



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000272
FtT No: HU/00908/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 22 December 2023

Before
Mr. C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

MARIA MILAGROS MOLINA REYES
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: In Person

For the Respondent: Mr C Howells, Senior Presenting Officer

Heard at Cardiff Civil Justice Centre on 14 December 2023

DECISION AND REASONS

Introduction

1. The appellant appeals with permission a decision of the First-tier Tribunal (Judge of the First-tier Tribunal Rhys-Davies) refusing her human rights (article 8) appeal. The decision was sent to the parties on 13 December 2022.

Brief Facts

2. The appellant is a national of the Philippines and aged 70. She secured entry clearance as a visitor on 25 October 2019 and entered this country on 31 October 2019. She enjoyed leave to enter until 25 April 2020 and then overstayed. An application for leave to remain as an adult dependent relative was made on 21 July 2020. By his decision dated 25 November 2020, the respondent refused the application under and outside the Immigration Rules.
3. The appeal was heard by the First-tier Tribunal as a CVP hearing on 1 November 2022. The appellant was unrepresented. She was assisted by her daughter and son-in-law, Mr and Mrs Heathfield.

Discussion

4. By his rule 24 response, the respondent confirmed:
 - '2. The respondent accepts that the Judge erred in law by attaching weight to the appellant's use of the NHS when considering factors which were to be weighed in the public interest. Moreover, the respondent accepts that the Judge should have brought to the unrepresented appellant's attention the insufficiencies in the medical and financial evidence she produced and provided her with an opportunity to rectify that.
 3. The respondent does not oppose the appellant's application for permission to appeal and invites the Tribunal to determine the appeal with a fresh oral (continuance) hearing ...'
5. Mr Howells confirmed to us that this remained the respondent's position.

6. Observing paragraph (v) of the headnote to *AM (fair hearing) Sudan* [2015] UKUT 656 (IAC), we conclude that the approach identified by the respondent is appropriate in this matter.
7. The decision of Judge Rhys-Davies is properly to be set aside in its entirety on the ground of procedural unfairness. The appeal is remitted to the First-tier Tribunal.
8. Mr and Mrs Heathfield indicated to us their intention to file and serve further evidence on the appellant's behalf. This step should be undertaken before the next hearing.

Notice of Decision

9. The decision of the First-tier Tribunal sent to the parties on 13 December 2022 involved the making of an error on a point of law and is aside in its entirety.
10. This matter is remitted to the First-tier Tribunal sitting at Newport, to be heard by any judge other than Judge Rhys-Davies.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

15 December 2023