these factors would in my view entail very serious hardship and accordingly Ex 1 applies.

10. Alternatively I am satisfied that Article 8 is engaged following the steps in **Razgar**. The factors identified as insurmountable obstacles amount to compelling circumstances to justify consideration of Article 8 outside of the Rules. Family life is established and there would be an interference if the appellant were required to leave the UK. The relationship, which is now formalised in marriage, could not reasonably be continued by modern means and that would constitute an interference. The interference would not be lawful as the Rules have been met in substance. In considering section 117B (2002 Act as amended) as to the public interest in the economic well being of the UK I am satisfied that the appellant speaks English and that she is financially supported by her partner. The relationship began when the appellant had lawful leave in the UK albeit as the fiancée of another person. I accept that the appellant had no lawful leave since 2012 and that her status was precarious during the time the relationship was established. In light of the fact that the appellant has met the Rules I place less weight on sections 117B(4) and (5). There is no reason to justify why the appellant should return to make an out of country application in these circumstances (**Agyarko [2017] UKSC 10 referring to Chikwamba v SSHD [2008] UKHL 40**). Having regard to all the evidence in the round I am satisfied that the interference would not be proportionate and that the private interest of the appellant's family life outweigh the public interest.

Decision

11. The appeal is allowed.

Signed
GA Black
Deputy Judge of the Upper Tribunal

Date 23.1.2018

ANONYMITY ORDER

Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

NO FEE AWARD

Signed
GA Black
Deputy Judge of the Upper Tribunal

Dated 23.1.2018