



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/50139/2013**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

**Determination
Promulgated**

On 7 August 2014

On 8 August 2014

Before

Deputy Upper Tribunal Judge MANUELL

Between

**Mr JAN RUDOLF DULLA URSUA
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Watson, McKenzie friend

For the Respondent: Mr C Avery, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by Designated First-tier Tribunal Judge Garrett on 13 June 2014 against the determination of First-tier Tribunal Judge

Munro who had dismissed the Appellant's appeal in a determination promulgated on 8 May 2014.

2. The Appellant is a national of the Philippines, born on 11 January 1985. He had sought leave to remain in the United Kingdom on the basis of his relationship with his male partner and his fear of returning to the Philippines. The Appellant's orientation was not in dispute. Judge Munro found that the Appellant had failed to show that he met the requirements of Appendix FM of the Immigration Rules: the relationship on which the application had been founded had ended in March 2013. The judge further found, following examination of the country background and objective evidence, that such discrimination as existed in the Philippines towards gay men did not reach the level of persecution: see [19] of the determination.
3. Permission to appeal was granted it was considered that it was arguable that the judge had not applied HJ (Iran) [2010] UKSC 31 correctly, nor considered exceptional or compelling circumstances despite quoting Gulshan (Article 8 - new rules - correct approach) [2013] UKUT 00640 (IAC).
4. The Respondent filed notice under rule 24 opposing the appeal. Standard directions were made by the tribunal, indicating that the appeal would be reheard immediately if a material error of law were found.

Submissions - error of law

5. Mr Watson (the Appellant's McKenzie friend) had filed a skeleton argument, on which the Appellant relied. It was submitted that the judge had not applied HJ (Iran) (above) correctly by failing to take account of the restrictions the Appellant would face in his private and family life if returned. The judge had paid insufficient attention to the country information.
6. The tribunal did not need to call on Mr Avery.
7. The tribunal indicated that it found no material error of law and reserved its determination which now follows.

No material error of law finding

8. The grant of permission to appeal by the First-tier Tribunal was in the tribunal's view very generous indeed and has regrettably raised the Appellant's hopes unnecessarily. As the tribunal explained at the hearing, as the Appellant was ineligible for leave to remain under the Immigration Rules, the only basis for remaining in the United Kingdom was a viable protection claim (i.e., asylum, humanitarian protection or Article 3 ECHR) or an Article 8 ECHR claim. The Appellant had not even claimed a United Kingdom based family life. His private life was based on less than 6 years' residence on a temporary basis, which had formally ended in 2012 and only been extended by the decision-making and appeals process. The judge had examined the objective evidence which showed discrimination not persecution. It is impossible to see how the judge could have reached any conclusion other than that she set out in her full and careful determination.

9. The Appellant's grounds of onwards appeal while doubtless well intended were misconceived and fallacious. They are no more than an expression of disagreement with a properly reasoned determination. The experienced judge proceeded exactly in accordance with HJ (Iran) (above), the headnote to which she helpfully cited at [16] of her determination. As already noted, it was accepted by the Secretary of State that the Appellant was gay and would be treated as gay. The judge therefore correctly moved to the next stage, the consideration of how the Appellant would be treated in his country of nationality. The judge examined the evidence produced, and concluded, as she was bound to do, that there was a real risk of discrimination but such discrimination fell short of persecution. That was self evidently the case: the latest material which the Appellant brought to the tribunal in the event of a full rehearing was variously headed "Philippines is getting Better for Gays, But Discrimination Persists: UN Study" and "Filipino gays more concerned about discrimination". The situation is one of discrimination, but as the judge also found, correctly, there are various NGOs actively working for improved conditions. The judge's finding that the Appellant might suffer strained relations

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with his family but would not suffer serious harm disposed of the protection claim.

10. Those correct findings were applicable to the judge's Article 8 ECHR analysis, set out at [20] to [22] of the determination. There were self evidently no compelling circumstances and nothing unduly harsh in requiring the Appellant who had come to the United Kingdom to study to return home as he had indicated he would do when he applied for leave to enter.
11. The tribunal finds that there was no material error of law in the determination and there is no basis for interfering with the judge's decision.

DECISION

The making of the previous decision did not involve the making of an error on a point of law and stands unchanged

Signed

Dated

Deputy Upper Tribunal Judge Manuell