Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/23449/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
on 13 September 2019	**on 18 September 2019**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

JULIAN DELA CRUZ
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Shah of 76 Law Associates.
For the Respondent: Mr S Walker Senior Home Office Presenting Officer.

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-Tier Tribunal Judge Onoufriou promulgated on 25 June 2019 in which the Judge dismissed the appellant's appeal on human rights grounds.

Background

2. The appellant is a citizen of the Philippines born on 18 October 1956 who applied for leave to remain in the United Kingdom on the basis of his family life with his partner pursuant to Appendix FM and paragraph 276ADE(1) of the Immigration Rules. The appellant asserts his removal from the United Kingdom will breach his human rights pursuant to ECHR.
3. The Judge noted the appellant claimed to have entered the UK on 4 October 2002 using an Italian passport which was a false document. The applicant claimed to have made an application in or about 2010 in order to regularise his status under the Overstayer Concession but claims to be unaware of the outcome. The appellant was encountered by Immigration Authorities on 8 October 2017 during a random visit to the family home following which he was served with a Notice of Removal dated 8 October 2017. A fresh application was filed on 4 December 2017 based on his long-term relationship with his wife.
4. The Judge sets out findings of fact from [32] in which the Judge notes there was no dispute that the appellant is in a genuine and subsisting relationship with his partner, at least since he arrived in the UK in 2002, and probably since before then from their time together in Saudi Arabia.
5. The Judge accepts the appellant had not completed his application form correctly, as contended by the respondent, who found the applicant unable to meet the suitability requirements for leave to remain pursuant S – LTR.2.2.(b) and 4.2 of Appendix FM as a result of a failure to disclose material facts in relation to the application.
6. The Judge finds the appellant did not meet the eligibility immigration status requirements at E-LTRP.2.1. to 2.2 as he does not currently have leave to remain in the United Kingdom [33].
7. Having concluded the appellant was unable to satisfy the requirements of the Immigration Rules the Judge considers article 8 ECHR between [35 – 33] in relation to which the following findings are made:

> "35. It therefore remains to consider the appellant's application in respect of family life under Article 8 of the ECHR, outside the Immigration Rules. I do not consider that there are exceptional circumstances in this case. Both the appellant and his partner are Filipinos. Neither of their medical conditions are such that they would not be able to obtain satisfactory medical treatment in the Philippines and this is accepted by the appellant. Ms Laguerta was fully aware of the appellant's immigration status when she resumed their relationship when he came to the United Kingdom and was apparently complicit with his intention to remain here illegally. She, herself, has visited the Philippines according to the appellant every year since 2002 for some two months to visit her family. Therefore, she would not be returning to an alien culture.
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> 36. The appellant has admitted that if he returned to the Philippines, although he might not be able to stay with either his family or Ms Laguerta's family with Ms Laguerta, his sons would support him financially to obtain accommodation and provide for his

> maintenance. Ms Laguerta also receives a pension which she would clearly continue to receive in the Philippines. Both she and the appellant, despite their respective ages, continue to do part-time work, which they will be able to continue in the Philippines. They are obviously both familiar with the language and the culture and in respect of the appellant, this is despite the fact that he apparently left the Philippines aged 29. Tagalog still remains his main language as he needed to give his evidence through a Tagalog interpreter.
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> 37. I therefore find there are no exceptional circumstances which would render the interference with his family life with Ms Laguerta disproportionate to the need to maintain effective immigration control. I also do not consider that there are either insurmountable obstacles to his return with Ms Laguerta in the event that EX.1 of Appendix FM applied and there are no significant obstacles regarding the interference with his private life either under paragraph 276ADE(1)(vi) or under Article 8 outside the Rules."

8. The appellant sought permission to appeal asserting the Judge erred in failing to grant the adjournment requested by the appellant who had been told by his previous representatives one day prior to the hearing of the need for him to find a new representative as they were no longer willing to attend court. The grounds assert the appellant was struggling with English but that the Judge erred by not appointing an interpreter but in deciding to complete the hearing which the grounds claim is contrary to the principles of fairness.
9. Permission to appeal was granted by another judge of the First-Tier Tribunal who found it arguable that there may have been an error of law as identified in the application on the basis of a procedural irregularity.

Error of law

10. Two issues arise in relation to this challenge. The first is that relating to the appellant's language abilities specifically challenged in the grounds seeking permission to appeal, the second relating to the fairness of the Judge, when it transpired the appellant was in the building but had not been called, hearing and relying upon the submissions from the Presenting Officer of which the appellant had no notice as he did not hear the same and/or have the chance to respond to them. There is no evidence in the decision that the Judge acquainted the appellant with the specific nature of those submissions or if any effort was made to recall the Presenting Officer to enable him or her to take part in the proceedings.
11. In a Rule 24 response dated 11 September 2019 the Respondent writes:

> "2. The respondent does not oppose the appellant's appeal on procedural grounds and submits that the appeal should be remitted to the First-Tier Tribunal to be determined afresh.
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> 3. The Respondent does not require an oral hearing."

12. In light of it being accepted the Judge erred in law in a manner material to the decision to dismiss the appeal the decision under challenge is set aside. In light

of the procedural irregularities noted above, sufficient to amount to a material error of law, there shall be no preserved findings.

13. Having considered the Presidential Guidance regarding remittal of appeals to the First-Tier Tribunal and in light of the fact the appellant has not had the opportunity of a fair hearing before the First-Tier Tribunal and in light of the fact findings of fact will be required on all relevant aspects of this claim by the Tribunal, it is appropriate in the circumstances for the appeal to be remitted to Hatton Cross to be heard by a judge other than Judge Onoufriou nominated by the Resident Judge of that hearing Centre.

Decision

14. **The First-Tier Tribunal Judge materially erred in law. I set aside the decision of the original Judge. I remit the decision to Hatton Cross.**

Anonymity.

15. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated the 13 September 2019