



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003603

First-tier Tribunal No: HU/04961/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 31 October 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE L MURRAY

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PACITA MANAGUELOD PUA
(NO ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Aslam of Counsel instructed by MBM Solicitors
For the Respondent: Mr Parvar, Senior Home Office Presenting Officer

Heard at Field House on 9 October 2023

DECISION AND REASONS

Introduction

1. I refer to parties as they were identified before the First-tier Tribunal. Ms Pua will be referred to as the Appellant and the Secretary of State as the Respondent. The Appellant arrived in the UK on 1 March 2007 and was issued with a visit visa on 11 January 2007 which was valid until 11 July 2007. On 3 August 2012 she made an application for leave to remain in the UK as an unmarried partner. This application was refused with no right of appeal on 27 February 2013. On 24 October 2020 she made an application to remain on the basis of her family and private life. The Respondent refused her application on 2 November 2021. First-

tier Tribunal Judge Khan allowed her appeal against the Respondent's decision in a decision promulgated on 13 June 2022.

2. Permission to appeal was granted to the Respondent on 11 July 2022 by First-tier Tribunal Judge Baker on the basis that it was arguable that the First-tier judge had erred in law in raising an issue that had not been raised by either the Appellant or Respondent before the hearing and it was arguable that her independent research on the question of whether divorce was permitted in the Philippines was an error of law. Judge Barker remarked that it was not clear from the Judge's decision and reasons what opportunity was given to the Respondent to properly deal with the articles considered by the Judge, or what submissions were made by the parties. The Judge arguably erred in finding that the Appellant would be treated as an adulterer on return.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so whether any such error was material and the decision should be set aside.

Submissions - Error of Law

4. At the hearing Mr Parvar withdrew the second ground of appeal because the hyperlinked reference in the grounds to a no fault divorce law coming into force in the Philippines on 6 April 2022 did not in fact relate to the Philippines, but to UK law.
5. The sole ground of appeal, which I have copied verbatim from the grounds, is that the First-tier Tribunal erred in law in committing a procedural irregularity in the following terms:

"1. The IJ has committed a procedural irregularity by effectively acting as advocate on behalf of the appellant in having regard to evidence in relation to submissions not apparently advanced by the appellant [18]. The reliability, of objectivity of these sources is deputed by the SSHD.

"At the hearing I drew the parties attention to an article in the Atlantic entitled 'Ending a Marriage in the Only Country that Bans Divorce' dated the 25 June 2015, a Refworld article on 'Philippines: Information on adultery laws, including enforcement' dated the 30 June 2017, a Daily Mail article 'British man facing jail over his 'adultery' with a Filipino woman asks "Why won't the Foreign Office help us"?' dated the 24 February 2008 and an extract from the website of Douglass Simon Solicitors posted on the 11 February 2019 on Filipinos remarrying in the UK."

2. The Home Office Presenting Officer remarks that both they and the appellant's representative were surprised by this action, it is submitted that this action by the FTTJ has resulted in a procedural unfairness to the SSHD, not only in terms of the FTTJ effectively acting as advocate for the appellant, but also if the appellant wished to make such representations they could and should have done so in advance of the hearing."

6. I referred Mr Parvar to the Joint Presidential Guidance 2019 No: Permission to appeal to UTIAC, and in particular, paragraph 38 and 40. According that Guidance, a bald allegation of procedural unfairness will not normally suffice to grant permission to appeal. As with all procedural issues, the proper place to raise an allegation of unfairness is with the judge in question during the hearing.
7. As permission had been granted, I enquired whether the Respondent had requested the record of proceedings from the First-tier Tribunal and asked why a witness statement had not been provided from the Respondent's representative before the First-tier Tribunal in accordance with (BW (witness statements by advocates) Afghanistan [2014] UKUT 00568 (IAC)). Mr Parvar confirmed that no request had been made and no witness statement had been prepared.
8. Mr Parvar was able to confirm from the Presenting Officer's note of the hearing that the Respondent's representative did not raise the issue of procedural fairness at the hearing and no application for an adjournment was made. He was further able to confirm from the Respondent's notes of the hearing, that there was no issue that the First-tier Tribunal Judge did, as she said at paragraph 18 of the decision, invite both representatives to consider the articles which she sets out in that paragraph and invited their submissions. He conceded that therefore an opportunity was given to the Respondent to make submissions on the evidence that the First-tier Tribunal Judge said she intended to take into account. He said that he was not making an application for an adjournment in order to either obtain the record of proceedings or a witness statement from the Presenting Officer. He added that the question of divorce in the Philippines was a matter of foreign law and consequently a matter for expert opinion.
9. I raised with Mr Parvar that since he was no longer relying on Ground two, which asserted that the First-tier Tribunal Judge had made a material mistake of fact in relation to the evidence regarding divorces in the Philippines, and no further ground was advanced in relation to evidence that the First-tier Tribunal had taken into account, it was not now open to him, in the absence of an amendment to the grounds, to argue that the Judge's conclusion on primary fact was plainly wrong (Gabriele Volvpi & Delta Ltd v Matteo Volpi [2022] EWCA Civ 464).
10. Mr Aslam said that the Appellant had not served a Rule 24 notice. However, the Appellant's position was that there was no procedural irregularity and that the Judge exercised fairness and acted in the interests of justice by informing the parties that there was relevant evidence and giving the parties an opportunity to address it. The Respondent did not ask for more time and did not ask to take instructions. It was too late in the day to make the argument now which should have been made in the course of the hearing. The Respondent was wrong to assert that the Judge was acting as an advocate for the Appellant because she was acting in a procedurally fair manner in bringing the evidence to the attention of the parties prior to making a decision in accordance with her role and duties.

