



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/08530/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 15<sup>th</sup> March 2018

Decision & Reasons Promulgated  
On 28<sup>th</sup> March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

EUSEBIO BONDOC  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - MANILA

Respondent

**Representation:**

For the Appellant: Ms Bustani of Counsel

For the Respondent: Ms Fijiwala, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant a citizen of the Philippines (born 2<sup>nd</sup> December 1975) appeals with permission against the decision of a First-tier Tribunal (Judge R G Walters) dismissing his appeal against the Entry Clearance Officer's decision of 1<sup>st</sup> December 2015 refusing him entry to the UK as the fiancé of Miss Paula Denny ("the Sponsor").

## **Background**

2. The Appellant applied for entry clearance to the UK on the basis of his relationship with the Sponsor. The Appellant and the Sponsor first met in 2011 when both were working in Singapore. They subsequently formed a relationship and both now wish to marry and live with one another as husband and wife. The Appellant therefore applied for entry as a fiancé.
3. The Entry Clearance Officer considered the application but noted;
  - (i) The Appellant is not free to marry. He is presently married to Ms Joanna Carlos who is also a citizen of the Philippines. There are four children to the marriage.
  - (ii) The Appellant had submitted a letter from his solicitors saying that he separated from Ms Carlos in 2009 and that he would obtain a divorce in the UK.
  - (iii) The Entry Clearance Officer further noted that although there is no divorce in the Philippines, annulment proceedings may be instituted. The annulment of the marriage would leave the Appellant free to marry.

4. The Entry Clearance Officer in the refusal letter also said,

“Furthermore, whilst the annulment process was indeed a timely process historically, this has now become more simplified and we are experiencing annulments being processed between 6-12 months.”

I pause here to say that following the service of an expert’s report, Ms Fijiwala conceded that 6-12 months is an incorrect estimation and accepted that the norm for obtaining an annulment could take anywhere from 2 to 6 years.

5. The Appellant appealed the ECO’s refusal to the First-tier Tribunal. The findings made by the FtTJ accepted that the Appellant could not fulfil the requirements of the Immigration Rules on the basis that entry as a fiancé requires that an Appellant is able to arrange his marriage within the six month period of the visa. The FtTJ found that it was more likely than not that the Appellant would be unable to be free to marry within the six month period permitted by the Immigration Rules.
6. The FtTJ then looked at Article 8 and decided that Article 8 was engaged in the sense that the Appellant and Sponsor are committed to a long term relationship and do intend to marry eventually. That finding stands. It has not been challenged. The FtTJ concluded nevertheless there would be no interference with any Article 8 rights saying in a few short lines at [18]:

“I find that the interference is proportionate to the legitimate public end sought to be achieved because the Appellant has not yet even started the annulment proceedings in the Philippines; nor have the parties investigated the prospects of the Appellant having an ‘offshore’ divorce from his wife.”

He dismissed the appeal.

7. The Appellant sought permission to appeal. The grounds seeking permission essentially relied upon Article 8 but also claimed that the decision was in breach of Article 12 (right to marriage).
8. Permission to appeal was initially refused in the FtT but was granted upon a renewed application to the UT. The grant of permission which is succinct in terms reads as follows:

“The appellant challenges the decision of First-tier Tribunal Judge Walters dismissing his appeal for entry clearance to join his fiancée on human rights grounds. His application was refused because although he met all the other requirements of the rules, he was not free to marry.

Arguably, having accepted that Article 8 was engaged, the judge’s very brief proportionality assessment arguably failed to take account of the personal circumstances of the appellant and his fiancée or the expert evidence on the question of obtaining a divorce in the Philippines. All the grounds may be argued.”

Thus the matter comes before me to decide if the decision of the FtT contains such error that the decision must be set aside to be remade.

### UT Hearing

9. Before me Ms Bustani appeared for the Appellant and Ms Fijiwala for the Entry Clearance Officer. At the outset of the hearing, Ms Fijiwala conceded that she accepted that Judge Walters’ decision contained an error of law requiring the decision to be set aside. She accepted that the judge, having found that family life existed between the Appellant and the Sponsor, had failed to engage in a meaningful assessment on the proportionality or otherwise of the decision.
10. Ms Fijiwala said further that if I agreed with that concession, then the matter could proceed by the decision being made in the UT; the Sponsor was available to give evidence and she had only a few questions to ask of her. Ms Bustani was agreeable to this course.
11. I indicated that I was satisfied that the decision of Judge Walters must be set aside for legal error in that there was no proper assessment or findings made which showed that the FtTJ had properly considered the proportionality exercise as per the fifth stage of **Razgar**. I was satisfied that I was in a position to hear evidence and thereby remake the decision.

