**IN THE UPPER TRIBUNAL**
**IMMIGRATION AND ASYLUM CHAMBER**

**Case No: UI-2022-005279**
**First-tier Tribunal No:**
**HU/51726/2022**
IA/02701/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**
**On the 23 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

EC
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**
For the Appellant: Mr T Hodson, solicitor, Queen's Park Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

**Heard at Field House on 5 May 2023**

**DECISION AND REASONS**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of her family is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant and her family. Failure to comply with this order could amount to a contempt of court.**

Introduction

1. This is the remaking of the appellant' appeal against the decision of the Secretary of State dated 13 March 2022 refusing her human rights claim.

Anonymity

2. No anonymity direction was made previously, and no application was made on the appellant's behalf. Nonetheless, given the necessary references to a minor child, I consider it necessary to anonymise the parties in this case.

Factual Background

3. The appellant is a national of the Philippines now aged forty-five. She first entered the United Kingdom on 5 April 2013, with leave to enter as a visitor, having previously formed a relationship with a British citizen in the Philippines. She returned to the Philippines and obtained leave to enter the United Kingdom as a fiancée. The appellant returned to the United Kingdom during January 2014 and subsequently married her then fiancé. She was granted leave to remain in the United Kingdom as a spouse and further leave to remain in the same capacity from 4 January 2018 until 5 July 2020.

4. The appellant's marriage broke down in around April 2020. On 1 July 2020, the appellant made an application under the Domestic Violence Concession based on her husband's controlling and emotionally abusive behaviour. That application was rejected for reasons which are not apparent from the papers. A further application made on 6 August 2020 was successful with the appellant granted limited leave to remain until 11 November 2020. On 13 November 2020, the appellant successfully made an application for a fee waiver in relation to the Immigration Health Surcharge and on 18 January 2021, she made a human rights application. It is the decision refusing this application, on 13 March 2022, which is the subject of this appeal.

5. The basis of the appellant's human rights claim was that she cared for a child with disabilities as well as relying on her length of residence in the United Kingdom.

6. In refusing the human rights claim, the respondent did not accept that the appellant could meet the requirements of Appendix FM, noting that her residence in the United Kingdom was limited to 7 years and 5 months, that she had spent her formative years in the Philippines and that there were no exceptional or compassionate circumstances.

The decision of the First-tier Tribunal

7. At the hearing before the First-tier Tribunal, the appellant relied upon a relationship with a new partner as well as with the partner's daughters from a previous relationship. The appeal was allowed on the basis that there were very significant obstacles to the appellant's reintegration in the Philippines. In addition, the judge accepted that the appellant had established a family life with her partner and his daughters. That decision was set aside by the Upper Tribunal following an error of law hearing which took place on 6 March 2023 and listing directions were made, which included the following.

> The Respondent is to confirm in writing to the Appellant and Upper Tribunal within 28 days of the date on which this decision is sent, whether consent is given for the Appellant to rely on her relationships with The appellant's fiancé and his two children for the Upper Tribunal to consider as a new matter in accordance with section 85(4) of the Nationality, Immigration and Asylum Act 2002. If consent is refused, reasons should be given.

8. The respondent replied, on 22 March 2023, stating that there was no objection to the appellant relying on the new matter referred to in the directions.

The continuance hearing

9. Mr Hodson confirmed that there had been compliance by the appellant with the directions to submit evidence in advance of the hearing. I subsequently received emails which had been sent in late April which contained two bundles of evidence, a skeleton argument and evidence relating to the appellant's divorce proceedings.

10. Thereafter, I heard oral evidence from the appellant and her partner, as well as submissions from both representatives.

11. Ms Isherwood's submissions included the following. She emphasised that the appellant had overstayed her last period of leave to remain and that the parameters of this appeal had kept changing. She further argued that the appellant had never made a valid application for leave to remain as a partner and that she did not meet the requirements of the Rules at the date of the hearing. Ms Isherwood made no submissions regarding whether the relationship was genuine and subsisting, instead citing issues with the appellant's partner's business documents. She argued there were no insurmountable obstacles to family life taking place in the Philippines and did not accept that there was dependency upon the appellant by the minor daughter of the appellant's partner who lived with him and the appellant. It was suggested that the appellant's partner could set up a business in the Philippines instead and that there were no very significant difficulties involved brought about by the appellant's removal there. Finally, Ms Isherwood submitted that the appellant's partner had stated that he would support the appellant and her application for entry clearance, but this was not a case where an application for entry clearance would be successful if submitted.

12. Mr Hodson relied on his skeleton argument and made the following points. The appellant's partner could not accompany the appellant, and this was not a matter of choice, because he has two children, one of whom was aged fourteen and it was not an option to take her to the Philippines. The evidence was consistent that the children very occasionally saw their mother. The younger daughter's letter makes it quite clear that her mother moved away, and she moved in with her dad, but that contact had lessened and currently there was no close relationship. The appellant met the requirements of the Rules other than entry clearance for entry as a fiancée. The findings in *Chikwamba* [2008] UKHL 40 have validity in this rare case. He suggested that the appellant had a genuine and subsisting parental relationship with the younger child and that it would be detrimental for the appellant to be absent from her life even if only for eight or nine months. It was relevant that the appellant got into immigration difficulties owing to a controlling relationship. That the appellant applied for a fee waiver indicated that she was anxious to make an application, albeit it was not an unblemished immigration history. The public interest in requiring the appellant to return to the Philippines to seek entry clearance is minimal.

