Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/11561/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 20th December 2017	**On 24th January 2018**

Before

UPPER TRIBUNAL JUDGE BLUM

Between

ENTRY CLEARANCE OFFICER - Manila

Appellant

and

EDWIN TABANGAY
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms J Isherwood
For the Respondent: No representative (the respondent's sponsor attended the hearing, aided by written submissions from Counsel)

DECISION AND REASONS

1. The Entry Clearance Officer appeals the decision of Judge of the First-tier Tribunal Majid, promulgated on 11th August 2017, in which he allowed the appeal of Mr Edwin Tabangay, a national of the Philippines, against a decision dated 30th March 2016 refusing him entry under the Immigration

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Rules. The respondent, whose date of birth is 13th January 1978, sought entry clearance to join his partner in the United Kingdom. The entry clearance application was made on 7th December 2015 and was based on Appendix FM of the Immigration Rules. In refusing entry clearance the Entry Clearance Officer noted that the respondent sought to join his wife, Marilou Tabangay, and considered a marriage certificate indicating that they were married in the Philippines on 28th April 2008.

2. According to Home Office records the respondent was issued entry clearance under the Sector-Based Scheme in 2006. The respondent maintains that he left the UK on 19th August 2007, just before the expiry of his leave on 22nd August 2007. However, according to Home Office records (which do not appear to have been disclosed to the respondent) he actually left the United Kingdom on 19th August 2008. If this was the case then he would not have been able to get married to his wife on 28th April 2008 in the Philippines.

3. The Entry Clearance Officer noted that there had been previous refusals of further applications for entry clearance on the same basis. The Entry Clearance Officer therefore checked Home Office records which apparently showed that the respondent had been encountered by immigration officers at Heathrow Airport on 19th August 2008. The Entry Clearance Officer gave the respondent an opportunity to provide further evidence that he had resided in the Philippines from August 2007 and not from August 2008. The respondent provided ten photographs of his wedding registration which were not dated and, as such, the Entry Clearance Officer was unable to determine the date on which they were actually taken. The Entry Clearance Officer also considered the respondent's claim that he lost his passport, which would have contained the relevant entry and exit stamps. The Entry Clearance Officer noted that a new passport was not issued until 18th November 2008 which was in accordance with the timescale advanced by the Entry Clearance Officer i.e. that the respondent left the UK on 19th August 2008. The Entry Clearance Officer was not therefore satisfied that the marriage certificate provided by the respondent was reliable and was not satisfied that there had actually been a valid marriage. The Entry Clearance Officer gave brief consideration to Article 8 and concluded that there would be no disproportionate breach.

4. The respondent strongly maintains that he had left the UK in August 2007 and that there had been a mistake on the Home Office records suggesting that he left in 2008 rather than 2007. He had a right of appeal and the matter came before Judge Majid on 5th July 2017. The respondent was represented by Mr Kushner of Counsel.

5. The judge allowed the appeal but his decision made little reference to the immigration history and no reference was made to earlier judicial decisions. The judge talked at length of irrelevant matters of a political nature and concluded that the respondent was telling the truth and that he met the requirements of the Immigration Rules. The judge allowed the

appeal. The Entry Clearance Officer sought permission to appeal and permission was granted by Judge of the First-tier Tribunal Holmes. Judge Holmes stated

> "It is well arguable that the judge has failed to demonstrate any adequate analysis of the disputed issues and the evidence relevant to them that was place before him and has failed to give adequate reasons for his decision to allow the appeal. There are also comments in the decision which appear to be political and which are arguably have no place in a judicial decision."

6. At the error of law hearing I received a respondent's skeleton argument drafted by Mr Kushner. The respondent's partner appeared in person and adopted the skeleton argument which contained a request for an adjournment. According to the adjournment request Mr Kushner was unable to attend because he had other travel commitments. It was argued that the appeal required an adjournment as there were issues of credibility and law involved and that the Tribunal would be assisted by legal submissions. The adjournment request additionally noted that the actual grounds of appeal had never been received. I gave the sponsor an opportunity to make additional submissions in relation to the adjournment request. I refused the adjournment request for the following reasons.

7. The respondent was aware or should be taken to be aware of the hearing since 16th November 2017. The respondent had adequate time and opportunity to instruct alternative Counsel and to request either from the Tribunal or from the appellant the full grounds of appeal. The grant of permission in any event identified, in a summary form, all of the material points relied on by the appellant. I have also had the benefit of written submissions from Mr Kushner, which fully engaged with the factors identified in the grant of permission. I took into account Rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the overriding objective to deal with cases fairly and justly, and I have also considered the principles enunciated in Tribunal decisions relating to fairness and adjournments and in particular **Nwaigwe (adjournment: fairness)** [2014] UKUT 00418 (IAC). I am satisfied that the respondent has not been deprived of a fair hearing particularly since I have had the benefit of written submissions that fully engaged with the grant of permission. I am additionally satisfied that the sponsor was given a full opportunity to make any further submissions in respect of the error of law. For these reasons I declined to grant the adjournment.

8. I heard brief submissions from Ms Isherwood who outlined the manner in which the First-tier Tribunal Judge erred in law and I took into account both the written submissions contained in the respondent's skeleton argument and the oral submissions from the respondent's sponsor. I note that there are children involved in this matter. I take into account her evidence that the children are suffering as a result of being deprived of being part of a full family unit and that they do not understand why they cannot join their mother. I additionally take into account the submission made that the judge believed the respondent and accepted that they were married.

9. I am however satisfied that this decision does contain very serious errors of law and that, on any rational view it is wholly unsustainable. I will give a brief summary of those legal errors.

10. The judge fails to identify the actual issues that are in dispute. The judge fails to identify or record the evidence that was given at the hearing and fails to engage with or to analyse any of that evidence in a transparent manner. The judge fails to give any or adequate reasons for accepting the respondent's evidence or for finding him credible and for allowing the appeal. The judge has given the wrong date in respect of the appealed decision and wrongly maintains that the appeal decision was not properly completed. The judge has taken into account irrelevant matters such as the United Kingdom going through an economic crisis and has made inappropriate reference to political statements by politicians and appears to accord an unprecedented and irrational weight to the concept of discretion available to judges. There is a bizarre reference to the principle of arguability and there simply has been no engagement at all with the immigration history and the previous judicial decisions. The judge's reasoning process is consequently irredeemably damaged.

11. Having holistic and cumulative regard to these factors I am entirely satisfied that the judge's decision cannot stand and that the matter will need to be remitted back to the First-tier Tribunal for a full hearing to consider all the issues before a judge other than Judge Majid.

Notice of Decision

The Entry Clearance Officer's appeal is allowed. The First-tier Tribunal's decision contains material legal errors.
The appeal is remitted back to the First-tier Tribunal for a fresh (de novo) hearing before a judge other than judge of the First-tier Tribunal Majid.

No anonymity direction is made.

Signed

23 January 2018
Date

Upper Tribunal Judge Blum