



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
IA/34494/2013

Appeal Numbers:

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 9<sup>th</sup> July 2014**

**Determination  
Promulgated**

**On 14<sup>th</sup> July 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE FRANCES**

**Between:**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**HELEN GALDO DEGARA**

Respondent

**Representation:**

For the Appellant: Mr P Duffy, Senior Home Office Presenting Officer  
For the Respondent: Mr P J White, instructed by Blakewells  
Solicitors

**DETERMINATION AND REASONS**

1. The Respondent is a citizen of the Philippines born on 31<sup>st</sup> July 1973. Her appeal against the decision to refuse to vary leave to remain as a spouse and the decision to remove her was allowed, on Article 8 grounds, by the First-tier Tribunal in a determination dated 9<sup>th</sup> April 2014. The Secretary of State applied for permission to appeal.

2. Permission to appeal was granted by Upper Tribunal Judge Renton on 20<sup>th</sup> May 2014 on the grounds that it was arguable that First-tier Tribunal Judge Abebrese failed to consider the test in Gulshan (Article 8 – new Rules – correct approach) [2013] UKUT 640 (IAC) or make any decision in respect of it.
3. Mr Duffy relied on the grounds of appeal and submitted that the Judge had failed to follow Gulshan and had carried out a ‘free-wheeling’ assessment of Article 8. It was not clear from the determination why the Respondent had failed to satisfy Appendix FM and there were no findings on maintenance. Although this was also not clear in the refusal letter it was incumbent on the Judge to look at the Rule in its entirety and make findings on where the Respondent fell short. This was relevant to the assessment of proportionality. There were no compelling circumstances in this case.
4. Mr White submitted that the Judge’s application of Appendix FM was not referred to in the grounds and was not the subject of the grant of permission. In any event there was no duty on the Judge to go through the Rule. There was no material error of law in the Judge’s finding that the Respondent had failed to satisfy Appendix FM.
5. The grounds of appeal submitted that the Judge had failed to apply Gulshan which stated that only if the Judge identified compelling circumstances was it necessary to consider Article 8. It was clear from the determination that the Judge had Gulshan in mind because he identified compelling circumstances in this case. There was no challenge to the Judge’s finding that the refusal to vary leave to remain was disproportionate. The grounds alleged that the Judge was wrong to consider Article 8 in the first place. There was no material error in the Judge’s Article 8 assessment.

### Findings and conclusions

6. The reasons for refusal letter did not refer to the maintenance requirements of the Immigration Rules, nor did it challenge the Respondent’s relationship. The Appellant failed to identify which paragraphs of the Immigration Rules the Respondent failed to satisfy other than stating that she could not benefit from paragraph EX.1. The Judge found that the Respondent could not satisfy Appendix FM of the Rules, but failed to give reasons for coming to this conclusion, other than reference to paragraph EX.1. Any error of law in this regard was not material to the decision to allow the appeal on Article 8 grounds. There was no challenge to the Judge’s decision to dismiss the appeal under the Immigration Rules.

7. The Home Office Presenting Officer relied on Gulshan in her submissions before the First-tier Tribunal. However, the Judge failed to refer to the case in his findings on Article 8. I find that this error was not material because the Judge identified circumstances in this case which were compelling and were not recognised under the Immigration Rules at paragraph 19 and 27 of the determination. The Sponsor lived with and cared for Mr Campbell, an 88-year-old man who had suffered a stroke and cancer in 2007.
8. The Judge took into account the fact that the Sponsor was 68 years old and had lived in the UK all his life. He had adult children with whom he had a close bond. The Respondent and the Sponsor cared for Mr Campbell and the Sponsor had investment properties in the UK. The Judge found that it would be unreasonable to expect the Sponsor to relocate to the Philippines and the decision to refuse leave to remain was disproportionate in the circumstances. This finding was open to the Judge on the evidence before him and he gave adequate reasons for his conclusions.
9. The Judge made no error on any point of law which might require the determination to be set aside. The appeal to the Upper Tribunal is dismissed. The determination of the First-tier Tribunal dated 28<sup>th</sup> March 2014 shall stand.

Deputy Upper Tribunal Judge Frances  
11<sup>th</sup> July 2014