



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: VA/03051/2014

THE IMMIGRATION ACTS

Heard at Field House

**Decision &
Promulgated**

Reasons

On 7 March 2016

On 24 March 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

ENTRY CLEARANCE OFFICER - MANILA

And

Appellant

**MARIA FE RAMIREZ PERRIN
(NO ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Mr Kotas a Home Office Presenting Officer

For the Respondent: No representation

DECISION AND REASONS

Background

1. For the sake of consistency with the decision in the First-tier Tribunal I will hereafter refer to Miss Perrin as the Appellant and to the Entry Clearance Officer as the Respondent.

2. The Respondent refused the Appellant's application for leave to enter as a family visitor on 13 May 2014. Her appeal against that decision was allowed by First-tier Tribunal Judge O'Hagan on Article 8 of the ECHR grounds only following a hearing on 1 December 2014. This is an appeal against that decision.
3. No one had attended for the Appellant by the time the case was called on to be heard at 2.20. I was satisfied I should proceed to hear the appeal in the absence of anyone for the Appellant in accordance with Rule 38 of The Tribunal Procedure (Upper Tribunal) Rules 2008. That is because the Appellant and her Sponsor had been given notice of the date time and place of the hearing, her solicitor wrote on 18 February 2016 noting the date of the hearing and advising that they wished to "withdraw", there was no good reason not to proceed, and the appeal could be justly determined given the issues. It was not a matter for the Appellant to withdraw the appeal as she had not lodged it.

The grant of permission

4. First-tier Tribunal Judge Simpson granted permission to appeal (16 January 2016) on the grounds that;
 - (1) it is arguable that family life is not interfered with by the visa refusal,
 - (2) an application for entry clearance as a spouse can be made if the Appellant wants to live here with her partner, and
 - (3) there was an inadequate assessment of proportionality.

Appellant's position

5. The Appellant did not engage with the appeal process having sought to "withdraw".

The Judges findings

6. The Judge found as follows;

[12] "...I am satisfied that there is family life between the Appellant and the Sponsor. They are husband and wife. It was clear from the evidence before me that their relationship is a subsisting one rather than merely a formal relationship..."

[16] "I considered the reasons for the proposed visit. Of the three reasons given, two related to family occasions: the Sponsor's daughter's wedding and the Sponsor's own 60th birthday party... Turning to the third reason for the proposed visit, I recognised the importance to the family life of the Appellant and the Sponsor in deciding whether or not the Appellant should seek to come to this country on a more permanent basis..."

[17] The Respondent was concerned "that the Appellant was not sincere in her stated intent to return to the Philippines at the end of the proposed visit...The Appellant had lived in the Philippines her entire life...insufficient consideration was given to the natural pull for the Appellant to the country and society in which she had always lived, and...she did have family in the Philippines...she is the wife of a British national" and "could have made an application to enter the United Kingdom permanently."

Discussion

7. The Judge has made 4 material errors of law.
8. Firstly he has failed to identify what compelling circumstances existed to support a claim for grant of leave to enter outside the immigration rules to even enable him to consider Article 8. The Judge failed to apply [Kaur \(visit appeals; Article 8\) \[2015\] UKUT 00487 \(IAC\)](#) which states that unless an Appellant can show that there are individual interests at stake covered by Article 8 "of a particularly pressing nature" so as to give rise to a "strong claim that compelling circumstances may exist to justify the grant of LTE [Leave to Enter] outside the rules": (see [SS \(Congo\) \[2015\] EWCA Civ 387](#) at [40] and [56]) he or she is exceedingly unlikely to succeed. That proposition must also hold good in visitor appeals.
9. Secondly he has failed to consider how the first question identified in [Razgar \[2004\] UKHL 27](#) is engaged, namely how the Respondent's decision interferes with the exercise of the Appellant's right to respect for her family life, when the Appellant and her Sponsor/husband chose to marry when they lived in different countries and all that the Respondent's decision does is maintain that position.
10. Thirdly he has failed to address at all the second question identified in [Razgar](#) namely how any such interference may have consequences of such gravity as potentially to engage the operation of Article 8.
11. Finally he has considered proportionality when it was plainly not reached.
12. I am therefore satisfied that the Judge made a material error of law. I set the decision aside and preserve no findings.
13. Mr Kotas submitted that I should rehear the matter. I agreed.

Rehearing

14. This was to be a visit by an Appellant to see her husband and attend 2 family events and see if she may wish to live here. She could not appeal against the refusal of the visa under the rules.

15. She has, as already explained, failed to establish what compelling circumstances existed to even enable me to consider Article 8, or how the Respondent's decision interferes with the exercise of the Appellant's right to respect for her family life, or what consequences of such gravity there were as potentially to engage the operation of Article 8.

16. I dismiss the appeal as she cannot appeal against the decision under the immigration rules and Article 8 was not engaged.

Decision:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I dismiss the appeal.

Signed:
Deputy Upper Tribunal Judge Saffer
8 March 2016