13. At the end of the hearing, I reserved my decision.

Decision on remaking

14. In reaching this decision, I have considered all the evidence before me as well as the submissions made.

15. I found the appellant and her partner to be witnesses of truth. Their evidence was given without evasion and in credible detail. Indeed, there was no real challenge to their evidence or to any of the documents relied upon by the appellant. I therefore find as follows.

16. The appellant and her partner met online in June 2020 and in person later the same month. The relationship continued and the appellant began cohabiting with her partner in November 2021. The couple intend to marry and were unable to do so previously primarily because the appellant's divorce was not finalised. As became apparent during the hearing, the Family Court issued the final order on 3 May 2003. The appellant's partner has two daughters, one aged nineteen, 'D1' and one, 'D2,' aged fourteen who live with him and the appellant.

17. The appellant has a close relationship with her partner's daughters, and both have provided handwritten letters which I accept reliably set out that closeness. In her letter, D1 emphasises the appellant's importance in her life and how she has helped her 'massively' with her mental health, studies and growing into a woman. D1 states that she no longer worries about her dad and describes the appellant as a mum to her. The letter from D2 is more relevant for these purposes as she is still a minor. In her letter, D2J explains how her relationship with her mother gradually deteriorated since her parents separated in 2019 and that so far, she has seen her mother only once in 2023. She says that the appellant's presence and activities make her feel like she lives in a real family again. In addition, D2 describes the support she receives from the appellant, including with her emotional needs and attending parents' evenings.

18. It is conceded on the appellant's behalf that she cannot meet the requirements of the Immigration Rules for leave to remain as a partner principally because she has no extant leave. I nonetheless consider the extent to which the Rules are unmet. The appellant made no valid application for leave to remain as a partner albeit she has raised an Article 8 claim at appeal, with the respondent's consent. There is also an issue whether the relationship meets the definition of partner set out in GEN. 1.2 of Appendix FM. That issue has now been resolved as at the date of the hearing. I accept that the appellant and her partner are now affianced and meet the requirements of GEN.1.2(iii). This does not assist the appellant because she was not granted entry clearance as a fiancée and therefore cannot meet the eligibility requirements set out in E-LTRP.1.12. There are no suitability issues. It is unclear whether the evidence of the appellant's partner's income from self-employment could meet the requirements of the Rules to support a successful application for entry clearance.

19. Mr Hodson asked me to find that paragraph EX.1.(b) applied in this case. I find that it does, in that I accept that the appellant and her partner have a genuine and subsisting relationship and that there are insurmountable obstacles to family life continuing in the Philippines. Those obstacles mainly relate to D2 who is a minor, a British citizen, and due to commence her GCSE studies later in 2023. D2, like her father, has no links to the Philippines. It is evidently in D2's best interests to continue to have a stable home and educational life in the United Kingdom particularly during the latter years of her childhood. It has rightly not been suggested on behalf of the respondent that D2 should accompany her father and the appellant to the Philippines however, the appellant's partner would face very

serious hardship in relocating without D2 given her mother has effectively become estranged from her daughters. I further find that EX.1.(a) applies, in that the appellant enjoys a genuine and subsisting parental relationship with D2. In addition to the letters from both daughters, there is evidence from D2's school to support the appellant's involvement in D2's parenting. For the foregoing reasons it is not reasonable to expect D2 to leave the United Kingdom.

20. I now consider the human rights claim outside the Rules, starting with Part 5A of the 2002 Act, with reference to sections 117A-117D. In determining whether the respondent's decision breaches the appellant's right to respect for her private and family life under Article 8, I have had regard to the considerations listed in section 117B.

21. The starting point is that the maintenance of an effective immigration control is in the public interest and that the appellant is unable to satisfy the Rules for a grant of leave to remain as a partner. I note that the appellant can speak English fluently and that she is financially independent in that she is supported by her partner, however these are neutral factors in the assessment. The appellant is currently an overstayer however her relationship with her partner was established when she had leave to remain and therefore that relationship is deserving of more than little weight.

22. The appellant does not rely on her private life to any great extent however it is the case that she entered the United Kingdom lawfully and lawfully extended her stay for much of the time that she has lived in this country. Her private life while conducted while her leave was precarious can, nonetheless, attract little weight. Of relevance here is the appellant's dedication to being a carer for the severely disabled which she would like to resume were she permitted to work. In addition, she fell foul of immigration laws owing to the breakdown of a previous relationship which from the account provided by the appellant, exhibited aspects of domestic violence and abandonment.

23. Of relevance in this case is 117B (6) given that she has a genuine and subsisting parental relationship with D2, who is a qualifying child, and it would not be reasonable to expect that child to leave the United Kingdom. As the said section states, the public interest does not require the removal of a person not liable to deportation in these circumstances.

24. As indicated above, the appellant and her partner have established a family life in the United Kingdom, and she also has a family life with D2. The refusal of the appellant's claim would result in an interference with that family life because her partner would be unable to accompany her to the Philippines because of his parental responsibilities. The best interests of D2 are for the appellant to remain in the United Kingdom so that the family life of this unit can continue without interruption. Furthermore, the public interest does not require the appellant's removal owing to her genuine and subsisting relationship with D2.

25. To conclude, I find that in this case the appellant's removal is, on balance, disproportionate to the otherwise legitimate aim of immigration control.

## Notice of Decision

The appeal is allowed on human rights grounds.

**Case No: UI-2022-005279**
**First-tier Tribunal No: HU/51726/2022**

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

17 May 2023

**TO THE RESPONDENT**
**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award for the following reason. The parameters of this case are markedly different to the case advanced to the Secretary of State.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

**17 May 2023**

**NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

**5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**

**6. The date when the decision is "sent' is that appearing on the covering letter or covering email**