



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: VA/30500/2012  
VA/30495/2012

**THE IMMIGRATION ACTS**

Heard at Field House  
On 3 September 2013

Determination Promulgated  
On 6 September 2013

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

ENTRY CLEARANCE OFFICER - MANILA

Appellant

and

MR PEDRO MAGNO CENIZAL  
MRS ERLINDA CENIZAL BRIONES

Respondents

**Representation:**

For the Appellant: Mr S Walker a Senior Home Office Presenting Officer  
For the Respondent: Ms R Infante a Solicitor and a relative of the appellant's  
acting pro bono

**DETERMINATION AND REASONS**

1. The appellant is the Entry Clearance Officer in Manila ("The ECO") the respondents are citizens of the Philippines. He was born on 19 October 1950 and she on 26 December 1964. They are brother and sister. I will refer to them as the brother and the sister and together as the appellants. The ECO has been given permission to appeal the determination of First-Tier Tribunal Judge Blackford who dismissed the appellants' appeals against the ECO's decision of

25 July 2012 to refuse them entry clearance to the UK as family visitors under the provisions of paragraphs 40 to 43 and 320 of the Immigration Rules.

2. Three members of the same family made family visitor applications at the same time; the brother and sister and their mother who was born on 6 October 1926. The family had asked the brother to accompany his mother and sister because they had never travelled outside the Philippines and the mother was elderly.
3. The applications were refused largely because of matters relating to the brother. The ECO said that he had been granted a previous visit visa to enter the UK. The ECO made some minor mistakes with dates but at this stage I will quote those which were given. The brother is said to have entered the UK on 16 June 2001 (he is more likely to be correct that it was 10 June 2001) but his expired Philippine passport which he submitted with the current application contained a Philippine Immigration arrival stamp showing that he returned to the Philippines on 2 July 2001. However checks made by the ECO showed that the brother made an application for asylum in the UK on 25 July 2001 which was refused on 28 August 2001. The brother appealed and he attended an appeal hearing in the UK on 27 February 2002. The ECO took the view that the Philippine Immigration arrival stamp dated 2 July 2001 was not a true reflection of his travel history damaged his credibility and cast doubt both on his intentions in applying for a visa to come to the UK and his intention to leave at the end of the visit.
4. Furthermore, the bank statements submitted by the brother and sister did not show the history of the funds and the sponsor's bank statements showed only limited funds. The ECO was not satisfied that the appellants had shown that they had sufficient funds to support themselves without recourse to public funds or taking employment or that they would be maintained and accommodated adequately by relatives or friends.
5. The application was also refused under paragraph 320 of the Immigration Rules because the ECO was satisfied that the brother was in the UK at the time and that the Philippine Immigration arrival stamp dated 2 July 2001 was not a true reflection of his travel history and he had made a false representation.
6. The two appellants and their mother appealed to the First-Tier Tribunal but the mother subsequently withdrew her appeal because, on reconsideration, the Entry Clearance Manager issued her with a family visit visa which, I am told, expires on 5 October 2013. There is no indication why she was issued with a Visa on reconsideration but the other two appellants were not.
7. The appellants asked for the appeal to be determined on the papers which is what the judge did on 18 June 2013. He found that the reasons given by the ECO did not justify the refusal and he allowed the appeals of both appellants.

8. The ECO applied for and was granted permission to appeal arguing that the judge erred in law by failing to find that the appellants made a false representation and that he applied an incorrect standard of proof.
9. In his determination the judge raised the point which had not been taken by the ECO. He said that in his answer to question 74 on the application form which read "have you ever being deported, removed or otherwise required to leave any country including the UK?"; the brother had replied "no" which was "almost certainly wrong". The judge's reasoning was that the brother had applied for asylum in 2001, gone through the appeal process and lost his appeal as a result of which he would have been required to leave the United Kingdom. I find that this is not a point which counts against either of the appellants. It does not show that they failed to comply with any of the requirements of the Immigration Rules and should not result in their appeals being dismissed. I reach this conclusion for several reasons. Firstly, Mr Walker informed me that the ECO did not wish to take up and pursue the point. Secondly, the ECO has never produced any documentary evidence to show that the brother was ever formally required to leave the UK. Indeed, documentary evidence has been produced which shows that he left the UK voluntarily after the Adjudicator ruled against him in his appeal. Before the time for appealing against this determination expired he wrote to the Tribunal stating that he was leaving the country voluntarily as a result of his father's death and mother's illness. The evidence shows that he did leave at this time. Furthermore, there is no reason why this factor should impinge on the sister's appeal.
10. Mr Walker accepted that the judge found in favour of the appellants in relation to the funds available for the proposed visit and that they satisfied the requirements of the Immigration Rules in relation to maintenance and accommodation. He also accepted that this conclusion had not been challenged in the grounds of appeal and that that the only outstanding point in the appeals arose as a result of the Philippines Immigration return stamp dated 2 July 2001 in the brother's expired passport.
11. Ever since the point was brought to his attention the brother's position has been that the Philippines Immigration return stamp dated 2 July 2001 in his expired passport must have been an administrative error by the Philippines Immigration authorities. With some small and immaterial differences as to the precise dates, which I consider to be slips by the ECO, both the brother and the ECO say that he came to the UK in mid June 2001, applied for asylum, had the application turned down, attended the appeal hearing on 27th of February 2002 and lost his appeal. Both he and the ECO say that he did not leave the UK during this period. I find that he was in the UK throughout this period and that he left the UK and returned to the Philippines in April 2002.
12. I asked Mr Walker how the ECO argued that the brother had made false representations or submitted false documents or information or failed to disclose material facts. Mr Walker could not think of any way in which he

might have done so except possibly if he had returned to the Philippines on 2 July 2001 and then come back to the UK before making his application for asylum on 25 July 2001. However, he accepted that if he had done so it was probable that his passport would have contained not only a departure stamp from the Philippine authorities but also an arrival stamp from the UK authorities. The ECO had seen the passport but not suggested that there were any such stamps. It was not suggested that the brother had forged the stamp in his passport. Indeed, there would be no reason to him to do so because it hindered rather than helped his case. It was not suggested that the passport was forged or not genuine in any other way.

13. Mr Walker indicated that he had no further submissions to make. If the judge erred in law by addressing the point in relation to question 74 on the brothers application form this was, for the reasons I have given, an immaterial error which could have made no difference to the outcome. I find that on the evidence before him it was open to the judge to come to the conclusions that the appellants met all the requirements of the Immigration Rules for family visitors and that the ECO had not established, to the standard of the balance of probabilities, that either appellant's application should have been refused under the provisions of Paragraph 320. There had been no false representations made or false documents or information submitted or material facts not disclosed.
14. I find that the judge did not err in law or that if he did the error is not such that his decision should be set aside. I uphold the judge's decision allowing the appeals of both appellants under the Immigration Rules.
15. The original purpose of the visit was for the brother and sister to accompany their mother on a family visit to the UK. She is now 86 years of age and her visa expires on 5 October 2013. I trust that the ECO will expedite the visas for both appellants so that they can accompany her to this country before her visa expires.

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Signed  
Upper Tribunal Judge Moulden

Date 4 September 2013