



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

Appeal Number: HU/17604/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 7th September 2018**

**Decision sent to parties on
On 28th September 2018**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

**ANA MARIE BANLUTA
(NO ANONYMITY ORDER)**

Appellant

and

**ENTRY CLEARANCE OFFICER
MANILA**

Respondent

Representation:

For the Appellant: Mr Damien Krushner, Counsel appearing by direct access
For the Respondent: Mr Nigel Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Obhi dismissing her appeal on human rights grounds against the respondent's decision not to grant her entry clearance to join the sponsor, her claimed British citizen spouse. The appellant is a citizen of the Philippines.

Background

2. The Philippines Statistics Authority, which is the record keeper for marriages and divorces in the Philippines, records in the bundle show that the appellant has had two previous marriages, the first to a Mr Yu in 1990 and the second in 1993. Her second marriage was dissolved in 2016 in United Kingdom divorce proceedings, before she married the sponsor. Divorce is not permitted in the Philippines, which is a Catholic country. However, the appellant was resident in the United Kingdom and was able to bring proceedings here.
3. The appellant came to the United Kingdom as a student and was here from 2011 - 2016. Between 2012-2016, she was living with the sponsor, and in 2016, once her divorce on the 1993 marriage came through, she married him.
4. After the marriage, the appellant returned to the Philippines to seek entry clearance as the sponsor's spouse, but the Entry Clearance Officer refused leave to enter, having seen from the Philippines Statistics Authority records that she was not free to marry him and that the British marriage appeared to be bigamous.
5. The Philippines Statistics Authority retains a record of both the 1990 and 1993 marriages, neither of which shows on that record as having been annulled or dissolved. The appellant maintains that she never contracted a genuine marriage to Mr Yu. Her evidence was that she was living with Mr Yu at university without being married, and that her father obtained a false marriage certificate, to prevent any stigma to the appellant or the family caused by their living together. The appellant has not, explained how in that case the 1990 marriage became registered with the Philippines Statistics Authority (see the First-tier Tribunal at [18]).

First-tier Tribunal decision

6. The core findings of the First-tier Tribunal are at [23] and [26]:

"23. I wish to comment on the evidence of the sponsor. I totally accept his evidence. I do not think that it would be proportionate for him to have to live in the Philippines. I accept that this is a genuine relationship and provided the appellant can get the Registrar [in the Philippines] to either accept that the marriage in 1990 was registered on the basis of a false document, and therefore remove that entry, or otherwise show that the marriage has ended by divorce, annulment or death, then there is no reason why entry clearance should not be given. Whilst I accept that the sponsor cannot go and live in the Philippines, he met the appellant in the United Kingdom when he was probably led to believe by her that she would be able to return, there is no reason why the relationship cannot be maintained through visits, Skype and the internet, until the procedural matters can be corrected. It is not a decision I reach lightly and I would hope that the appellant can secure some legal advice in her own country about how she addresses this issue. ...

26. I am satisfied that there is a family life between the appellant and sponsor. However, I [am] not satisfied that it is disproportionate to

refuse entry clearance in the unusual circumstances of this case. It is for the appellant to prove that she was not married at the time she entered into a legal marriage with the sponsor. I can only assume that information about that marriage was not given to the Registrar in the United Kingdom as otherwise it is unlikely that she would have been able to marry [the sponsor].”

7. The First-tier Judge did not make any finding as to whether the first marriage certificate was a forgery, but concluded that the decision which the respondent had made was open to him.
8. The appellant appealed to the Upper Tribunal.

Permission to appeal

9. Leave to appeal was granted by Upper Tribunal Judge Coker on the basis that it was arguably perverse or irrational on human rights grounds to continue to exclude the appellant for whatever time it would take for her to resolve her legal position.

Upper Tribunal hearing

10. For the appellant, Mr Krushner accepted that the assertion in the grounds of appeal that the First-tier Judge’s decision reversed the burden of proof was unarguable. However, the Judge had found the relationship of the appellant and sponsor to be genuine and they were able to meet the financial requirements of the Rules. It was disproportionate to expect the sponsor to go to live in the Philippines and arguably perverse to dismiss the appeal, on these facts. The sponsor had been found to be a credible witness. Family life between the parties was accepted and the parties’ human rights would be disproportionately breached if the appellant were further excluded from the United Kingdom.

Discussion

11. I bear in mind that these parties lived together in the United Kingdom for about four years before getting married, that the appellant went back to the Philippines specifically to make an application to regularise her position and to re-enter the United Kingdom lawfully, and that the relationship has been found to be genuine. However, it is for the appellant to show that she is indeed the sponsor’s spouse, including, on these facts, that she was free to marry him when the marriage in the United Kingdom was contracted. I note that nine months have elapsed since the Entry Clearance Officer refusal but there appears to be no new evidence and there has been no application under Rule 15(2)(a) to adduce additional evidence.
12. It was unarguably open to the First-tier Judge to conclude, on the evidence before him, that the appellant had failed to discharge the burden of showing that the 1990 marriage recorded on the Philippines Statistics Authority database was not a genuine marriage. That is not a trivial

matter: bigamy is a criminal offence. The First-tier Judge's finding that the 1990 marriage was a valid marriage and a continuing obstacle to a lawful marriage in the United Kingdom is neither perverse nor **Wednesbury** unreasonable. He was entitled to find, as he did, that on these facts, the appellant's exclusion from the United Kingdom until the question of her first marriage was resolved was not disproportionate nor a breach of the United Kingdom's international human rights obligations.

13. The grounds of appeal disclose no material error of law in the decision of the First-tier Tribunal and I dismiss the appeal.

DECISION

14. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law.

I do not set aside the decision but order that it shall stand.

Signed: **Judith A J C Gleeson**
September 2018
Upper Tribunal Judge Gleeson

Date: 25