



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

**Appeal
Number**

OA/07496/2013

THE IMMIGRATION ACTS

Heard	at	Field	House
		Determination promulgated	
On 15 July 2014		On 16 July 2014	

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

**Entry Clearance Officer,
Bogota**

Appellant

and

Pedro Jose Bernal Martinez
(No anonymity direction made)

Respondent

Representation

For the Appellant: Mr. G. Saunders, Home Office Presenting Officer.

For the Respondent: Mr. M. Sowerby of Counsel instructed by Nandy & Co..

DETERMINATION AND REASONS

1. This is an appeal by the Entry Clearance Officer ('ECO') against the decision of First-tier Tribunal Judge Lingam promulgated

on 29 April 2014 allowing Mr Martinez's appeal against the decision dated 25 June 2012 refusing entry clearance as a spouse.

2. Although in the proceedings before me the ECO is the appellant, and Mr Martinez is the respondent, for the sake of consistency with the proceedings before the First-tier Tribunal I shall hereafter refer to Mr Martinez as the Appellant and the ECO as the Respondent.

Consideration

3. Given that essentially there was no dispute between the parties today – see further below – it is unnecessary to set out the background to this case in any detail. All such details are a matter of record on file and are rehearsed in the decision of the First-tier Tribunal. I am able to be relatively brief herein.

4. The First-tier Tribunal Judge stated her decision at the end of the determination as being that the appeal under the Immigration Rules was dismissed, but that the Appellant's appeal was allowed under Article 8 of the ECHR.

5. The Respondent challenged the favourable conclusion in respect of Article 8, with reference in particular to the decisions in **Gulshan [2013] UKUT 00640 (IAC)** and **Nagre [2013] EWHC 720 (Admin)**. No challenge was made to any of the primary findings of fact made by the First-tier Tribunal Judge.

6. In granting permission to appeal First-tier Tribunal Judge Brunnen, whilst accepting there was an arguable case in respect of the favourable decision on human rights grounds, also observed *"the Appellant may wish to argue that the Judge erred in law in that having found in his favour on the only two issues under the Immigration Rules (paragraph 320(11), decided in paragraph 24 of the Determination; paragraph 281 (v), decided in paragraph 28), and having expressly stated in paragraph 34 that the Appellant had met the requirements of the Rules, she then dismissed the appeal under the Rules"*.

7. I am grateful for the helpful and realistic way in which Mr Saunders dealt with this appeal. He readily acknowledged that the observations of Judge Brunnen in respect of the appeal under the Rules were appropriate: indeed he suggested that the refusal under

the Rules had every appearance of being a 'slip' given the favourable findings of fact.

8. Further, Mr Saunders accepted that in such circumstances the decision of First-tier Tribunal Judge Lingam under the Rules should be set aside because she had erred in not translating her findings to a favourable decision under the Rules, and the decision should be remade by allowing the appeal under the Rules. In such circumstances it was unnecessary to consider Article 8 of the ECHR.

9. Mr Sowerby necessarily accepted this approach in respect of the Rules. Whilst he formally indicated that the Appellant disputed the Respondent's challenge to the Article 8 decision, he acknowledged that it was unnecessary to resolve it in circumstances where the appeal fell to be allowed under the Rules.

10. In all such circumstances I find that Judge Lingam erred in law in dismissing the appeal under the Immigration Rules. I set aside the decision of the First-tier Tribunal accordingly. I set aside the decision, both in respect of the Rules and human rights because if the Judge had not erred in respect of the Rules she would not have needed to consider the issue of human rights.

11. I remake the decision in the appeal and allow it under the Immigration Rules. The Respondent's decision to refuse entry clearance was not in accordance with the Rules and entry clearance should properly have been granted to the Appellant.

12. In the circumstances it is unnecessary to remake the decision in respect of human rights grounds.

Decision

13. The decision of the First-tier Tribunal Judge contained an error of law and is set aside. The decision in the appeal is re-made. The appeal is allowed under the Immigration Rules.

Deputy Judge of the Upper Tribunal I. A. Lewis 15 July 2014

