



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

Appeal Number: IA/48743/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 30th June 2014**

**Determination
Promulgated
On 4th August 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**Miss Flordeliza Maimban Gabriel
(Anonymity Direction Not Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Ward James & Co Solicitors

For the Respondent: Mr S Kandola, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of the Philippines born on 10th October 1984 who applied for leave to remain on human rights grounds. Her application was refused 13th November 2013 under Appendix FM, as the partner of Alan Andrew West, and under paragraph 276 ADE of the Immigration Rules.

2. The appeal was refused by First Tier Tribunal Judge Rose on 26th March 2014, who recorded that neither the solicitor nor the appellant attended.
3. An application for permission to appeal was filed by James & Co Solicitors on behalf of the appellant, with a witness statement from Mr Paul Ward, the solicitor with conduct of the appeal. In his witness statement of 4th April 2014 he confirmed that neither he nor the appellant were aware of the date and time of the hearing. Permission was granted by First Tier Tribunal Judge Hollingworth.

The Hearing

4. Mr Ward of the Solicitors James & Co, attended and confirmed that he had completed the notice of appeal and that the firm did not receive a notice of hearing. There were issues of gravity within the appeal. The appellant was living with a British citizen and together they have a child who was now 1 year old. It was curious that both notices of appeal had gone astray and the one supposedly sent to the wrong address had not been returned. This suggested that neither had been sent. Mr Kandola submitted that the issue was whether the correct address had been given for service.

Conclusions

5. The notice of hearing was sent to both the appellant and James & Co Solicitors on 18th March 2013 by the Tribunal. Although Rule 48(9) of the Tribunal Procedure Rules states that a notice served on the solicitors should be deemed as properly served unless the Tribunal is notified that the representatives have ceased to act and the appellant has a duty to keep in contact with the solicitors, it seems, on the basis of the sworn witness statement and appearance of Mr James at before the Upper Tribunal that the solicitors did not receive the notice of hearing. I accept this to be the case. In all the circumstances, I am satisfied that further to Rule 55(5) that the notice of hearing should not be deemed to have been properly served.
6. In addition, although the appellant was represented, the appellant was unable to alert the solicitor of the hearing as the notice was also sent by the Tribunal to the wrong address of the appellant. The address for the solicitors was the correct address but the address listed on the notice for the appellant was incorrect. The number given on the notice was 10 not 18 which was the correct number. The first notice of appeal was lodged by the solicitors and contained the appellant's wrong house number. A duplicate notice was also served by the appellant's solicitors with the same date but with the correct house number. This was easy to check as much of the correspondence between the Home Office and the appellant was to the correct address of 18. Contrary to the judge's finding, I am not persuaded that the Tribunal had *not* been notified of the correct address of the appellant further to Rules 56(2) of the Asylum and Immigration Tribunal Procedure Rules 2005.

7. The judge could not have known of the procedural error regarding the notice to the solicitors and this would no doubt account for the failure, by the appellant or her solicitors as identified by the judge [7], to serve any further evidence, in compliance with the direction contained in the notice of hearing.
8. In all the circumstances, there has been a procedural irregularity which in effect denied the appellant the opportunity to give evidence and be represented at the hearing, which is an error of law. I therefore set aside the determination of Judge Rose albeit I make clear that the judge was not at fault for the error of law contained in that determination. The matter should be remitted to the First Tier Tribunal for a fresh hearing. The solicitors should advise whether an interpreter is required.

Signed

Date 25th July 2014

Deputy Upper Tribunal Judge Rimington