Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12489/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15 April 2019	**On 1st May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

GINA [C]
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Ms J Isherwood, Home Office Presenting Officer
For the Respondent: Mr S Muquit, Counsel, instructed by Farani Taylor Solicitors

DECISION AND REASONS

By my decision promulgated on 21 February 2019 I set aside the decision of the First-tier Tribunal. I now remake that decision.

Mrs [C], whom I shall refer to as the appellant, is appealing against the decision of the Secretary of State to refuse her article 8 ECHR human rights claim.

Findings of Fact

The factual findings of the First-tier Tribunal, as set out in the decision of Judge Cockrill promulgated on 4 December 2018, have not been challenged and stand. The key persevered findings of fact are as follows:

> The appellant, who was born a Christian on 25 February 1967, is from the Philippines. In 1988 she married Mr [C] and had two children with him who are both now adults and with whom she is not in contact. She suffered domestic violence at the hand of Mr [C] and left him and her family in 2002, moving to Jordan as a domestic worker. In 2004 she travelled to the UK (lawfully) with a Jordanian family and was left on her own in the UK in 2005. She remained in the UK unlawfully thereafter.
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> In 2006 the appellant commenced a relationship with Mr [R], a citizen of Pakistan who is a Muslim and had been in the UK unlawfully since 1992. The appellant converted to Islam and in 2010 undertook a religious ceremony of marriage with Mr [R] and began living with him as husband and wife. Mr [R] is economically self-sufficient and both the appellant and Mr [R] speak English. Mr [R] was granted limited leave to remain in the UK in January 2018 on the basis of twenty years' continuous residence.
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> The appellant remains legally married to Mr [C] and in the Philippines she would be treated as still being married to him.
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> The appellant does not have family or friends in the Philippines with whom she is in contact and who would be able to assist and support her.
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> Mr [R] would face practical obstacles moving to the Philippines. The First-tier Tribunal stated that it would be "extraordinarily difficult [for him] to get into that country." It was also found that, if the appellant was required to move to the Philippines, she would not be in a position to maintain a close relationship with Mr [R].

The First-tier Tribunal did not make a finding in respect of (or consider) whether the appellant and Mr [R] could relocate to Pakistan. There is a reference, at paragraph 44 of the decision, to Mr [R] not having a passport, but this is discussed in the context of considering whether he could move to the Philippines, not return to Pakistan. Despite this - and Ms Isherwood making it clear that the point was in contention – Mr Muquit took the decision to not call any witnesses. In his witness statement Mr [R] says that he has been unable, despite several attempts, to obtain a passport. This evidence was not tested orally, despite the opportunity to do so being given. Moreover, there is no documentary evidence (such as letters from the Embassy of Pakistan) to support Mr [R]'s claim that it is impossible for him to obtain a passport. In these circumstances, I do not accept that Mr [R] would be unable to relocate to Pakistan should he wish to. No evidence has been submitted to indicate that the appellant would be unable to move with Mr [R] to Pakistan. I therefore find

as a fact that Mr [R] and the appellant could, if they wished, move to - and continue their relationship in – Pakistan.

Submissions

Ms Isherwood highlighted that the relationship between the appellant and Mr [R] commenced when they were both in the United Kingdom unlawfully. Therefore, in her view, the relationship should be given only little weight in the Article 8 proportionality assessment.

She drew attention to the paucity of evidence before the First-tier Tribunal about conditions in the Philippines which would support the appellant's contention that she would face very significant obstacles in the country, either alone or with Mr [R].

Mr Muquit argued that the appellant satisfies the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules as there would be very significant obstacles to her integration into the Philippines, which is the country she would have to go to if required to leave the UK. He argued that the very significant obstacles arise, firstly, because she is still married to the man who abused her and the law in the Philippines does not facilitate divorce; and secondly, because she has converted to Islam and would face a hostile environment in the Philippines because of this.

