



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

Appeal Number: IA/38561/2013

THE IMMIGRATION ACTS

Heard at Field House

On 16th July 2014

Determination

Promulgated

On 24th July 2014

Before

UPPER TRIBUNAL JUDGE POOLE

Between

**MAE DRAPER
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a female citizen of the Philippines born 20 October 1972.
2. The appellant had been granted entry clearance as a visitor until 31 July 2013. She arrived in the United Kingdom in February of that year and on

23 July 2013 applied for variation of leave to remain as the spouse of a person present and settled in the United Kingdom. The respondent had decided on 11 September 2013 to reject the application on the basis that the appellant did not qualify for leave to remain under Appendix FM of the Rules and that there were no exceptional circumstances justifying the grant of leave outside those rules. Removal directions were also given under Sect 47 of the Immigration, Asylum & Nationality Act 2006.

3. The appellant appealed that decision and in doing so did not request an oral hearing. The appellant indicated she was content for the matter to be dealt with “on the papers”.
4. The matter came before Judge of the First-Tier Tribunal Sangha who dismissed the appeal both under the Rules and in respect of “human rights grounds”. The determination is dated 24 February 2014.
5. In the judge’s determination the appellant’s case is set out at paragraphs 8 to 14 which also contains details of how the respondent reached her conclusions upon the original application.
6. The judge reached a conclusion that the appellant did not qualify under the Immigration Rules and the judge then went on to consider the guidance given in the Upper Tribunal reported decision of **Gulshan [2013] UKUT 00640 (IAC)** before dismissing that aspect of the appeal.
7. The appellant then sought leave to appeal that decision. The grounds indicated that the judge may have erred in law in a failure to consider the appellants human rights in line with the case of **MF (Article 8 - New Rules) Nigeria [2012] UKUT 00393**. The grounds also allege that the judge had erred in failing to take proper account of the medical condition of the appellant’s mother-in-law and in respect of all parties affected by the respondent’s decision and that insurmountable obstacles prevented the appellants return to make an application in her home country.
8. The application came before another judge of the First Tribunal who refused the application in a decision dated 19 March 2014.
9. Giving reasons for this refusal that judge said this:

“1. By a determination promulgated on 3 March 2014, First-Tier Judge Sangha dismissed the appellant’s appeal against a decision of the respondent. Having assessed the evidence, the judge concluded that the appeal did not succeed pursuant to the Immigration Rules, HC395; or through the application or Article 8 of the European Convention on Human Rights.

2. Realistically, the grounds on which the appellant seeks permission to appeal do not suggest that the judge was not entitled to determine this appeal on the papers (paragraph 5 of the determination refers).

3. In my assessment the grounds do not establish that a grant of permission would be appropriate. It seems to me that the judge's reasoning in his paragraphs 15 to 24 very adequately explains why this is not an appeal that should have succeeded pursuant to the Rules or Article 8. Amongst other things, the judge pointed out that there was nothing to stop the appellant from returning to the Philippines and applying for entry clearance to join her husband and daughter again after a temporary separation. There would be no question of the appellant's (British) daughter having to leave her school or the United Kingdom. Given, amongst other things, what the appellant has told the UK Immigration Authorities (see paragraph 17 of the determination), the judge was properly satisfied that it would be appropriate for this appellant to return to the Philippines in order to apply for entry clearance to rejoin her husband and child in this country (his paragraph 22).

4. In other words, the grounds do not establish any irrelevant factors that the judge took into account, nor establish any material factors that he did not take into account. Given, amongst other things, the determination in **Gulshan [2013] UKUT 640 (IAC), circulated on 20 December 2013**, the judge did not need to explain any further why the appeal fell to be dismissed by reference to all the grounds that were before him.

5. The grounds do not identify any arguable error of law. There is no basis upon which to interfere with the decisions of the First-Tier Tribunal Judge”.

10. The appellant's application for leave was then renewed before the Upper Tribunal itself. The reasons given suggested a material error of law in dealing with the question of human rights and in failing to consider the health issues suffered by the appellant's husband (whilst the appellant was absent from the UK) and again the condition of the appellant's mother-in-law.

11. In granting leave a judge of the Upper Tribunal said this:

“It is arguable that the judge failed to carry out an Article 8 ECHR Assessment having found that the appellant did not qualify to remain in the United Kingdom under the Article 8 Provisions of the Immigration Rules”.

12. Hence the matter came before me sitting in the Upper Tribunal on 16 July 2014.

13. There was no attendance or appearance by or on behalf of the appellant. I note that on 11 June 2014 due notice of the hearing was sent to the appellant at the address given by her. No notification has been received from the appellant indicating she would be unable to attend. I considered it appropriate to proceed with the hearing in the absence of

the appellant by reason of Rule 38 of the Procedure Rules (Upper Tribunal) Rules 2008 in that it is within the interests of justice to proceed with the hearing.

14. Following the grant of leave the respondent submitted a response under Rule 24 of the above mentioned procedure rules indicating that in the respondents view the First-Tier Tribunal judge directed himself appropriately especially bearing in mind the guidance in **Gulshan** and that the judge came to a reasoned finding and that there were no exceptional circumstances that would make it unjustifiably harsh to remove the appellant.
15. For the reasons given below I do not consider that the judge made any material error of law in reaching the conclusions set out in the determination mentioned above.
16. No challenge has been made to the judge proceeding to determine the appeal “on the papers”. This was at the request of the appellant. Her consent to this course of action being contained within the notice of appeal that she initially lodged against the respondent’s decision.
17. No challenge has been made to way the judge dealt with the matter under the Immigration Rules. The challenge is to the way the judge dealt with the matter under Article 8 ECHR. It is of course the situation that certain aspects that form the basis of Article 8 are themselves contained within the Immigration Rules. It is a matter then for a “stand alone” consideration of Article 8 to be conducted only if there are particular compelling or exceptional circumstances that exist in an individual case.
18. In my view it is clear that from paragraphs 15 to 24 of the judge’s determination he fully set out why the appeal could not succeed both under the Rules and by reason of Article 8 ECHR.
19. The grounds seeking leave refer to the case of **MF Nigeria** in the Upper Tribunal. That case has of course been the subject of an appeal to the Court of Appeal in **MF (Nigeria) [2013] EWCA Civ 1192** and there are then other cases both in the High Court (**Nagre [2013] EWHC 720**) and in the Upper Tribunal in the case of **Shahzad (Article 8: Legitimate Aim) [2014] UKUT 00085 (IAC)**.
20. The judge properly referred to the case of **Gulshan** which very clearly sets out the guidance with regard to a proper assessment of an appellant’s claim both under the Rules and Article 8. The judge refers to that case and it is clear from the determination that he followed that guidance. The conclusions he reached were that there were no circumstances that would preclude the appellant from leaving the United Kingdom for her home country in order to make the appropriate application for settlement. When read as a whole the determination shows that the judge concluded (for the reasons shown) that there were

no particular compelling or exceptional circumstances and that there were no (paragraph 21) insurmountable obstacles.

21. In all these circumstances I find that no arguable error of law is contained within the judge's determination and the findings must stand.
22. The appeal of the appellant is accordingly dismissed.
23. No application has been made to me in respect of an anonymity direction and I do not make such a direction.

Signed

Date: 23/7/14

Upper Tribunal Judge Poole