



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/08388/2013

THE IMMIGRATION ACTS

Heard at Field House
On 24 October 2013
Prepared 25 October 2013

Determination Sent
On 4 November 2013

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MARY ROSE ESTEBAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Dias, Solicitor
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Secretary of State appeals with permission against the determination of First-tier Tribunal Judge P J M Hollingworth promulgated on 15 August 2013 in which he allowed the appeal of Mrs Mary Rose Esteban (“the claimant”) against the decision of the respondent to refuse leave to remain in the United Kingdom as the spouse of a

British national. The judge did not allow the appeal under the Immigration Rules but did so pursuant to Article 8.

2. There is little dispute over the facts of this case. The Claimant who is a citizen of the Philippines born on 3 February 1976 was on 10 February 2011 granted leave to remain in the United Kingdom as a Tier 4 General Student until 30 July 2012. On 26 July 2012 she applied for her leave to remain to be varied on the basis of her marriage to a British citizen. The application was refused on the sole basis that she had not provided the necessary evidence to meet the financial requirement set out in E-LTRP.3.1 of Appendix FM of the Immigration Rules that is a specified gross annual income of at least £18,600.
3. The Claimant appealed against that decision on the basis that she did in fact meet the requirements of the Rules and in the alternative that to require her to leave the United Kingdom was a breach of her rights pursuant to Article 8 of the Human Rights Convention.
4. When the appeal came before Judge Hollingworth the evidence adduced by the appellant indicated that her husband's income was £29,371.16 comprising income from full-time work as a courier and from a private pension from Saudi Arabian Airlines.
5. The evidence before the judge showed that the income had been generated prior to June 2013 and was confirmed in letters, payslips and bank statements.
6. The judge concluded that on the basis of **Raju [2013] EWCA Civ** that the appellant could not show that he met the requirements of the Rules as the necessary evidence had not been provided to the respondent at the time of the application [9, 10] he went on to allow the appeal pursuant to Article 8.
7. The respondent sought permission to appeal against the decision on the basis that the judge had failed to give adequate reasons why there would be a disproportionate breach of the appellant's Article 8 rights.
8. In granting permission to appeal, First-tier Tribunal Judge Gibb stated

"Given the positive findings as to the finances at the date of hearing, however, it is arguable that this rested on a legal error in the understanding application of **Raju**. This case is arguably narrower than suggested in the respondent's submission in this case, which was accepted by the judge. It may therefore be that this is not in the category of **MM** cases where Article 8 is the sole issue. What needs to be considered first is whether the judge erred in law in paragraph 9 of the determination in excluding evidence despite this not being an entry clearance or PBS appeal."
9. When the matter came before me, Mr Walker very fairly and candidly accepted that the judge had misapplied the decision in **Raju**. I accept that that is correct. First, this was not an appeal to which Section 85A of the 2002 Act applies. Second, as Mr

Walker conceded, the Immigration Rules in Appendix FM do not require evidence to be submitted prior to a specific date nor is it a requirement of Appendix FM that the relevant gross annual income must be in a period ending on the date of application rather than the date of decision.

10. The judge found that the appellant's husband's income was well in excess of the minimum £18,600. It therefore follows that he should have allowed the appeal under the Immigration Rules. The determination was therefore not in accordance with the law in the light of the ground identified in the grant of permission from First-tier Tribunal Judge Gibb.
11. In the circumstances therefore it is unnecessary for me to consider whether the decision of Judge Hollingworth to allow the appeal on human rights grounds was an error of law given that as he ought to have allowed the appeal under the Immigration Rules, that error was not material.
12. In the circumstances, I set aside the determination of Judge Hollingworth and I substitute it by allowing the appeal under the Immigration Rules.

SUMMARY OF DECISIONS

- 1 The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
- 2 I remake the decision by allowing the appeal under the immigration rules.

Signed

Date 1 November 2013

Upper Tribunal Judge Rintoul