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

Case No: UI-2023-003359

First-tier Tribunal No: HU/52987/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On 12th of March 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LEWIS**

**Between**

**Melca Ragudo PADILLA**
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mr N Paramjorthy of Counsel instructed by FA Legal Ltd.
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

**Heard at Field House on 4 March 2024**

**DECISION AND REASONS**

## Introduction

1. This is an appeal against a decision of First-tier Tribunal Judge Mailer promulgated on 26 June 2023 dismissing on human rights grounds an appeal against a decision dated 4 May 2022 to refuse to grant leave to remain in the United Kingdom.

2. The Appellant claimed that she was entitled to a grant of leave by reason of a continuous period of 20 years residence in the UK, pursuant to paragraph 276ADE(1)(iii) of the Immigration Rules. The Appellant claimed to have entered the UK on 12 January 2001 on a visit visa (which would have conferred 6 months leave to enter) and not to have left since. For reasons explained in his Decision, the First-tier Tribunal Judge determined that the Appellant had not demonstrated that she had been continuously

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present in the UK for the period claimed. This aspect of the First-tier Tribunal's decision is not the subject of challenge.

3. The First-tier Tribunal also gave consideration to paragraph 276ADE(1)(vi) with particular reference to the issue of 'very significant obstacles' to integration into the Philippines, but again ruled against the Appellant. This aspect of the decision is also not challenged before me.

4. The challenge raised against the decision of the First-tier Tribunal is focused on the residual consideration of Article 8 outside the scope of the Rules.

5. The Grounds in summary plead that the Judge failed to consider section 117B of the Nationality, Immigration and Asylum 2002, failed to make findings on private life, and failed to make a reasoned proportionality assessment: (see Grounds at paragraph 2).

6. Permission to appeal was granted by a decision of First-tier Tribunal Judge Dainty dated 13 August 2023.

**Consideration of the 'error of law' challenge**

7. The vast majority of the 15-page 'Decision and Reasons' of the First-tier Tribunal consists of an analysis and evaluation of the principal basis upon which the Appellant advanced her case – her claimed continuous residence in the UK since January 2001. This encompasses a detailed consideration and evaluation of the Appellant's testimony and supporting documentary evidence. It is thorough; every item of evidence appears to have been considered and commented upon. The Grounds do not make any criticism of the Judge's primary fact-finding or reasons for such fact-finding.

8. The evidence considered by the Judge included a supporting letter from an uncle and aunt in the UK (the Maralits), a supporting letter from cousins in the UK (the Messinas), and supporting letters from friends which included references to church membership (Mr Burns, Mrs Clinch, Mr Castillo, and Ms Martinez). The Judge also made reference to the Appellant's narrative in respect of undertaking gardening and housekeeping jobs, and her claim to have "*integrated into the local community and culture*" (paragraph 23).

9. An adverse conclusion in respect of the claim to have been continuously resident in the UK for 20 years is finally reached at paragraph 112.

10. Having reached such a conclusion the Judge then goes on to consider the issue of 'very significant obstacles' to integration, which might potentially avail the Appellant under paragraph 276ADE(1)(vi): see paragraphs 113-119. In so doing the Judge expressly identifies that the Appellant "*claims to have made and built up relationships with people in the local community*" in the UK (paragraph 113).

11. In evaluating this aspect of the case the Judge finds "*the nature and extent of [the Appellant's] relationship with [her uncle and aunt] has not been established*" (paragraph 114), and also notes that there is no statement "*from any of the friends with whom she claims to have lived over the years*" (paragraph 115). Moreover, the Judge finds "*There is no unique relationship that she has made in the United Kingdom which could not be replicated in the Philippines*" (paragraph 116).

12. Having reached an adverse conclusion in respect of paragraph 276ADE(1)(vi) at paragraph 119 – as noted above, a conclusion that is not the subject of challenge before me – the remainder of the Decision is in these terms:

> "*120. In deciding whether the respondent's decision constitutes a disproportionate interference with her private life under Article 8, I must consider the section 117B considerations under the 2002 Act.*
>
> *121. I attach little weight to her private life established when her immigration status was unlawful. Although I accept that she may be able to speak some English, she was assisted by a Tagalog interpreter. There is no evidence that she is financially independent. The remaining paragraphs are not relevant.*
>
> *122. For the reasons already given, there would not be very serious hardship for her if required to return to the Philippines.*
>
> *123. I find that the respondent's decision does not constitute a disproportionate interference with her right to private life under Article 8 of the Human Rights Convention.*"

13. Further to the above, and in the premises, I make two observations.

14. First, in evaluating the Appellant's claim to have been continuously resident in the UK since January 2011, the Judge, as noted above, traversed all of the evidence filed in the appeal, and did so in some detail. The Judge clearly had in mind the Appellant's claim to have made and developed ('built up') relationships (paragraph 113) when considering 'very significant obstacles' to integration, and made relevant findings (paragraphs 114-116) just prior to turning his mind to the issue of proportionality (from paragraph 120). It is unrealistic to consider that the Judge – as Mr Paramjorthy noted, a very experienced judge - did not have it in my that the evidence considered, and the findings made, in the earlier parts of the Decision did not also speak to the Appellant's private life in the UK.

