Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: OA/16275/2014**

THE IMMIGRATION ACTS

Heard at North Shields	**Decision & Reasons Promulgated**
On 28 January 2016	**On 4 February 2016**
Prepared on 28 January 2016	

Before

DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES

Between

M. K.
(ANONYMITY DIRECTION MADE)

Appellant

And

ENTRY CLEARANCE OFFICER MANILA

Respondent

Representation:
For the Appellant: The Appellant in person
For the Respondent: Mr Diwnycz, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Japan. She was granted ILR on 10 April 2000, but returned to Japan to live in 2005. She applied for entry clearance as a returning resident on 20 November 2014, and her application was refused on 4 December 2014 by reference to the requirements of paragraphs 18 and 19 of the Immigration Rules.
2. The Appellant duly appealed against that immigration decision and her appeal was heard on the papers by Judge CM Phillips and allowed in a decision promulgated on 16 July 2015.

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3. The Respondent's application to the First Tier Tribunal for permission to appeal was granted by First Tier Tribunal Judge Ford on 29 October 2015.
4. The Appellant filed no Rule 24 response, and neither party applied to introduce further evidence. Thus the matter comes before me.

The grant of entry clearance

5. The Appellant was able to appear at the hearing because she was granted entry clearance by the Respondent on 8 July 2015. This date fell between the date of the hearing of the appeal and the date of promulgation of the Judge's decision. The Appellant produced her passport to me, which is endorsed with the visa, and which records that she has leave until 22 March 2018 as a spouse.
6. Mr Diwnycz accepted that neither the ECO, nor subsequently the ECM, had made any reference to the relevant IDIs, and that their decisions contained no analysis of whether the Appellant would meet the substantive requirements of either paragraph 281, or Appendix FM. He accepted that the ECO's decision was not made in accordance with the law as a result.
7. After a brief discussion of whether the grounds actually disclosed a material error of law in the Judge's decision, or amounted merely to a disagreement with it, Mr Diwnycz accepted that no error of law was disclosed by the decision that required it to be set aside and remade. He accepted in consequence that the Appellant's application as a returning resident should have been granted so that she should have been granted ILR. No doubt the position will now be rectified, and the appropriate grant of ILR will now be recorded in the Appellant's passport, superceding the limited grant of leave that has been made.
8. It follows that, despite the terms in which the grant of permission to appeal was framed, this is a challenge that must be dismissed. I reject the Respondent's argument that the Judge made any material error of law that requires his decision to be set aside and remade.

DECISION

The Determination of the First Tier Tribunal which was promulgated on 16 July 2015 did not involve the making of an error of law in the decision to allow the appeal that requires that decision to be set aside and remade. The decision to allow the appeal is accordingly confirmed.

Direction regarding anonymity – Rule 14 Tribunal Procedure (Upper

Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

Deputy Upper Tribunal Judge JM Holmes Dated 28 January 2016