Conclusions – Error of Law

11. The First-tier Tribunal Judge found that the relationship requirements of E-LTRP were met and the Respondent does not take issue with that finding. She directed herself properly in relation to the requirements to prove insurmountable obstacles. She found at paragraph 32 that the Appellant's divorce in the UK on 31 December 2021 would not be valid in the Philippines and that insurmountable obstacles consisted in the risk of imprisonment for adultery if the Appellant and her husband were to live in the Philippines before her marriage was annulled.
12. The Appellant's case was put in the skeleton argument on the basis that insurmountable obstacles consisted in the Appellant's partner poor health and the fact that he could not cope with day-to-day chores without the support of the Appellant. It is asserted in the skeleton argument that he is on medication which he receives from the NHS as a British Citizen and he would not be able to pay for this abroad.
13. The First-tier Tribunal Judge set out at paragraph 18 that she drew the parties attention to the articles set out in the grounds (paragraph 5 above). Whilst the Respondent argued in the grounds seeking permission to appeal that the First-tier Tribunal failed to note that the Philippines had passed a 'no fault' divorce law, that argument is no longer advanced, because the Respondent accepts that the article relied on in the Grounds relates to UK law and not the law in the Philippines. The Respondent therefore no longer argues that the Judge made a material mistake of fact nor has it been argued that her findings of fact on the evidence were not open to her.
14. Two recent Upper Tribunal decisions have stressed the importance of procedural rigour. In TC (PS compliance - "issues-based" reasoning) Zimbabwe [2023] UKUT 00614 a Presidential panel stressed that the procedural architecture in the First-tier Tribunal, including the Practice Statement under the reformed process, is specifically designed to enable the principal important controversial issues to be identified and for the parties' preparation as well as the hearing to focus on them. In Lata (FtT: principal controversial issues) v SSHD [2023] UKUT 00163 the Upper Tribunal again stressed that the reformed appeal procedures are specifically designed to ensure that the parties identify the issues and that they are comprehensively addressed.
15. However, the overriding duty of the First-tier Tribunal is to deal with cases fairly and justly. The First-tier Tribunal Judge was aware of evidence that could be material to the matters in issue and she brought this to the attention of the parties, manifestly gave them an opportunity to address it and set the evidence out clearly in her decision. This was not an instance of a Judge acting, as the Respondent asserts, as an advocate, but of raising a potentially relevant matter with the parties within the parameters of her duties mandated by the overriding objective. As conceded by Mr Parvar, the Respondent had the opportunity to address any procedural unfairness at the hearing but did not take it. The Respondent made no

objection to the evidence being admitted, made no application for an adjournment, nor was there an application to adduce further evidence. The Respondent now concedes that the evidence relied on in the Grounds which seeks to rebut the findings of the First-tier Tribunal is irrelevant.

16. As set out above, a bald allegation of procedural unfairness will not normally suffice to grant permission to appeal and will usually need to have been raised during the hearing. In view of the fact that the Respondent did not object at the hearing, did not apply for an adjournment, has withdrawn the ground asserting the Judge made a material mistake of fact and does not argue in the Grounds that the findings were not open to her on the evidence, I find that the Respondent has not shown that there was procedural unfairness.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
2. I do not set aside the decision.



Deputy Upper Tribunal Judge Murray
Immigration and Asylum Chamber

16th October 2023