



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/24555/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 13<sup>th</sup> June 2013

Determination Promulgated  
On 5<sup>th</sup> August 2014

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MISS MARYWIN LOPEZ

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms K Joshi, Legal Representative, Good Advice UK  
For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. The appellant is a citizen of the Philippines born on 13<sup>th</sup> November 1981. She seeks leave to remain in the United Kingdom as the spouse of her sponsor husband.
2. That application was refused under paragraph 276ADE and under E-LTRP.3.1. In particular it was said that the sponsor did not have the requisite amount of income to meet the Rules.

3. The Secretary of State in the reasons dated 28<sup>th</sup> May 2013 set out in greater detail why the application for further leave had been refused.
4. Since the date of decision funds from Kashmir have been transferred to the sponsor's account NatWest bank statement showing savings of £43,447 was enclosed in the letter dated 20<sup>th</sup> May 2013. In addition the sponsor husband has an annual income of £11,402.54. There is little doubt, therefore, that at the time of the hearing the financial requirements were met although the Rules themselves provided that the financial requirement was to have the specified amount of money not less than six months prior to the date of the application. How far it assisted the appellant therefore in having the funds at the date of hearing was less clear. The Judge therefore dismissed the appeal under the Immigration Rules and also in relation to Article 8 of the ECHR.
5. Grounds of appeal were submitted against the decision contending that the findings that the appellant did not meet the requirements of the Immigration Rules was in error. In the alternative that the Judge had failed to engage with Article 8 and proportionality.
6. Initially leave to appeal was refused but was granted by the Upper Tribunal. Thus the matter comes before me in pursuance of that grant.
7. A matter of concern in relation to the hearing was that the Judge made frequent references to Rule 281 which specifies the requirements to be met by a person seeking leave to enter the United Kingdom with a view to settlement.
8. It is common ground that such a Rule is inappropriate in the circumstances of the appellant and sponsor. This is not an out of country case rather it is an application in country for leave to remain. There seems to be a thread of reasoning throughout the determination concerning out of country applications. For example in paragraph 25 there is a detailed consideration of the case of **MM** with reference once again to Rule 281(v). Reference is made in paragraph 26 also to the fact that certain requirements of paragraph 281 were satisfied.
9. As Mr Deller, who represents the respondent, most fairly indicated this was not an entry clearance case and the repeated reference to paragraph 281 served more to obscure the reasoning of the determination than otherwise might be the case.
10. He submitted that Appendix FM-E in paragraph 11 particularly established the requirement of the requisite funding for six months prior to the application were the appellant to fail to meet the Rules then it would be only in the most compassionate compelling circumstances that Article 8 would have any effect. I was asked to consider particularly the case of **Gulshan** in that regard.
11. Ms Joshi, who represents the appellant, sought to persuade me that the appellant did meet the Immigration Rules having the access to the relevant funds at the time of hearing but in any event there had been no proper consideration of Article 8 in the light of the Immigration Rules. It seems to me that the interests of justice and fairness should be paramount in the circumstances of this case. It may well be that

under the strict application of the Immigration Rules the appellant does not meet those Rules, having regard to the requirements of such Rules. However, the precise reasoning in respect of the relevant Immigration Rules has been obscured by repeated reference to one that has in fact no application.

12. No attempt has been made to apply the current jurisprudence to Article 8 or to make findings of fact as to whether or not there is an arguable case for such rights to be considered outside the Immigration Rules.
13. I determine, and indeed Mr Deller most fairly conceded, that given the lack of clarity in certain of the reasoning that it would be unfair not to set aside the determination on an error of law and to grant the appellant the opportunity of having the arguments clearly presented and findings of fact made upon them.
14. In those circumstances the decision of Judge Plumptre shall be set aside to be re-made. No findings are to be preserved.
15. I have regard to paragraph 7 of the Senior President's Practice Direction. It is to be recognised that there will be evidence to be considered in some detail and findings of fact to be made. In those circumstances I find that it is appropriate to remit the matter back to the First-tier Tribunal for hearing. A date for that to take place has been set as 26<sup>th</sup> November 2014.
16. Any further evidence concerning funding or as to the private and family life of the appellant and sponsor should be submitted no later than fourteen days prior to that hearing.

Signed

Date 30/06/2014

Upper Tribunal Judge King TD