Upper Tribunal

(Immigration and Asylum Chamber) **Appeal Number: VA/11388/2013**

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 15 October 2014	**On 30 October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

ELVIRA SALGADOS MANGARON

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: not represented

For the Respondent: Mr Nath Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this

Appellant. Having considered all the circumstances and evidence I do not deem it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Onoufriou, promulgated on 4 July 2014 which allowed the Appellant's appeal under the Rules.

3. The Appellant did not attend the appeal nor was he represented at the appeal. The sponsor Steven Hooton did not attend the hearing although he was sent a notice of hearing. He emailed the court on 22 September 2014 and told of his anger and frustration at the decision that was made by the ECO , how long the appeal had taken to list, and indicated that he wished to withdraw his wife's visit visa application as they were going to apply for a spouse visa. He was sent a notice by the court telling him that the case was listed for appeal as the Respondent had been given permission to challenge the decision of the Judge who had allowed the appeal. He was told he could not withdraw the Respondent's appeal and it would remain listed for hearing. He was advised that it would proceed taking into account what he had said.

4. I am satisfied that due notice of the appeal was served upon the Appellant at the address that was given and upon the Sponsor. Although the notice served on the Appellant herself was returned as undelivered I am satisfied it was served at the last address given to the court and that the Sponsor was also served and was aware of the hearing date. I am therefore satisfied that having been served notice of the hearing and not attended it is in the interests of justice to proceed with the hearing in the Appellant's absence as I am entitled to do by virtue of paragraph 38 of The Tribunal Procedure (Upper Tribunal) Rules 2008.

Background

5. The Appellant was born on 17 August 1971 and is a citizen of the Philippines.
6. On 15 April 2013 the Appellant applied for entry clearance as a family visitor in order to see her husband the sponsor Steven Hooton a United Kingdom citizen

she married on 5 January 2013. Her application was considered by reference to paragraph 41 of the Immigration Rules.

7. On 9 May the Secretary of State refused the Appellant's application by reference to paragraph 41 9i) and (ii) of the Rules. The ECO noted that the Appellant was unemployed and totally reliant on her husband in the United Kingdom for financial support and that she had supplied insufficient evidence of her financial or social standing in her home country or that she had social ties by way of family members.

The Judge's Decision

8. The Appellant submitted grounds of appeal that were apparently drafted by her sponsor. No further documentary evidence was submitted. He asserted that he and the Appellant intended to apply for a spousal visa and wished to see other again to build up evidence of their relationship; he advised the Appellant not to get a job as he would support her; they would not endanger the spousal visa by overstaying.

9. The Appellant appealed to the First-tier Tribunal and First-tier Tribunal Judge Onofriou (hereinafter called "the Judge") decided the case on the papers and allowed the appeal against the Respondent's decision. The Judge accepted the assertions made in the grounds that they would not endanger the spousal via and that while her "circumstances in the Philippines may well not be particularly attractive but that does not necessarily mean that she is not a genuine visitor."

10. Grounds of appeal were lodged and on 1 September 2014 First-tier Tribunal Judge Hollingworth gave permission to appeal.

11. At the hearing I heard submissions from Mr Nath on behalf of the Appellant that he relied on the grounds of appeal.

The Law

12. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or

evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

13. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigrations Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence that was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration judge concludes that the story told is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Finding on Material Error

14. Having heard those submissions I reached the conclusion that the Tribunal made material errors of law such that the decision should be set aside and remade.

15. The Respondent in the refusal letter asserted that the Appellant had failed to provide evidence of the social ties to her home country that would encourage her to return in accordance with the terms of any visa. It was specifically stated that she had failed to establish the existence of a brother she claimed to have. This issue would have been easily addressed by documentary evidence. No such evidence was provided with the application or the grounds of appeal. The Judge in his determination stated 'She has given evidence of her family in the Philippines.' This is factually incorrect: the Appellant made an assertion that was challenged that she had a brother but no evidence was produced in either

documentary form nor did the sponsor attend court to give evidence of having met the brother.