Mr Muquit submitted that the findings of the First-tier Tribunal, as set out in particular at paragraph 49 of the decision, clearly establish that the very significant obstacles threshold is met. At paragraph 49 the judge stated that the "appellant herself would find herself in an extraordinarily difficult conflict if she was expected to go to the Philippines ". The reasons given by the judge in paragraph 49 for reaching this conclusion are that the appellant converted to Islam, she would be treated as still married to a person who was abusive to her, and she would not be able to maintain the relationship with Mr [R]. Mr Muquit argued that this is dispositive of the appeal as there is no public interest in removing the appellant if she satisfies the requirements of the Immigration Rules.

When asked to identify evidence establishing the difficulty the appellant would face because of her marriage to Mr [C], Mr Muquit referred to paragraph 13 of his skeleton argument before the First-tier Tribunal, where a paragraph from a U.S. State Department Report is cited. The relevant passage states:

> "The law does not provide for divorce. Legal annulments and separation are possible, and courts generally recognised foreign divorces if one of the parties is a foreigner. These options, however, are costly, complex, and not readily available to the poor. The Office of the Solicitor General is required to oppose requests for annulment under the constitution. Informal separation is common but brings with it potential legal and financial problems. Muslims have the right to divorce under Muslim family law."

The aforementioned report is not in the bundle of evidence and the citation in the skeleton argument does not provide a date for the report. Mr Muquit

pointed to paragraph 22 of the First-tier Tribunal decision where the judge mentioned that the Philippine Immigration Act of 1940 refers to an exclusion of persons who practise polygamy.

Mr Muquit also argued that even if I did not accept that paragraph 276ADE(1)(vi) was satisfied the appeal should be allowed under Article 8 ECHR outside the Rules. He submitted that in the proportionality assessment weight should be given to the relationship between the appellant and Mr [R], which had subsisted for many years and which could not in practice be continued either in the Philippines or Pakistan. He argued that there are in fact insurmountable obstacles to the relationship continuing outside the UK such that the requirements under EX.1 of Appendix FM would have been satisfied were it not for the requirement that the appellant's partner be a British citizen, present and settled in the UK or in the UK with refugee leave or with humanitarian protection. Mr Muquit argued that although this route under the Immigration Rules cannot be satisfied the fact that the insurmountable obstacles part of the test is satisfied should be given substantial weight in the Article 8 balancing exercise.

He also argued that even though the appellant's relationship with Mr [R] commenced when she was in the UK unlawfully, I am not mandated to give "little weight" to it under Section 117B(4) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). This is because Section 117B(4) would only apply if Mr [R] were a British citizen or settled in the UK. Mr Muquit argued that the duration and significance of the relationship is such that substantial weight should be given to it.

Analysis

As accepted by Mr Muquit, the only route by which the appellant can succeed under the Immigration Rules is by establishing that she meets the requirements of paragraph 276ADE(1)(vi). This requires her to show that there would be very significant obstacles to her integration into the Philippines.

The term "very significant obstacles" is not defined but it was explained by the Court of Appeal in *Parveen v SSHD* [2018] Civ 932 that:

> "The task of the Secretary of State, or the Tribunal, in any given case is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as "very significant"".

It was explained in *Kamara v SSHD* [2016] 4 WLR 152 that:

> "The idea of "integration" calls for a broad evaluative judgement to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individuals private or family life."

The appellant has relied on several obstacles to her integration.

