



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

Appeal Numbers: IA/23215/2012

THE IMMIGRATION ACTS

No hearing

On 8th July 2013

**Determination
Promulgated**

On 10th July 2013

Before

Mr C M G Ockelton, Vice President

Between

DONNABEL PASCUA McCOOL

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The appellant, a national of the Philippines, appealed to the First-tier Tribunal against simultaneous decisions made by the respondent on 9 October 2012 to refuse to vary her leave and to give directions for her removal. Judge Quigley dismissed the appeal. She was not satisfied on the evidence before her that the appellant's claimed relationship, on which her application was based, was genuine and subsisting. She gave no separate consideration to the removal decision.
2. On the appellant's application, permission to appeal against Judge Quigley's decision was granted. The grant of permission indicates that the dissent from the Judge's conclusions on the relationship discloses no error

of law, but that the appeal against the removal decision should have been allowed on the authority of Adamally.

3. On 30 May 2013 I wrote to the parties as follows:

“I refer to your appeal. Permission to appeal to the Upper Tribunal has been granted on the sole ground that the Secretary of State ought not to have made a removal decision in your case as she had no power to do so.

I propose to determine this appeal without a hearing, to set aside the decision in relation to the removal decision and to substitute a determination allowing the appeal against the removal decision only.

Any submissions to the contrary must be made within **21 days** of the date of this letter”.

4. No response has been received and I proceed to act as heralded in the letter.
5. The First-tier Tribunal erred in law in its approach to the appeal against the removal decision. I set aside the decision of the First-tier Tribunal. I remake the decision.
6. The appeal against the refusal to vary leave is dismissed for the reasons given by Judge Quigley, which I adopt.
7. The appeal against the removal decision is, however, allowed.

TRIBUNAL

C M G OCKELTON
VICE PRESIDENT OF THE UPPER

IMMIGRATION AND ASYLUM CHAMBER
Date: 8 July 2013