Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: VA/16422/2013**

VA/16425/2013

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 12 September 2014	**On 15 September 2014**

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

(1) MISS RORELYE SESE
(2) MISS RENALY SESE

(ANONYMITY DIRECTION NOT MADE)

Respondents

Representation:
For the Appellant: Mr E Tufan, Home Office Presenting Officer
For the Respondents: Ms Celia Tabita (sponsor)

DETERMINATION AND REASONS

Introduction

1. The Appellant (the Secretary of State) appealed with permission granted by First-tier Tribunal Judge Shimmin on 30 July 2014 against the determination of First-tier Tribunal Judge Lingam who had allowed the Respondents' linked appeals against the refusal of their application for entry clearance as visitors in a determination promulgated on 29 May 2014. The appeals were determined on the papers as the Respondents had requested.

2. The Respondents are nationals of the Philippines, sisters born respectively on 19 December 1998 and 5 August 1996. Their mother Mrs Froly Sese ("mother") had also appealed, successfully, against the Appellant's decision. The Appellant did not seek to appeal that element of the determination as it is accepted that the relationship between the respondents' mother and the sponsor falls within the terms of The Immigration Appeals (Family Visitor) Regulations 2012 (SI. 1532/2012).

3. The Respondents' entry clearance had been refused because their mother had been refused entry clearance so that as minors they could not show that suitable arrangements had been made for their care and reception in the United Kingdom. The Secretary of State's decision had appended to it the following:"Your right of appeal is limited to the grounds referred to in section 84(1)(c) of the Nationality, Immigration and Asylum Act 2002", i.e., under the Equality Act 2010 and the Human Rights Act 1998. This was unfortunately not noticed by the judge.

4. Permission to appeal to the Upper Tribunal as sought by the Appellant was granted because the judge had allowed the two appeals under the Immigration Rules, when there had been no jurisdiction to do so. The Respondents were not within the required degree of relationship to their sponsor.

5. Directions were issued by the Upper Tribunal in standard form.

Submissions – error of law

6. Mr Tufan for the Appellant relied on the grounds and the grant of permission to appeal. Mr Tufan filed The Immigration Appeals (Family Visitor) Regulations 2012

(SI.2012/1532) in support of his submission that the First-tier Tribunal had no jurisdiction over the Immigration Rules appeals.

7. As the sponsor was not formally represented the tribunal explained the procedure to her in accordance with standard protocol. It was inappropriate to request submissions from the sponsor, who had not appeared before the judge at first instance and who was not legally qualified.

The error of law finding

8. The tribunal announced its decision at the hearing and briefly explained to the sponsor that the Secretary of State's appeal would have to be allowed and reserved its reasons which now follow. The determination was prepared by an experienced judge but the tribunal was bound to find that the judge had inadvertently fallen into material error of law as to her jurisdiction, as she had failed to recognise the limited right of appeal afforded to the Respondents.

9. The Respondents had not appealed the judge's omission to deal with the only matters within the tribunal's jurisdiction, namely human rights and the Equality Act 2010, i.e., race discrimination. There probably would have been no point in pursuing such an appeal, as it was open to the Respondents to submit fresh entry clearance applications. As their mother's appeal was allowed by the judge and not challenged on appeal, the main basis of the Entry Clearance Officer's refusal of her daughters' applications has fallen away. Fresh applications thus have a strong prospect of success.

10. The tribunal finds that the determination contains material errors of law, such that it must be set aside and remade. The appeal to the Upper Tribunal is allowed.

The fresh decision

11. As noted above, the Respondents did not raise or pursue issues of race discrimination or human rights, nor did they seek to cross-appeal the tribunal's determination. The

First-Tier Tribunal's decision can only be remade in one way, that is, that the appeals against the Entry Clearance Officer's decisions must be dismissed. It of course remains open to the Respondents to submit fresh entry clearance applications.

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 Lingam is set aside and remade as follows:

The appeals of the original Appellants are DISMISSED

Signed **Dated**

Deputy Upper Tribunal Judge Manuell

TO THE RESPONDENT
FEE AWARD

The appeals were dismissed and so there can be no fee award

Signed **Dated**

Deputy Upper Tribunal Judge Manuell