### **Remaking the decision**

12. I heard evidence from the Sponsor, [PD]. She relied upon two written statements (one of which was handwritten) dated 7<sup>th</sup> April 2017. In addition she referred to a statement from the Appellant dated 2<sup>nd</sup> April 2017.
13. The evidence set out in the Sponsor's statement confirmed that she and the Appellant met in 2011. They were both working in Singapore. They started a relationship but did not cohabit at that time. The relationship endured but subsequently the Appellant returned to the Philippines via Malaysia and Macau where he was working. The Sponsor returned to the UK in 2014. She commenced employment as a teacher on a salary of £37,000 per annum. The Appellant applied for entry as a visitor but that was refused.
14. She stated that the Appellant is estranged from his wife and that the separation took place in 2009. The whereabouts of his wife is currently unknown.
15. She said that she and the Appellant continued their relationship and presently she visits the Appellant twice a year.
16. She outlined that the Appellant had commenced annulment proceedings in the Philippines but apparently a lawyer took money off him and effectively "took him for a ride". Nevertheless their relationship continues and they speak on the telephone almost daily.
17. In cross-examination Ms Fijiwala asked the Sponsor whether she had ever investigated the possibility of the couple being able to live together in the Philippines. The Sponsor said that she would not be able to gain any status there – it is a conservative society – and it would therefore be difficult to live as a couple. Presently she visits on a visit visa for a restricted amount of time.
18. The Sponsor was then asked whether she and the Appellant had ever discussed the possibility of living elsewhere, for example Singapore where they had met. She said candidly that they had not discussed this possibility because she works presently in the UK, has her pension rights here and in addition she lends support to her elderly parents. Her mother suffers from dementia.
19. The Sponsor was then asked about the position of the Appellant's children. She said that his older children are aware of the relationship. The eldest is now 20 years of age. Their mother is no longer on the scene and the youngest child whose date of birth is May 2010 is looked after by his older siblings. That concluded her evidence.

### **Consideration**

20. The central question before me is whether the ECO's refusal is contrary to the Appellant and Sponsor's Article 8 ECHR rights in that it is disproportionate, when considering the specific circumstances of this appeal. I am satisfied that family life

exists between the Appellant and Sponsor because the FtT's finding on this point was not challenged. Therefore applying the **Razgar** test, the ultimate question is whether when weighing factors in the balance, is any interference proportionate to the need for immigration control?

21. I find that I am satisfied that, because of the circumstances of this case, family life in the sense of living together as husband and wife or in a relationship akin to marriage, can only take place in the United Kingdom. I accept the expert's report that the Philippines is a country that does not recognise divorce. To obtain a speedy annulment requires influence of the sort that neither the Appellant nor the sponsor possess.
22. I accept the Sponsor's evidence that the best she can arrange in the circumstances that she finds herself in, is to visit the Appellant twice a year and stay with him in a hotel. She can only visit for a restricted amount of time on a visit visa. Because of the conservative nature of society in the Philippines and because it will take time and expense for the Appellant to obtain an annulment, this is all that she is able to do. Ms Fijiwala quite properly accepted the expert's evidence that it would take somewhere between two to six years to obtain the necessary annulment.
23. In these circumstances I find it cannot be said that the couple are making a lifestyle choice to live together in the United Kingdom. On the contrary it is their only realistic option if they wish to live together in the way that normal married couples do.
24. The Sponsor was quite candid in her evidence when she said that the couple had not looked at the possibility of setting up home elsewhere, but I find that that would not be a practical undertaking. The Sponsor holds a responsible job in the United Kingdom - she is a teacher earning £37,000 a year. Furthermore, although her reluctance to leave her elderly parents might not be determinative, it nevertheless lends weight to her situation.
25. Ms Bustani did ask that I also take into account the fact that if the Appellant's appeal was successful, then the normal grant of leave under Article 8 would be two and a half years, and this would enable the Appellant to seek his divorce via the UK courts. I make no comment in that regard. My task is to decide whether the Appellant's appeal is allowed or dismissed. The length of time of any grant of leave under Article 8 is a matter for the Secretary of State to determine.
26. In coming to my decision, I do take into account that it has not been challenged that the parties are in a genuine and subsisting relationship and that, in view of Miss Denny's earnings, there would be no call on the public purse. I understand that the Appellant can speak English.
27. For the foregoing reasons I am satisfied that the Appellant has shown that refusal of entry clearance in his case amounts to a disproportionate interference with both his rights and those of the Sponsor. Accordingly this appeal is allowed.

**Notice of Decision**

The decision of the First-tier Tribunal promulgated on 26<sup>th</sup> April 2017 is set aside. I remake the decision allowing the appeal under Article 8 ECHR.

No anonymity direction is made.

Signed                                      C E Roberts                                      Date                      25 March 2018

Deputy Upper Tribunal Judge Roberts

**TO THE RESPONDENT**

**FEE AWARD**

No fee award is made. I was not asked to make a fee award.

Signed                                      C E Roberts                                      Date                      25 March 2018

Deputy Upper Tribunal Judge Roberts