



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/32757/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 17<sup>th</sup> September 2015

Decision & Reasons Promulgated  
On 1<sup>st</sup> October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE LEVER

Between

MRS MARIA BUENAFE DIMAACQUIAT  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr. Coleman of counsel  
For the Respondent: Mr. Tarlow, Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellant born on 27<sup>th</sup> February 1978 is a citizen of the Philippines. The Appellant had made application on 18<sup>th</sup> October 2013 to remain in the United Kingdom as the spouse under the Immigration Rules. The Respondent had refused

the Appellant's application in part on 28<sup>th</sup> November 2013 but indicated that an application had been placed on hold until the outcome of an appeal case had been heard. Thereafter that application had been refused.

2. The Appellant had appealed that decision and her appeal was heard by First-tier Tribunal Judge Naphine at Hatton Cross on 12<sup>th</sup> February 2015. The judge allowed the appeal under the Immigration Rules.
3. The Respondent had appealed that decision by application dated 18<sup>th</sup> March 2015 essentially on the basis that the judge had erred in taking account post-application material. Permission to appeal was granted by First-tier Tribunal Judge Grimmett on 6<sup>th</sup> May 2015 finding the matter was arguable. Directions were issued for the Upper Tribunal to firstly decide whether an error of law had been made by the First-tier Tribunal or not. The matter comes before me in accordance with those directions.

### **Submissions**

4. It was agreed by the representatives at the outset that given the strict requirements of Appendix FM-SE an error of law had been made by the judge in considering material that postdated the application date in this case, which was 18<sup>th</sup> October 2013.
5. This is one of a not insignificant number of cases that suffered from delay as a consequence of two unfortunate circumstances. Following the original decision in **MM** the Home Office had, rather than making a decision upon financial threshold requirements, adjourned their final decision to await the outcome of the Secretary of State to challenge that original case in **MM**. The need to so do was a moot point and perhaps unsurprisingly the original decision in **MM** was overturned by the Court of Appeal. The delay in this case was of less significance than in many other cases given that the Appellant was lawfully in the UK with her spouse rather than applying from abroad and being separated from her spouse.
6. The error of law is not one that is open to remedy simply by remaking this decision. However Mr Tarlow accepted that the facts of this case as found by the judge, and not challenged by the Home Office, disclosed that since the application date given the length of delay the Sponsor had produced credible evidence and documentary evidence to disclose that at the date of hearing the Sponsor had documentary evidence for two years of self-employment disclosing annual income of £21,000 and therefore above the income threshold needed.
7. Mr Tarlow's decision therefore that the matter should now be remitted back to the Home Office, for them to consider the case fully and exercise discretion in a proper and equitable manner of disposal of this case that was agreed upon by Mr Coleman of Counsel.
8. It is agreed that the lack of challenge to the income level now, the credibility of the Appellant and Sponsor and the reliability of documents submitted all found by the judge within the First-tier Tribunal would tend to suggest the result of such an examination now by the Home Office although that is a matter of course for them.

### **Notice of Decision**

9. I find a material error of law was made by the judge and set aside the decision of the First-tier Tribunal which by agreement will now be remitted back to the Home Office for them to exercise their discretion in this case.
10. Anonymity direction not made.

Signed

Date

Deputy Upper Tribunal Judge Lever