



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/14505/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On 24 November 2015**

**Decision & Reasons Promulgated
On 3 December 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MS REBECCA GUILLAMA VILLALOBOS
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr S Kandola, Home Office Presenting Officer

For the Respondent: No appearance

DETERMINATION AND REASONS

Introduction

1. The Appellant (the Secretary of State) appealed with permission granted by First-tier Tribunal Judge PJM Hollingworth on 6 August 2015 against the decision and reasons of First-tier Tribunal Judge Clemes who had allowed the Respondent's appeal against the refusal of her application for entry clearance as a domestic worker (a children's nanny) in a decision promulgated on 29 May 2015. The

appeal was determined on the papers as the Respondent had requested.

2. The Respondent is a national of the Philippines, born on 28 September 1969. She was sponsored by her employer Mrs Katie Richardson who planned to return to the United Kingdom from Hong Kong. The Entry Clearance Officer, Manila applied paragraph 159A of the Immigration Rules. The Entry Clearance Officer did not accept that Mrs Richardson would only be staying in the United Kingdom for 6 months, nor that she was normally resident outside the United Kingdom. Judge Clemes was however satisfied from the evidence (which included a letter from Mrs Richardson's husband which stated that he was travelling from Hong Kong to Saudi Arabia where his family would join him) that Mrs Richardson would be in the United Kingdom for only 6 months before joining Dr Richardson in Saudi Arabia. The judge went on to allow her appeal "as a visitor".
3. Permission to appeal to the Upper Tribunal as sought by the Appellant was granted because the judge had stated at [6] of his decision that the Respondent "would not be supported in the United Kingdom by the Richardson family". It was unclear which rules the judge had applied.
4. Directions were made by the Upper Tribunal in standard form.
5. There was no appearance by or on behalf of the Respondent, nor had there been any rule 24 response. It was far from clear that the appeal was defended or was of any interest to the Respondent. The tribunal decided that it should proceed in her absence and that it was fair to do so.

Submissions – error of law

6. Mr Kandola for the Appellant relied on the grounds and the grant of permission to appeal. The decision was inadequately reasoned and was contradictory. Possibly there had been a typographical error when the judge stated that the Respondent would *not* be supported by her employer (which was the whole point of her application) but the judge had then referred to a visit to which paragraph 41 of the Immigration Rules applied. The judge had given no consideration to the requirements of paragraph 41 which were different from paragraph 159A. The decision and reasons should be set aside and the appeal remade and dismissed.

The error of law finding

7. The tribunal indicated its decision at the hearing that the Secretary of State's appeal would be allowed and reserved its reasons which now follow. Unfortunately the judge's decision was impossible to follow. It may be that the word "not" had been inadvertently inserted into the first sentence of [6] of the decision and reasons, but it was still impossible to understand which paragraph of the Immigration Rules

the judge had been intending to apply or why, when he allowed the appeal. It is obvious that paragraph 41 of the Immigration Rules which was then in force (now replaced by Appendix V) has significantly different provisions from paragraph 159A, one of which is that visitors to the United Kingdom are not permitted to work. The evidence was that the Respondent was employed as a nanny and was travelling with her employer. That confusion is sufficient to amount to an error of law, as Mr Kandola submitted.

8. The tribunal finds that the decision and reasons contains material errors of law, such that it must be set aside and remade. The Secretary of State's appeal to the Upper Tribunal is allowed.

The fresh decision

9. The First-tier Tribunal's decision can only be remade in one way, that is, that the appeal against the Entry Clearance Officer's decision made under paragraph 159A of the Immigration Rules must be dismissed. It is also obvious that the Respondent had not applied to enter the United Kingdom as a visitor under paragraph 41 of the Immigration Rules nor indeed that she was eligible in that capacity.
10. Paragraph 159A of the Immigration Rules which applies to overseas domestic workers contains stringent provisions, one of which is that the worker will leave the United Kingdom at the end of 6 months. Insufficient evidence was provided to show that the Respondent's employer was relocating to the United Kingdom on a temporary basis. No visa for Saudi Arabia for the employer or the Respondent had been provided, nor any proof that such applications had been made, e.g., by means of evidence from Dr Richardson's prospective employer. The letter from Dr Richardson dated 3 December 2014, which was post decision, merely expressed the hope that the family's plans to live in Saudi Arabia would be achieved. It indicated that the Saudi visas could be problematic for his family. It was, of course, open to the Respondent and her employer to make a fresh entry clearance application supported by sufficient evidence and quite possibly that has already happened given the date of the Entry Clearance Officer's original decision and the Entry Clearance Manager's review.

DECISION

The making of the previous decision involved the making of an error on a point of law. The appeal to the Upper Tribunal is allowed. The decision of First-tier Tribunal Judge Clemes is set aside and remade as follows:

The appeal is DISMISSED

Signed

Dated

Deputy Upper Tribunal Judge Manuell

TO THE RESPONDENT:
FEE AWARD

The appeal was dismissed and so there can be no fee award

Signed

Dated

Deputy Upper Tribunal Judge Manuell