16. The sponsor also asserted that he would not endanger the spousal visa by allowing the Appellant to overstay. Again the Judge merely accepted this assertion. There was no evidence in any form before the Judge to suggest that an application for a spousal visa would inevitably succeed and therefore no adequate reasons given why the Judge was prepared to accept this assertion.

17. Given the Judge's conclusion that her circumstances 'were not particularly attractive' in her home country I am not satisfied that he gave adequate reasons why he reached the conclusion that she would return.

18. The failure of the First-tier Tribunal to address and determine the facts put in issue by the Respondent , whether the Appellant had sufficient social and economic ties to encourage her to return to the Philippines at the end of her proposed trip constitutes a clear error of law. This error I consider to be material since had the Tribunal conducted this exercise the outcome could have been different. That in my view is the correct test to apply.

19. I am therefore found that errors of law have been established and that the Judge's determination cannot stand and must be set aside in its entirety to be remade.

The Law

20. The burden of proof in this case is upon the Appellant and the standard of proof is upon the balance of probability. I have determined this matter based upon facts that were appertaining at the time the decision of the Entry Clearance Officer being constrained by Section 85(5) of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act) I am entitled to take into account evidence of matters occurring after the date of the decision providing that they relate to and inform an understanding of facts in existence at the time of the decision pursuant to DR (Morocco) [2005] UKIAT 00038.

21. The Appellant's appeal is pursuant to Section 82 of the 2002 Act.

22. The appeal must be allowed if I find that the decision against which the appeal is brought was not in accordance with the law or with the Immigration Rules. Otherwise I must dismiss the appeal.

Evidence

23. On the file I had the Respondent's bundle. The Appellant put in an appeal attaching the refusal notice, setting out the Grounds of Appeal but no further documents provided. There was an Explanatory Statement from the Entry Clearance Officer which maintains the refusal and sends the documents on to me.

Findings

24. I have looked at all of the evidence in the round whether I specifically refer to it or not.

25. The Appellant is a citizen of the Philippines who applied on 16 April 2013 for entry clearance to visit the sponsor Stephen Hooton who is her husband who she married on 5 January 2013.

26. I accept that the Appellant was frank in her visa application in that she accepted that she was entirely dependent on the sponsor who provided financial support for her which was evidenced in bank statement. She asserted that she had family in her home country in that she had a brother, Renato Mangaron.

27. Given that the Appellant was entirely dependent upon her husband the sponsor and had not provided any documentary evidence of her brother or any other social or economic ties to her home country the Respondent challenged that she had not met the evidential burden of showing that she would return at the end of her trip.

28. In the grounds the Appellant did not address the issue of her social ties to the Philippines and did not provide any evidence in documentary form that she had a brother as claimed.

29. The Appellant also suggested through the sponsor that they would be applying for a spousal visa and would not endanger that application. The Appellant bears the burden of proving her case. Had she provided evidence that they would inevitably succeed in a spouse application this argument may have had some force but the Appellant and the sponsor elected to have the case dealt with on

the papers without providing any further evidence. I am not persuaded that this may not have simply been a device to secure entry to the United Kingdom when the spousal requirements cannot be met.

30. I am satisfied that Article 8 is not engaged by the decision as there is a route by which the Appellant can join her husband and indeed he can visit her in the Philippines.

Conclusion

31. Taking all my findings into account I find that the Appellant has not discharged the burden of proof on her to show that the terms of paragraph 41 of the Statement of Changes in Immigration Rules are met.

32. I have considered the issue of anonymity in the present instance. Neither party has sought a direction. The Appellant is an adult and not a vulnerable person. I see no reason to make any direction in this regard.

Decision

33. **There was an error on a point of law in the decision of the First-tier Tribunal such that the decision is set aside**

34. **I remake the appeal.**

35. **I dismiss the appeal under the Rules**

36. **This appeal is also dismissed on human rights grounds (Article 8)**

Signed Date 21.10.2014

Deputy Upper Tribunal Judge Birrell