Upper Tribunal

(Immigration and Asylum Chamber) **Appeal Number: HU/13338/2019 (P)**

THE IMMIGRATION ACTS

Decided under rule 34 (P)	**Decision & Reasons Promulgated**
On 16 July 2020	**On 29 July 2020**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

DARYLLE DADWA-AS

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

Representation (by way of written submissions)
For the appellant: Mr S Krushner of Counsel, Paramount Chambers, London

For the respondent: Mr A McVeety, Senior Home Office Presenting Officer

Background

1. This appeal comes before me following the grant of permission to appeal by First-tier Tribunal Judge Foudy on 13 April 2020 against the determination of First-tier Tribunal Judge Brewer, promulgated on 5 December 2019 following a hearing at Taylor House on 4 December 2019.

2. The appellant is a national of the Philippines born on 26 July 1999. He entered the UK in July 2016 as a Tier 2 dependent child of his mother and subsequently sought to remain on human rights grounds.

3. The judge considered that the appellant would not face insurmountable obstacles on return to the Philippines where he still had a home and some family. He found that although the appellant has established a private life in the UK, there was no evidence of any family life between the appellant and his mother prior to 2019 and that the Kugathas threshold had not been met. Accordingly, he dismissed the appeal.

4. The appellant sought permission to appeal and this was granted by the First-tier Tribunal.

Covid-19 crisis: preliminary matters

5. The matter was to have been listed for a hearing but due to the Covid-19 pandemic and need to take precautions against its spread, this did not happen and directions were sent to the parties on 12 May 2020. They were asked to present any objections to the matter being dealt with on the papers and to make any further submissions on the error of law issue within certain time limits.

6. The Tribunal has received written submissions from both parties. Neither party has raised any objection to the matter being considered on the papers but I nevertheless consider whether that course of action is appropriate.

7. In doing so I have regard to the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Rules), the judgment of Osborn v The Parole Board [2013] UKSC 61, the Presidential Guidance Note No 1 2020: Arrangements during the Covid-19 pandemic (PGN) and the Senior President's Pilot Practice Direction (PPD). I have regard to the overriding objective which is defined in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as being "to enable the Upper Tribunal to deal with cases fairly and

justly". To this end I have considered that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues (Rule 2(2) UT rules and PGN:5).

8. I have had careful regard to the submissions made and to all the evidence before me before deciding how to proceed. I take the view that a full account of the facts are set out in those papers, that the arguments for and against the appellants have been clearly set out and that the issue to be decided is straightforward and narrow. There are no matters arising from the papers which would require clarification and so an oral hearing would not be needed for that purpose. I have regard to the importance of the matter to the appellant and consider that a speedy determination of this matter is in his best interests. I am satisfied that I am able to fairly and justly deal with this matter on the papers before me and I now proceed to do so.

Submissions

9. The appellant's written submissions are dated 19 May 2020. The respondent's submissions are dated 18 June 2020. There has been no response, as far as I am aware, from the appellant as of today. Given the contents of the respondent's reply, however, I do not consider that the appellant is put at any disadvantage due to this.

10. The appellant's submissions rely on the grounds put forward for permission to appeal and argue that the judge based his assessment on incorrect facts, specifically, a belief that the appellant had entered the UK as a visitor. That infected his proportionality assessment and rendered his conclusions unsafe. It is also pointed out that his findings that there was no family life between the appellant and his mother prior to 2019 was incompatible with his acceptance that the appellant had entered the UK in 2016 and had lived with his mother since then. The grounds also note that the judge repeatedly referred to the appellant as being from Nepal. It is also maintained that the judge's s.55 assessment of the appellant's stepfather's daughter is flawed as if there is family life between the appellant, his mother and stepfather, then the child is more likely to be part of that.

11. The respondent concedes that the judge proceeded on an incorrect factual premise and does not oppose the appellant's request to have the determination set aside. The respondent,

however, maintains that there is no error in the judge's findings on the s.55 assessment; it is pointed out that the child does not live with the appellant.

Discussion and conclusions

12. I have considered all the evidence, the grounds for permission and the submissions made by both parties. I am satisfied that for the following reasons the judge's determination contains errors of law and that it is unsustainable.

13. The judge refers to the appellant's return to Nepal at 3 and 20. This may be carelessness on the part of the judge rather than a confusion over the facts of the case but it does not inspire confidence in the determination.

14. The judge, whilst correctly recording that the appellant entered the UK in 2016 as a Tier 2 dependent child (at 1), then assesses the article 8 claim on the basis that the appellant entered as a visitor (at 7 and 8). Given the significant difference between the public interest in the removal of a visitor and the removal of an individual who had entered in a category that could lead to settlement, the proportionality assessment has clearly been compromised by this misrepresentation of the facts. This is a material error and rightly conceded as such by the respondent.

15. The judge further finds that there was no family life between the appellant and his mother until 2019 when the evidence before him was that the appellant entered the UK in 2016 to join his mother and has been living with her in the UK. This error further infects his assessment of article 8.

16. There are no findings as to the issues of language ability or financial independence when s.117B is considered.

17. Given the incorrect factual bases on which the judge's findings were made, I am unable to preserve any of them. It is impossible to say whether the judge was simply careless in his preparation and assessment of the case or whether he had confused the appellant with another. The appellant has not had a fair hearing and the decision is set aside in its entirety so that the appeal can be reheard and decided afresh by another judge of the First-tier Tribunal.

Decision

18. The appeal is allowed in that the decision of the First-tier Tribunal is set aside because it contains errors of law. A fresh decision shall be made by another judge of the First-tier Tribunal at a date to be arranged.

Anonymity

19. No request for an anonymity order has been made at any time and I see no reason to make one.

Signed

R. Kekić

Upper Tribunal Judge

Date: 16 July 2020