15. Second, it is not possible to identify anything specifically advanced on behalf of the Appellant as constituting exceptional circumstances that would warrant departure from the scheme of the Immigration Rules in the

event that she did not establish her claims in respect of duration of presence in the UK and very significant obstacles to integration in the Philippines. The supporting letter of representations prepared by the Appellant's representatives and submitted with the application (Respondent's bundle before the First-tier Tribunal, Annex C) refers under the heading 'Exceptional Circumstances' only to the length of time the Appellant has been in the UK and the difficulties it is claimed she would face in attempting to integrate back into life in the Philippines. This is to do no more than cover the requirements of the Immigration Rules and does not, in truth, identify any further, or different – exceptional – circumstances. The Skeleton Argument drafted by counsel before the First-tier Tribunal under the heading Leave outside the Rules puts the residual Article 8 case in these terms:

> "*28. A proper application of the residual discretion outside of the rules should mean that any decision to refuse the appellant's long residence application and remove her to the Philippines would breach Article 8 ECHR and would not be proportionate.*
>
> *29. Notwithstanding that little weight is to be given to private life pursuant to section 117B of the Nationality, Immigration and Asylum Act 2002, and the other factors therein, removal would be disproportionate as there remains a small degree of flexibility which enables the appellant's application to succeed (see Rhuppiah v SSHD [2018] UKSC 58 at [49]).*"

This is to do no more than to identify that there is a discretion outside the Rules to ensure that any decision is Article 8 compliant, and to assert – without reasons – that the Appellant should have the benefit of such discretion.

16. Nor is anything meaningfully articulated in the Appellant's witness statement: perhaps the highest it is put is that the Appellant has "*developed a standard of life, which I will not be able to re-establish in the Philippines*" (witness statement at paragraph 39).

17. In short, there was nothing further articulated in evidence or submissions before the First-tier Tribunal in respect of exceptional circumstances, or why a proportionality balance outside the Immigration Rules should favour the Appellant. The emphasis is on the claimed continuous period of time in the UK, and the claimed difficulty in reintegrating in the Philippines – i.e. the matters covered by the Rules. Of course, if the Rules are not met, it is difficult to see that a period that falls short of 20 years will in itself amount to an exceptional circumstances, and it is difficult to see that any problems of integration falling short of very significant obstacles will in themselves amount to exceptional circumstances.

18. As regards the Grounds – they do not identify anything in respect of section 117B that has been overlooked by the First-tier Tribunal at

paragraphs 120-121. The Judge has considered the Appellant's private life and made findings on it. Paragraphs 120-123 demonstrates a balancing exercise in respect of proportionality. As Mr Tufan pointed out, the Judge's reference to his earlier finding that "*there would not be very serious hardship*" (paragraph 122) approximates to, and appropriately informs an evaluation of whether there would be 'unjustifiably harsh consequences' (cf. Appendix FM, GEN.3.2.(2)).

19. For completeness I note that Mr Paramjorthy – who did not appear before the First-tier Tribunal and was not involved in the drafting of the Grounds in support of the application for permission to appeal - was appropriately frank in acknowledging the limitation of the Grounds. In particular: he acknowledged that there was no real substance to the pleadings in respect of section 117B, and that the Judge appeared to have undertaken a balancing exercise in respect of proportionality. He also acknowledged that beyond the claimed period of residence in the UK and the claimed obstacles to integration, identification of anything amounting to exceptional circumstances was "*an uphill struggle*". Accordingly, if there was any substance to the Grounds at all it was with regard to the cogency of the Judge's evaluation of private life and related consideration of unjustifiably harsh consequences pursuant to paragraph 10 of the Grounds. However, even in this context he indicated that he felt duty bound to direct the Tribunal's attention to paragraphs 105-118 as potentially indicative of the Judge having considered such matters adequately. He further indicated that in the event that I were to find that there was an error of law, he would leave it to my judgement as to materiality – in substance declining to advance a submission in this regard.

20. In all such circumstances I conclude that the Judge did make findings on private life; the Judge did consider section 117B of the 2002 Act; there was a proportionality assessment under Article 8 beyond the parameters of the Immigration Rules. The Grounds of challenge fail.

21. Even if there were some substance to the Grounds, it has not been shown that any error would be material in the absence of identification of anything exceptional that would justify departure from the normal scheme of immigration control represented by a fair and consistent application of the Immigration Rules.

22. For the reasons given, the Appellant's challenge to the decision of Judge Mailer fails.

## Notice of Decision

23. The decision of the First-tier Tribunal contained no error of law and accordingly stands.

24. The appeal remains dismissed.

**Ian Lewis**

Deputy Judge of the Upper Tribunal
(Immigration and Asylum Chamber)

**5 March 2024**