



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

Appeal Number: HU/ 01386 /2020

THE IMMIGRATION ACTS

**Heard at Field House
On 11 January 2022**

**Decision & Reasons
Promulgated
On 27 January 2022**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

EMMAR MAGPUYO

(anonymity direction not made)

Respondent

Representation:

For the Appellant: Ms A Everett, Home Office Presenting Officer

For the Respondent: Mr A Malik, Counsel instructed by Queen's Park Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal by a citizen of the Philippines against a decision of the Secretary of State refusing her leave to remain on human rights grounds.
2. Unhelpfully, the First-tier Tribunal has indicated in the title to its decision that it made an anonymity direction and below the Notice of Decision that no such direction had been made. I see no need for and do not make an anonymity direction.
3. In outline, the respondent, hereinafter "the claimant", entered the United Kingdom with permission probably in 2016. An application to extend her leave

was refused but she chose to marry a citizen of the United Kingdom and remain with him.

4. The claimant has explained frankly that she did not want to go back to the Philippines to make an application for entry clearance as a spouse because she had been told that a lot of people fail in their attempts to do that. That may or may not be objectively right but it is not a proper reason to remain in the United Kingdom without permission. The Rules provide that a person should make the application for leave as a spouse usually, if not always, from outside the United Kingdom. Nevertheless, such claims can succeed on human rights grounds and the First-tier Tribunal Judge decided that this was such a case.
5. I have a lot of trouble with the First-tier Tribunal's reasoning. One of the things that ought to have been considered was whether the claimant and her husband could establish themselves in the Philippines or whether there would be insurmountable obstacles in the way of their doing that. The judge has sort of done that because the judge says at paragraph 48 that: "For the reasons explained above I do not consider there to be insurmountable obstacles to this happening". That might have been thought a reason for the judge to go on to dismiss the appeal on human rights grounds but the judge has allowed it.
6. The judge has also left me uncertain about quite what his findings are on the appellant's ability to satisfy the requirements of the Rules if she chose to make an application. There is a clear finding that on the evidence before him the claimant's husband did not earn enough money although only by a short margin. There was a prediction that if she made the application there would be enough money. Again, that might be a perfectly sound decision, I do not know, but where the judge took those possibly conflicting findings is not easy to establish. I say conflicting because the judge should have been concerned with the evidence as things were before him when he made his decision rather than any other time in past or future.
7. Further, the judge has decided that the claimant satisfies the language requirements or the rules but has *not* done a language test. It is another element of concern. If not always strictly necessary, a human rights claim by a life partner would be illuminated by clear evidence and findings about the claimant's ability to satisfy the requirements of the rules.
8. There is also an element to this case which is puzzling. The judge has decided to give numerical values to points that are relevant to the balancing exercise. Ms Everett says that there is considerable difficulty with this from the Secretary of State's point of view. The Secretary of State, in this context being an informed reader, is trying to work out what the judge's criteria were and how one point related to another. Was it intended that all points were of equal weight or is it some sort of sliding scale for reasons that are known to the judge? I fall short of saying that this is necessarily always the wrong approach but it is one that is likely to produce difficulties in understanding and is entirely unnecessary and, frankly, is a practice that would be best stopped promptly.
9. I agree with the Secretary of State's grounds that the judge appears to have allowed the appeal exceptionally and has given no proper explanation for that. The decision just will not do.

10. I do heed Mr Malik's arguments. These made, with respect, sound points. Parts of the decision are right; there are appropriate self-directions, there are appropriate summaries of the law but the reasons for the conclusions are just not discernible.
11. I set aside the decision in its entirety.
12. I do direct that the appeal be heard again in the First-tier Tribunal. Essentially, the appellants have not had a proper decision and they are entitled to one.
13. There is a particular element of this case that might have to be considered further. As I have already indicated, cases have to be decided in the light of the information at the time of the decision and it may be that there were strong points to be made because of difficulties arising from the COVID crisis but that is something which can be argued properly in front of the First-tier Tribunal if that is what the claimant wants to do and this is not something I consider appropriate to be looked at in the Upper Tribunal at first instance.
14. Overall, this determination is not reasoned properly, for the reasons outlined by the Secretary of State and I set aside the decision of the First-tier Tribunal Judge and I direct that the case be redetermined in the First-tier Tribunal. That is my decision.

Notice of Decision

15. I find an error of law, I set it aside and I direct redetermination in the First-tier Tribunal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 14 January 2022