



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/19044/2016**

THE IMMIGRATION ACTS

**Heard at : Field House
On : 19 March 2018**

**Decision & Reasons Promulgated
On : 21 March 2018**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

MILAGROS [M]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Murphy, instructed by Juris Law Solicitors
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of the Philippines born on 18 August 1959. She has been given permission to appeal against the decision of First-tier Tribunal Judge Fox dismissing her appeal against the respondent's decision to refuse her application for leave to remain as a spouse.

2. The appellant entered the UK on 23 July 2008 with leave to enter as a student and was subsequently granted further leave to remain as a student until 30 March 2013. An application for leave to remain outside the immigration rules was rejected on 22 March 2013 and an application for leave to remain on family/private life grounds was refused on 31 May 2013 with no right of appeal.

A further application for leave to remain on Article 8 grounds made on 24 September 2015 was refused and certified as clearly unfounded on 27 January 2016. On 4 May 2016 the appellant applied for leave to remain as a spouse.

3. The appellant's application was refused on 22 July 2016. The respondent accepted that the appellant was in a genuine and subsisting relationship with her partner [PG] but considered that she failed to meet the eligibility requirements of the immigration rules under the 5-year partner route because she was an overstayer and because the evidence she had produced did not meet the English language requirements. The respondent considered that the appellant did not meet the requirements of EX.1. of Appendix FM because there were no insurmountable obstacles to family life continuing in the Philippines. The respondent considered that the appellant could not meet the criteria in paragraph 276ADE(1) and that the appellant's circumstances were not exceptional for the purposes of Article 8 outside the immigration rules.

4. The appellant's appeal came before First-tier Tribunal Judge Fox on 26 May 2017. The judge considered the appellant's circumstances and those of her husband and found that the appellant could not meet the requirements of the immigration rules and that the respondent's decision was proportionate and did not breach her Article 8 human rights. He accordingly dismissed the appeal.

5. Permission to appeal to the Upper Tribunal was sought by the appellant on several grounds: firstly, that the judge had failed to give reasons for his findings that she did not qualify under paragraph 276ADE(1)(vi); secondly, that the judge had failed to delineate between EX.1, paragraph 276ADE(1)(vi) and Article 8 outside the immigration rules and referred to them interchangeably despite the lower test in paragraph 276ADE(1)(vi); thirdly that the judge had failed to address Counsel's submissions on Chikwamba v Secretary of State for the Home Department [2008] UKHL 40; fourthly, that the judge had made mistakes in respect of evidence given and events at the hearing with regard to her English language qualifications, the medical treatment available to her husband in the Philippines, the papers provided to the Tribunal, her husband's ability find employment in the Philippines and her intentions in regard to making an entry clearance application; fifthly that the judge drew conclusions without explanation or evidence with respect to her husband's medical condition; and sixthly that the judge gave the perception of being biased against her.

6. Permission was granted on 11 January 2018 on the second ground only, on the basis that the judge arguably applied too high a test in applying paragraph 276ADE(1)(vi). The sixth ground was found in particular to be unarguable.

Appeal Hearing

7. At the hearing it was confirmed that no application had been made to the Upper Tribunal to renew the other grounds seeking permission. Mr Murphy indicated, however, that if no error of law was found in respect of ground 2, he would seek to argue the other grounds. He then proceeded to make

submissions on ground 2, submitting that the judge's reference to "exceptional circumstances" and "insurmountable obstacles", at [12], [23], [24], [26], [29] and [38] alongside his reference to paragraph 276ADE(1)(vi) showed that he had conflated the legal tests in EX.1, Article 8 outside the rules and paragraph 276ADE(1)(vi) and had applied a higher test to paragraph 276ADE(1)(vi) and had materially erred in law. Mr Murphy also expressed concerns about the judge's finding at [24] that the sponsor did not have serious health problems, when his GP's letter confirmed that he suffered from ischaemic heart disease and chronic kidney disease and that it was advisable that he remained in the UK for health reasons.