> Firstly, the appellant relies on the fact that she has lost contact with friends and family in the Philippines. I accept that this will make returning to the Philippines challenging. However, I do not accept that it will be an obstacle to her *integration*. The appellant grew up - and has spent most of her life - in the Philippines and is familiar with the language and culture. The absence of friends and family will no doubt make her life more difficult, but it will not inhibit her integrating into the society in which she grew up.
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> Secondly, the appellant relies on her conversion to Islam. There was no evidence before the First-tier Tribunal - and there is no evidence before me - which establishes that converts to Islam face a particular challenge integrating in the Philippines. A supplementary bundle was submitted which included an article on radicalisation of Muslims and a proposal of Muslim-only identification documents. Neither of these articles supports the contention that the appellant's conversion will impede her integration.
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> Thirdly, the appellant relies on her marriage to Mr [C] (a man who abused her) and the challenges she would face divorcing him. Mr Muquit argued that the fact of this marriage would create an almost impossible difficulty for the appellant. He relied in support of this contention on a passage quoted in his skeleton argument from a U.S. State Department Report. I am unable to place any weight on the quote from the U.S. State Department Report as I have only seen one paragraph in isolation. Without seeing the rest of the report or at least the relevant chapter I am unable to reach a view on its significance. Moreover, the single paragraph that has been quoted does not provide an indication of the difficulties in practice a person in the appellant's circumstances would face. It says, for example, that informal separation is common but brings with it potential legal and financial problems. It may be that the potential legal and financial problems, whatever these may be, are unlikely to apply in the appellant's case. The burden of proof lies with the appellant and the evidence before me is simply insufficient to demonstrate that her marriage to Mr [C] will be an obstacle to her integration.
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> Fourthly, the appellant relies on the fact that Mr [R] would be unable to move to the Philippines with her. Although this is clearly a matter of great significance to the appellant, the absence of Mr [R] does not affect her ability to integrate in the Philippines.

Accordingly, I am not satisfied that the appellant satisfies the requirements of 276ADE(1)(vi) as she has not shown that there would be very significant obstacles to her integration in the Philippines.

I now turn to consider Article 8 ECHR outwith the Immigration Rules. It was common ground that the appellant has a private and family life in the UK that

engages article 8. The issue in contention is the proportionality of her removal under article 8(2) ECHR.

In assessing the proportionality of the appellant's removal, I have considered the factors weighing in both directions, having regard (but not limiting my analysis) to the public interest considerations set out in Section 117B of the 2002 Act.

Weighing against the appellant is that the maintenance of effective immigration controls is in the public interest (section 117B(1)). Given that the appellant has spent many years living in the UK unlawfully I attach substantial weight to this consideration.

Weighing in the appellant's favour are the following:

> She has lived in the UK for a considerable length of time and has established a private life. However, as her private life was established when she was in the UK unlawfully, in accordance with section 117B(4) of the 2002 Act I attach only little weight to it. No features of the appellant's private life in the UK were identified that could justify attaching more than little weight to this consideration.
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> The appellant lives as husband and wife - and has done for many years - with an individual who has a right to remain in the UK although he is not a British citizen or settled in the UK. As Mr [R] and the appellant were both in the UK unlawfully when their relationship commenced, I attach only little weight to it. Mr Muquit is correct that Section 117B(4)(b) of the 2002 Act is not applicable as Mr [R] is not a qualifying partner. However, no reason was advanced (and I can think of no reason) why more weight should be given to the appellant's relationship with Mr [R] than would have been given had he been a British citizen or settled in the UK. As only little weight is attached to the relationship with Mr [R] it makes no difference to my overall assessment whether or not the relationship could continue (or there would be insurmountable obstacles to it continuing) in the Philippines or Pakistan.
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> The appellant would face challenges in the Philippines because she would not have the support of family and friends, she has converted to Islam and she remains married to a man who abused her. These factors, although not "very significant obstacles" for the purposes of paragraph 276 ADE are nonetheless important considerations to which I give weight in the proportionality assessment.
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> The appellant is unlikely to be a burden on the taxpayer given Mr [R]'s financial circumstances and she speaks English.

Having carefully evaluated - and considered together and cumulatively – the considerations weighing in the appellant's favour, I have reached the view that they are insufficient to outweigh the public interest in the maintenance of

effective immigration controls. For the reasons explained above, the challenges the appellant is likely to face in the Philippines, although significant, fall considerably short of amounting to very significant obstacles to integration; and I have attached only little weight to the appellant's private life and relationship with Mr [R] in the UK. In these circumstances, I am satisfied that the appellant's removal would be proportionate under article 8 ECHR and would therefore not be unlawful under Section 6 of the Human Rights Act 1998.

Notice of Decision

The appeal is dismissed.

No anonymity direction is made.

Signed

Deputy Upper Tribunal Judge Sheridan

Dated: 29 April 2019