



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/24767/2015

THE IMMIGRATION ACTS

Heard at Field House  
On 27 July 2016

Decision & Reasons Promulgated  
On 6 June 2018

Before

THE HONOURABLE MRS JUSTICE MAY DBE  
UPPER TRIBUNAL JUDGE ALLEN

Between

MRS HELEN ANAGAP  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms V Sharkey (Legal Representative)  
For the Respondent: Mr Avery, Home Office Presenting Officer

DECISION AND REASONS

*This is a repromulgation of the decision to enable correction of a slip/clerical error in the decision previously promulgated, in accordance with Rule 42 of the Tribunal Procedure (Upper Tribunal) Rules 2009.*

1. This is an appeal from the decision of First-tier Tribunal Judge Mackenzie at Harmondsworth dismissing the appellant's appeal from the decision of the Secretary of State for the Home Department refusing her indefinite leave to remain as the spouse of a settled person.
2. Ms Anagap was married in the Philippines on 27 February 2012 to Mr Clifford White. Mr White is a British citizen and is also her sponsor. On 23 May 2012 Mrs White

arrived in the UK with entry clearance valid until 23 August 2014 and has since then lived with her husband in Bourne End, Buckinghamshire.

3. On 30 July 2014 she applied for indefinite leave to remain. That application was refused on 23 June 2015 as the Secretary of State was not satisfied that Mrs White met the requirements of paragraph 287 of the Immigration Rules, in particular a requirement that she and her husband would be able to maintain themselves adequately without recourse to public funds.
4. Judge Mackenzie was asked to, and did, determine the appeal on the papers. She found that Mrs White had not satisfied her that she met the requirements of paragraph 287 of the Rules and for that reason the learned Judge upheld the Secretary of State's decision on paragraph 287.
5. In rejecting the claim on Article 8 grounds the learned judge referred to Mrs White not having lived in the UK for long enough to have an established private life and held that she did not come within paragraph 276ADE(vi) as someone who would face very significant obstacles in integrating back into life in the Philippines. She considered Mrs White's family life outside the Rules, referring in that context to Mr White's health issues and remarking "It is not claimed however that the sponsor's health would prevent him travelling to the Philippines or indeed any other country to be with the appellant" (at para.16 of her judgment).
6. The grounds of appeal against that decision are as follows. Firstly, and this is the key issue, it is said that Judge Mackenzie failed to make any assessment under paragraph FM with reference to EX.1. There was evidence before her that Mr White suffered physical and mental health problems entitling him to benefits here which he requires for daily living and which he would lose were he to relocate to the Philippines. The judge is said to have placed undue weight on his having made trips to the Philippines: visiting there, it is said, being a very different matter to moving there permanently.
7. There was a subsidiary point argued before us to the effect that the Article 8 consideration was cursory and that insufficient notice had been taken of the fact that Mrs White had established a family life with her husband before coming to the UK: Ms Sharkey submitted that although in the UK Mrs White's leave to remain was limited her family ties with Mr White had already been established, a fact which the judge, she said, wrongly left out of account.
8. Ms Sharkey argued that the error started with a statement in the Secretary of State's letter giving reasons for refusal as follows:

"You have not provided any evidence or raised any issues that would lead us to believe you have a child or partner in the United Kingdom consequently no consideration has been given to your rights under Appendix FM of the Immigration Rules."
9. The omission to consider Appendix FM or EX.1 was continued, Ms Sharkey submitted, in the First-tier Tribunal decision.
10. Mr Avery who appears for the Secretary of State today argued that although the First-tier Tribunal Judge may not have mentioned FM and EX.1 specifically the conclusion

that she reached at para. 16 of her judgment (see above) showed that this was not a material error in that there had been a finding relating to the ability of Mr White to travel to the Philippines to be with the appellant. Insofar as it may be said that the evidence underpinning such a finding was very slight Mr Avery pointed out that the responsibility to produce evidence was on the claimants and that the judge had done no more than reach a conclusion on the evidence that had been brought.

11. In our view the First-tier Tribunal Judge should have considered Appendix FM and EX.1. The omission is understandable, in view of the erroneous paragraph in the Secretary of State's reasons, but in circumstances where there was evidence that Mr White is in receipt of employment support allowance his health was an issue that had been raised. Employment support allowance itself suggests an inability to work through illness or disability of some kind. There was also the information from Mrs White set out in her form and in a following letter about the nature of her husband's difficulties.
12. In our view the absence of any consideration of Appendix FM or EX.1 amounts to a material error of law. The decision must accordingly be quashed. The case will be sent back to the First-tier Tribunal specifically to make an Appendix FM decision with reference to EX.1 and EX.2. That ought to be an oral hearing giving Mrs White the ability to present evidence on EX.1 and 2 in relation to the insurmountable obstacles test. The case should be heard by a different judge at Hatton Cross or Harmondsworth.

**Notice of Decision**

The appeal is allowed to the extent set out in paragraph 12 above.

No anonymity direction is made.

Signed

Date

Mrs Justice May

**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a fee award of any fee which has been paid or may be payable.

Signed

Date

Mrs Justice May