Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/12598/2013

THE IMMIGRATION ACTS

Heard at Columbus House, Newport	**Determination Promulgated**
On 18 February 2014	**On 27 February 2014**

Before

UPPER TRIBUNAL JUDGE POOLE

Between

MR EFREN LAMBARTE BANSALE
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No one attended
For the Respondent: Mr Irwin Richards, Home Office Presenting Officer

DETERMINATION AND REASONS

1. In this matter I will refer to the parties in the order and by the description set out before the First-tier Tribunal.

2. The appellant is a citizen of the Philippines born 14 April 1961. He applied for variation of leave to remain in the United Kingdom. He last entered this country in August 2010 with entry clearance as a spouse valid until February 2012. In refusing the application the respondent's refusal notice dated 3 April 2013 indicated that the requirements of paragraph 284 of the Immigration Rules had not been met as no English language certificate had been produced in compliance with the Rule. The appellant's appeal against that decision came before Judge of the First-tier Tribunal Britton on 18 September 2013. Judge Britton dismissed the appeal "under the Rules" but allowed the appeal under Article 8 ECHR.

3. The Respondent sought leave to appeal which was granted. The matter then came before me in the Upper Tribunal on 28 November 2013. In a decision notice dated 6 December 2013, and for the reasons set out therein, I found an error of law in respect of the Judge's decision under Article 8 and that part of the decision was accordingly set aside.

4. In paragraph 12 of my decision I indicated that before the decision could be remade it was necessary for evidence to be taken so that the outstanding aspect of the appeal could be concluded. I specifically indicated that the conclusions of the judge with regard to the appeal under the Rules had not been challenged and were preserved. As an interpreter was not available it was necessary for me to adjourn that hearing for a "resumed evidential hearing". Hence the matter was relisted before me on 18 February 2014.

5. At the time the hearing commenced Mr Richards was present but neither the appellant nor his representatives appeared. A Tribunal-financed interpreter was available. I caused enquiries to be made of the representatives and after some delay a faxed letter was received indicating that the appellant was unable to attend the hearing due to "some personal issues". The letter contained a request for the outstanding issues to be decided on "available evidences" (sic). I therefore considered it appropriate to proceed.

6. Mr Richards indicated that he relied upon the original decision letter.

7. It is indeed unfortunate that the appellant has not sought to prosecute the outstanding aspect of his appeal. The decision of Judge Britton was preserved along with his findings in respect of the appellant's appeal against the refusal under the Rules. The only issue before me was in respect of the appellant's Article 8 claim.

8. The Appellant's representatives asked me to take into account the available evidence. Regrettably there is very little. I consider it appropriate at this stage to set out Judge Britton's findings in respect of the appeal as a whole in which he said as follows:

> "18. The appellant's wife came to the United Kingdom in 2004 and the appellant joined her with their children in 2010. The appellant said he took his English Language test in 2008. He failed that test but has not

> attempted to take it again. I find it is surprising that he had lived in this country since 2010 and has made no attempt to take the test again. I do not accept that there are exceptional circumstances which prevent the appellant from being able to meet the requirements and thus being exempt from the English Language requirement. I find there are no insurmountable obstacles to family life with his wife in the Philippines. His wife and children are also Filipino nationals. he has his mother and sister and other family members in the Philippines. I find the appellant is trying to circumvent the Immigration Rules by not taking his English Language test. The appellant been in this country since 2010 and therefore has not lived in this country for 20 years continuously, and has not eroded all cultural, social and family ties to the Philippines. Therefore his application to vary his leave under the Immigration Rules is dismissed."

9. The appellant's original bundle contained very little information that I find of assistance. There was a witness statement dated 12 September 2013 along with wage slips, utility bill and bank statements. I have also noted the contents of the appellant's original grounds of appeal.

10. I have no reason to doubt the findings of Judge Britton at his paragraph 18. Indeed they remain unchallenged. I adopt those findings and note in particular there were no exceptional circumstances with regard to the English language test and that there were no insurmountable obstacles to the family continuing family life in the Philippines. The appellant, his wife and children are all Filipino nationals and he has family members in that country. Judge Britton found that the appellant was trying to circumvent the Immigration Rules and I believe that that was a reasonable conclusion to draw. The appellant has only spent three or four years in the United Kingdom and Judge Britton found that he had not eroded all cultural, social and family ties to his home country.

11. I accept that the appellant and his wife are both working and that two of the children are studying. I have no further information with regard to the personal circumstances of the appellant, his wife or children.

12. I have reminded myself with regard to the provisions of Article 8 as to family and private life. I have reminded myself of the provisions of reported cases in particular **Razgar** and the case of **Gulshan (Article 8 – new Rules – correct approach) [2013] UKUT 00640 (IAC)**.

13. As indicated above, I endorse Judge Britton's findings with regard to the lack of insurmountable obstacles preventing family life continuing in the Philippines. Adopting the five-step approach suggested in **Razgar** I have considered the question of proportionality. I have reminded myself that a form of balancing act must be conducted with regard to the personal interests of the appellant and his family and the public interest. The respondent has a duty in respect of effective immigration control. Article 8 provisions are to an extent included in certain provisions of the

Immigration Rules and the appellant has been found wanting with regard to those Rules.

14. Whilst I accept that both the appellant and his wife are in employment and at least some of the children are in education in the United Kingdom I have little additional evidence to suggest that the respondent's original decision was disproportionate. I conclude that it was not.

15. Having found that the original decision of the First-tier Tribunal contained an error of law in respect of the Article 8 decision I set that decision aside and remake it. The appellant's appeal in respect of Article 8 is dismissed.

16. No anonymity direction was made in the First-tier Tribunal and no application was made before me. Accordingly no anonymity order is made.

Signed Date

Upper Tribunal Judge N Poole