



**Upper Tribunal
Immigration and Asylum Chamber
IA/18815/2013**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 19 January 2015**

**Promulgated
On 21 January 2015**

Before

Upper Tribunal Judge Kekić

Between

Ms Leonara Tajada Ebre

Appellant

and

Secretary of State for the Home Department

Respondent

Representation

For the Appellant: Ms F Allen, Counsel

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Determination and Reasons

Details of appellant and basis of claim

1. This appeal comes before me following the grant of permission to the respondent by First-tier Tribunal Judge Hollingworth on 4 November 2014 in respect of the determination of First-tier Tribunal Judge N M K Lawrence who allowed the appeal of this appellant to the limited extent that the matter was remitted to the

respondent for a lawful decision. The determination was promulgated on 27 August 2014. For ease of reference, I continue to refer to the Secretary of State as the respondent.

2. The appellant is a Filipino national born on 30 November 1958. She arrived on 4 August 2002 with entry clearance as a domestic worker. Extensions were granted but the latest application made on 10 May 2012 was refused on 9 January 2013. An appeal was lodged and the appellant argued that the Secretary of State had erred in describing her as an overstayer when it was plain from the endorsement in her passport that she had been here with valid leave when her application was made. Consequently, the matter was remitted back to the Secretary of State for reconsideration but was refused again on 8 May 2013. The appellant appealed again and her appeal was allowed to the limited extent that it was sent back to the Secretary of State yet again, for a lawful decision to be made. It is that decision which the Secretary of State challenges.

Appeal hearing and findings

3. Mr Melvin relied on the grounds for permission at the hearing before me on 19 January 2015. Ms Allen relied on her Rule 24 response and submitted that the judge had acted correctly. She pointed out that the problem was that the Secretary of State had not applied the rule in force at the date of the application as she was required to do by the terms of HC760. Ms Allen clarified that she was not referring to the post 9 July 2013 rules but to the pre 13 December 2012 changes to paragraph 159G which introduced the word "lawfully" into sub paragraph (ii) and made provision under 159G-SD for specified documents. By deciding the application under the rules post 13 December 2012, the Secretary of State had considered the wrong rules and had acted unlawfully. In the circumstances, she maintained that the judge had been right to remit the matter back to the Secretary of State for a lawful decision.
4. Having considered Ms Allen's submissions, Mr Melvin accepted that they had merit although he did not accept that it had been shown that the appellant would succeed in her application even if the correct rule was considered.
5. I am not concerned at this stage with whether or not the initial application would succeed. However, it is plain that the Secretary of State did not apply the correct rules when she considered it. It follows that her decision was not in accordance with the law. The grounds argue that the judge should have proceeded to have considered the applicable rules himself, however as he made clear in his determination, he was reluctant to become the primary decision maker. He was properly entitled to take that stance; the principle that the Secretary of State should ordinarily be the

primary decision maker is an established one (for example, see SM [2014] UKUT 00064 (IAC)). I therefore conclude that the First-tier Tribunal Judge did not make an error of law in deciding to allow the appeal and to remit it to the Secretary of State for a lawful decision to be made.

Decision

6. The First-tier Tribunal Judge did not make an error of law. I uphold his decision to allow the appeal to the extent that it is remitted to the Secretary of State for a lawful decision to be made.

Signed:

Dr R Kekić
Judge of the Upper Tribunal

20 January 2015