



**Upper Tribunal  
(Immigration and Asylum Chamber)  
IA/33566/2013**

**Appeal No:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
Promulgated  
on 12 August 2014**

**Determination  
on 26 August 2014**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL DIGNEY**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

and

**FELECITACION BOLO (MRS)**

Respondent

**Representation:**

For the appellant: Mr Duffy, Home Office Presenting Officer  
For the respondent: Mr Packer

**DETERMINATION AND REASONS**

- 1.** The respondent, a citizen of the Philippines, applied to remain in this country on the basis of her marriage to someone who had refugee status here. That application was refused but an appeal against the decision allowed. At the hearing the only point at issue, as is the case in this appeal, is whether EX1 of Appendix FM of the Immigration Rules applies. It was for the respondent to show, on a balance of probabilities that there were not insurmountable obstacles to family life continuing in the Philippines and the judge concluded that there were.

2. The first ground of appeal argues that the judge did not properly apply Gulshan [2013] UKUT 00640 and permission to appeal was granted, inter alia, on that ground. That point is, to put it at the lowest, misconceived, as Mr Duffy acknowledged. The judge decided the case on the basis of the Immigration Rules and in those circumstances did not go on to consider article 8.
3. The other point relied on, and on which permission was granted, was that the judge did not give adequate reasons for his conclusions that the respondent and her husband could not relocate in the Philippines.
4. The grounds of appeal contain two particular criticisms of the judge's reasoning. It is said that the judge relied on an untranslated document in reaching his conclusion that the respondent's family were involved in a serious land dispute. The judge did not, in fact, do so; it is clear that he was relying on the respondent's evidence which he accepted. If a fact finder accepts that a witness is truthful, he is entitled to accept what a witness says about a document, even if it is untranslated.
5. The second point made is that the respondent failed to make an asylum claim, although she realised that this was a possibility. There is a great deal of difference between being at risk of persecutory conduct and there being insurmountable obstacles to return. The fact that the respondent chose not to make an asylum claim is not something that should be held against her.
6. It follows that there is nothing in either of the two particular criticisms that are made of the judge. The appellant must therefore fall back on the argument that the judge's conclusions are not properly reasoned. In paragraph 29 of the determination the judge correctly directs himself on the law as to "insurmountable obstacles". He then goes on to explain why he concludes that they exist in this case. It could be argued that the judge could have given more weight to the respondent's husband's refugee status in this country, but all the matters that he does refer to are relevant to the decision. Ground 8 states that the Tribunal relied on immaterial matters in its assessment of the article 8 claim and gave undue weight to the fact that the respondent was married. Leaving aside the fact that an article 8 claim was not considered, clearly the fact of the marriage is a factor in this case, but I cannot see that it was given undue weight.
7. "Insurmountable obstacles" is a broad and not clearly defined term and I conclude that the judge was entitled on the evidence to conclude that they existed here. He relied on matters that he was entitled to rely on and did not rely on anything that was immaterial. His reasoning could not be stigmatised as irrational or perverse. The definition has now changed slightly but as I am deciding whether the judge fell into legal error I have to consider the law as it was at the time of the decision.
8. It follows that the original judge made no error of law. The original decision stands.

**The appeal is dismissed**

Designated Judge Digney  
Judge of the Upper Tribunal  
August 2014

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