8. Mr Jarvis submitted that the judge had made clear findings about the appellant's private life and her circumstances on return to the Philippines which were in substance findings on paragraph 276ADE(1)(vi). The judge considered the medical evidence and noted that the sponsor was still working and his condition had not worsened. There were no errors of law in the decision. Mr Jarvis submitted that the Tribunal had no jurisdiction to consider the other grounds of appeal as permission was refused in the First-tier Tribunal with respect to those grounds and no application was made to renew the grounds in the Upper Tribunal in accordance with the Procedure Rules.

9. Mr Murphy reiterated his submissions in response.

10. I advised the parties that I found no material error of law in the judge's decision in relation to ground 2. I did not permit Mr Murphy to argue the other grounds of appeal as no application had been made for permission to do so. My reasons for concluding as such are as follows.

Consideration and findings

11. As I stated at the hearing, I agree that the judge did not refer to the test of "very significant obstacles to integration" in paragraph 276ADE(1)(vi) in his findings and referred repeatedly to "insurmountable obstacles" and "exceptional circumstances" alongside references to paragraph 276ADE. I refer by way of example to [12], [29] and [38]. To that extent it seems to me that the judge has erred. However I do not consider such an error to be material in any way. It is clear that the judge was aware of the test in paragraph 276ADE(1)(vi), as a separate consideration to paragraph EX.1(a) of Appendix FM and Article 8 outside the immigration rules, as he set that out clearly at [2] in the last four bullet points, when summarising the reasons for refusal. I also agree with Mr Jarvis that the issue is a matter of form rather than substance and that the substance of the relevant test in paragraph 276ADE(1)(vi) was in fact fully and properly considered and addressed by the judge. At [13] and [14] the judge addressed matters relevant to integration into the Philippines, namely the appellant's period of residence outside the Philippines, her family ties in the Philippines and her ability to find accommodation and employment in the Philippines. At [16] and [23] the judge addressed the evidence of the appellant's husband's ability to find employment and medical treatment in the Philippines. I find no basis for concluding that the judge applied any higher test

than was appropriate in making his findings on these matters. The judge plainly considered all aspects of the appellant's life and that of her husband and was entitled to conclude as he did.

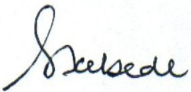
12. As for Mr Murphy's concerns about the judge's findings at [24] in regard to the sponsor's health problems in light of the medical evidence, it seems to me that those findings were made further to a very detailed and careful consideration of all the evidence and were fully and properly open to the judge. The judge had regard to the letter from the sponsor's GP at [20] and his observation as to the limited assistance the letter provided was entirely apt, in my view. Having regard to the letter at Annex 5 of the appeal bundle, the GP's view, that it was advisable for the sponsor to remain in the UK for health reasons, was without any explanation or detail and the judge was entitled to accord it limited weight. The judge also considered the detailed medical notes and the medication the sponsor was taking and made appropriate findings. I therefore do not share Mr Murphy's concerns about the judge's findings on the sponsor's medical issues and note, in any event, that permission was not granted in respect to that ground of challenge.

13. Finally, addressing Mr Murphy's submission that the other grounds of appeal should be re-opened, I find no merit in such a suggestion. The First-tier Tribunal's decision with respect to the permission application was specific in limiting the grounds upon which permission was granted. That decision was issued to the parties accompanied by form IA68 which clearly advised that an application to the Upper Tribunal was to be made if permission were sought on grounds on which permission had been refused. No application was made to the Upper Tribunal to renew the grounds seeking permission. It would not be appropriate for the appellant to simply bypass the requirement for a written application to the Upper Tribunal and, aside from any question of the Tribunal's jurisdiction to re-open the grounds, I find no basis for permitting her to do that.

14. For all of these reasons I find no errors of law in the judge's decision requiring it to be set aside. On the evidence before him the judge was fully and properly entitled to conclude that the appellant could not meet the requirements in Appendix FM or paragraph 276ADE(1) and that there were no circumstances justifying a grant of leave outside the immigration rules on wider Article 8 grounds. Accordingly I uphold the judge's decision.

DECISION

15. The making of the decision of the First-tier Tribunal did not involve an error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Signed 
Upper Tribunal Judge Kebede

Dated: 19 March 2018