



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/16247/2016

THE IMMIGRATION ACTS

Heard at Field House
On 31 July 2018

Decision & Reasons Promulgated
On 30 August 2018

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS LUZ ISABEL GALLEGO SIERRA
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr L Tarlow, Home Office Presenting Officer

For the Respondent: Mr J Rene, Counsel

DECISION AND REASONS

1. In a decision sent on 13 December 2017 Judge Sweet of the First-tier Tribunal (FtT) allowed the human rights appeal of the respondent (hereafter the claimant), a national of Colombia, against the decision made by the appellant (hereafter the Secretary of State or SSHD) on 19 June 2016 refusing indefinite leave to remain as a spouse.

2. It is unnecessary to set out the grounds in any detail since both parties are in agreement with me that the judge materially erred in law in wholly failing to give adequate reasons for his conclusion that there would be insurmountable obstacles facing the claimant and her husband on return to Colombia. (The judge simply stated that the claimant's partner was a British citizen who had divorced his ex-partner in the UK). In the absence of any reasons the decision appears as one based on generosity rather than on any rational basis. The error is such that the judge's decision must be set aside.
3. In discussion with the parties as to how I should proceed to dispose of the appeal, both requested that it be remitted to the FtT. Both accepted that before the FtT the claimant would again be unable to show that she met the 60-month requirement under paragraph R-ILRP of Appendix FM and in particular paragraph E-ILRP.1.3, but that the claimant had an arguable case that she could succeed under EX1(b) of the Rules if able to show there would be insurmountable obstacles to family life with the claimant's partner continuing outside the UK. (Mr Rene's argument hinged on the wording of R-LTRP.1.1(d)(iii)). Even if upon analysis the FtT did not accept this argument, the claimant would still be entitled to argue that she could succeed outside the Rules on the basis of compelling circumstances. Either way, no findings of fact have been made on the claimant's Article 8 circumstances and hence it is appropriate for the case to be remitted to the FtT.
4. It will be necessary, in light of the unclear documentation of the claimant's partner's divorce from a previous partner, referred to by Judge Sweet in paragraph 17, for the claimant's representatives to produce both his original marriage certificate and his divorce documents.
5. For the above reasons:

The decision of the judge is set aside for a material error of law.

The case is remitted to the FtT (not before Judge Sweet).

No anonymity direction is made.



Signed

Date:19 August 2018

Dr H H Storey
Judge of the Upper Tribunal