



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

Appeal Number: IA/14805/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
on 20 May 2014**

**Determination  
promulgated  
On 21st May 2014**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**CAROLA VERONICA CHANG LOPEZ**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the Appellant: Ms G Brown, Counsel, instructed by Farani Javid Taylor, Solicitors

For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

No anonymity order requested or made

**DETERMINATION AND REASONS**

1. The appellant, a citizen of Peru, appeals against a determination by First-tier Tribunal Judge Flynn, dismissing her appeal against a notice dated 18 April 2013, headed "refusal to vary leave to enter or remain and decision to remove", which was accompanied by a "reasons for refusal letter" of the same date.
2. The grounds of appeal to the Upper Tribunal raise the question whether the judge found unfairly that the relationship between the appellant and her UK citizen husband was not genuine, as the respondent had not

raised that in the decision under appeal or in submissions, and the judge had not put the appellant on notice of her concerns.

3. Mr Whitwell said that the appellant's application was bound to fail anyway, because she was here as a visitor when it was made; that the respondent's decision had therefore not actively considered whether the relationship was genuine; that the refusal reasons took an incorrect approach to EX.1 of the Rules, which is not a free standing provision; and that there was no error in the judge's adverse credibility findings. However, I did not understand him to raise any answer to the question whether there was unfairness to the appellant by the judge taking a material point against her without giving her an opportunity to answer it.
4. Ms Brown was prepared to argue substantively on other points raised in the grounds, but on the view that procedural unfairness required the determination to be set aside and a fresh hearing fixed in any event, I did not require to hear from her further.
5. I do not think that the error could be regarded as immaterial, or that it can be saved by the alternative finding that the appellant may reasonably be expected to apply from Peru. That may yet be found to be so, but as matters stand, the appellant would face a great difficulty with such an application, because it might very well be refused on the basis of a judicial finding that her marital relationship is not genuine.
6. For avoidance of doubt, I record that it is accepted that the genuineness of the relationship is a live issue of which the appellant is now on notice.
7. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law, such that it falls to be **set aside**. The determination is preserved only so far as it may be referred to as a record of the evidence at the hearing on 14 February 2014. No findings of the FtT can stand. Under s.12(2)(b)(i) of the 2007 Act and Practice Statement 7.2 the nature and extent of judicial fact finding necessary for the decision to be remade is such that it is appropriate to remit the case to the FtT. The member(s) of the FtT chosen to reconsider the case are not to include Judge Flynn. A Spanish interpreter will be required.



20 May 2014  
Judge of the Upper Tribunal