



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

Appeal Number: IA/00019/2014

THE IMMIGRATION ACTS

Heard at Manchester

**On 25th July, 2014
Singed 4th August 214**

**Determination
Promulgated
On 6th August 2014**

Before

Upper Tribunal Judge Chalkley

Between

MRS ROSALINDA CAGUIOA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr G Harrison, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant in this appeal is a citizen of Philippines born on 5th March, 1951. She first landed in the United Kingdom on 3rd August, 2012 as a visitor in possession of a visa that conferred leave to enter until 3rd February, 2013 subject to a condition restricting employment and recourse

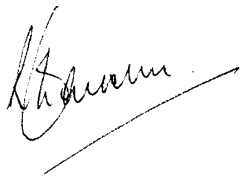
to public funds. She submitted an application to the respondent on 24th December, 2012 to vary leave to remain in the United Kingdom on 3rd December, 2013.

2. The respondent refused leave to remain and gave directions for her removal under Section 47 of the Immigration, Asylum and Nationality Act 2006. In her visa application she indicated that she was a widow with three children none of whom live in the Philippines. A son is in the United States of America and a daughter is in the United Kingdom. Her sponsor lives in the United Kingdom and she had previously lived with her sponsor Rowena for two years in Dubai before coming to the United Kingdom. In the Reasons for Refusal Letter dated 3rd December, 2013 the respondent pointed out that the appellant did not meet the requirements of Appendix FM or paragraph 276ADE of Statement of Changes in Immigration Rules HC 395 as amended "the Immigration Rules" and that there were no circumstances which required consideration of the application pursuant to Article 8 of the European Convention on Human Rights and Fundamental Freedoms outside the Immigration Rules.
3. The appellant appealed that decision and her appeal was heard by First-tier Tribunal Judge Camp sitting in Birmingham on 26th February, 2014. The appeal was heard without an oral hearing. The judge noted that the appellant did not meet the requirements of either Appendix FM or paragraph 276ADE of the Immigration Rules and applying *Nagre v Secretary of State for the Home Department* [2013] EWHC 720 (Admin) and *Gulshan (Article 8 - new Rules - correct approach) Pakistan* [2013] UKUT 640 (IAC) he concluded that it was not necessary for him to decide the appeal under "freestanding" Article 8 jurisprudence because there were no "exceptional circumstances" or "compelling circumstances not sufficiently recognised under the Rules". He dismissed the appellant's appeal. The appellant applied for permission to appeal and First-tier Tribunal Judge P J M Hollingworth granted permission. In doing so he said:

"In the light of the recent changes governing the establishment of a gateway for consideration of Article 8 on a freestanding basis following consideration of the application of the Rules it is arguable that there should have been a direction for the oral listing of this case. There is an arguable error of law in view of the insufficient nature of the analysis in the determination as to the reason for not proceeding to a freestanding analysis."
4. The respondent filed a Rule 24 response in which the respondent pointed out that the judge directly corrected himself on recent case law, gave a proper self-direction as to the law and as to whether there were any compelling or exceptional circumstances, noted that the appellant had asked for a hearing on the papers and found no evidence falling within the definition of paragraph 11 of the determination had been provided that would have permitted further examination outside the Rules.
5. The matter was listed before me at 10am on Friday 25th July. At 10.30am there was no appearance by or on behalf of either the appellant or the

sponsor. The sponsor had however written a letter to the Tribunal on 1st July explaining that she and her husband were due to be abroad on holiday and that the appellant would not be in a position to travel to the hearing on her own because she is not familiar with travelling via public transport.

6. That application was refused on 3rd July by Upper Tribunal Judge Jordan who pointed out that it was the appellant's appeal and that she should be ready to proceed with it when it was listed. Other arrangements cannot take priority.
7. There was no appearance by or on behalf of the appellant at 10.30 and I concluded that in the absence of any satisfactory evidence I was required to proceed with the hearing of the appeal.
8. Mr Harrison had told me that he relied on the Rule 24 response.
9. I am satisfied having carefully read the determination that there are no errors of law in it. The judge properly applied *Nagre, R (on the application of) v Secretary of State for the Home Department [2013] EWHC 720 (Admin)* and *Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 00640 (IAC)* and the appellant simply fails to meet the requirements of the Immigration Rules. **I uphold the judge's decision. The appellant's appeal is dismissed.**



Upper Tribunal Judge Chalkley