



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: IA/40875/2013  
IA/43835/2013  
IA/43831/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 June 2014**

**Determination Promulgated  
On 10 July 2014**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**MRS DIGNA PINILI RACUYA  
MR GERALD RACUYA  
MISS DIANA KATE PINILI RACUYA**

**[NO ANONYMITY ORDER MADE]**

**Appellants**

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellants: Mr M Bhuiyan, a Legal Representative with Universal Solicitors  
For the Respondent: Mr S Kandola, Home Office Presenting Officer Presenting Officer

## DETERMINATION AND REASONS

1. The appellants are a family of citizens of the Philippines, a husband and wife and their five year old daughter. The infant son of the principal appellant ('the wife') is also a citizen of the Philippines. Both children were born here.
2. They appeal with permission against the decision of First-tier Tribunal Judge Walker, dismissing their appeal against the respondent's decision to refuse to grant them leave to remain in the United Kingdom on Article 8 ECHR grounds, within or outwith the Immigration Rules, and to remove them by way of directions under s. 47 of the Immigration Asylum and Nationality Act 2006.
3. The wife arrived in the United Kingdom in November 2008 as a student, with valid leave until 18 February 2010. She was then pregnant by the second appellant ('the husband'). Their daughter was born on 26 March 2009, and on 16 February 2011, the husband arrived in the United Kingdom as his wife's dependant partner. Both were granted further leave to remain until 15 July 2013, the wife as a student and the husband as her dependant. In 2012 the wife became pregnant again and on 19 May 2013, she gave birth to their son. Their daughter attends school and has some friends there but is still only five years old.
4. On 4 July 2013, the family applied for leave to remain outside the Immigration Rules on Article 8 grounds: their son was then about six weeks old. The family are living with the wife's mother who is a British citizen; her aunt and other relatives and are settled in the United Kingdom. The respondent refused and the appellants appealed.

### **First-tier Tribunal determination**

5. At the First-tier Tribunal hearing, the appellants accepted that they could not bring themselves within the Rules, with particular reference to Appendix FM and paragraph 276ADE. The First-tier Tribunal dismissed the appeals, holding that the adult appellants' accounts were self-serving and lacking in credibility as to essential facts relevant to the Article 8 assessment. At paragraphs [30-[33], the First-tier Tribunal considered Article 8 outside the Rules:

"30. It is quite clear that family life exists here for the appellants. They are a family unit comprising of mother, father and two young children. I do not accept that the appellant's mother enjoys Article 8 family life with the appellants. Whilst they are currently living together, what will happen in the near future and when the appellant's mother loses her accommodation connected with her employment is not known. Even if their intention is to live together as a large family unit I find it has not been shown that there is a relationship and dependency with the appellant's mother and which goes beyond normal emotional ties. I do not accept that the appellant's mother is supporting the appellants financially. The evidence today points towards both the appellant and her husband working and earning at some point in time.

31. If the appellants return to the Philippines then they will return as a family unit and so their established family life will not be interfered with. As far as the best interests of the two children are concerned it is quite clear and obvious that this is for them to remain with their parents and each other. They are not British citizens so have no rights to remain. Their best interests are to stay with their parents and each other wherever they may be. I have taken into account Section 55 of the Borders, Citizenship and Immigration Act 2009 as well as the case law that has been referred to by Mr Hasan and also the solicitor's application letter of 4<sup>th</sup> July 2013.
  32. I do not accept that the family will be returning to difficulties or severe hardship in the Philippines. The evidence today shows that they have extended family there, a family home, the possibility of financial support from the UK as well as job prospects in the Philippines.
  33. I accept that the appellants will have established private lives in their time in the UK but this has been established with the full knowledge that their leave to remain has always been temporary and at some stage they will be going back to the Philippines. The appellant was a student and she has accepted in evidence today that she knew that once her studies had finished she would be returning to the Philippines. She has failed to explain how the circumstances have changed and so that she and her family now need to stay in the UK."
6. The First-tier Tribunal found that the interference with the appellants' family life was of insufficient gravity to engage Article 8(1) and that, having regard to Article 8(2), the respondent's decision was in accordance with the law and proportionate.

### **Permission to appeal**

7. When granting permission, First-tier Tribunal Judge White considered it arguable that the First-tier Tribunal had given insufficient weight to the best interests of the child appellants, who had been born and raised in the United Kingdom. He applied the guidance given by Sales J in *Nagre, R (on the application of) v Secretary of State for the Home Department* [2013] EWHC 720 (Admin) and by the Upper Tribunal in *Gulshan (Article 8 - new Rules - correct approach)* [2013] UKUT 640 (IAC). There were no exceptional or compelling circumstances requiring the exercise of the respondent's discretion under Article 8 ECHR outside the Rules.

### **Respondent's rule 24 Reply**

8. The respondent in her Reply argued that the First-tier Tribunal Judge had directed himself appropriately; that the best interests of the children had been considered at paragraphs 31-33 of the determination; that one of the children was only just 5 years old and could be expected to adapt to the Philippines by reason of her relative youth; and that the First-tier Tribunal Judge's approach was consistent with *Nagre* and *Gulshan*.

## The Upper Tribunal hearing

9. I heard oral submissions only: there were no skeleton arguments. For the respondent, Mr Kandola relied on the respondent's letter of refusal and rule 24 Reply.
10. For the appellants, Mr Bhuiyan accepted that the grounds of appeal did not challenge the findings of fact by the First-tier Tribunal. He asserted that the fact that the family lived together had been given insufficient weight and that there was no evidence that the family in the Philippines would be prepared to accommodate or support these appellants if they were to be returned there. Mr Bhuiyan sought to distinguish the decisions in *Nagre, Gulshan* and *Azimi-Moayed* on their facts because of the better immigration history in this case. These appellants had not remained unlawfully in the United Kingdom and the application was made while they still have extant leave.

## Azimi-Moayed guidance

11. The guidance given by the Upper Tribunal in *Azimi-Moayed and Others (decisions affecting children; onward appeals)* [2013] UKUT 197(IAC) is relevant and is set out in the judicial headnote:

### *"Decisions affecting children*

*(1) The case law of the Upper Tribunal has identified the following principles to assist in the determination of appeals where children are affected by the appealed decisions:*

- i) As a starting point it is in the best interests of children to be with both their parents and if both parents are being removed from the United Kingdom then the starting point suggests that so should dependent children who form part of their household unless there are reasons to the contrary.*
- ii) It is generally in the interests of children to have both stability and continuity of social and educational provision and the benefit of growing up in the cultural norms of the society to which they belong.*
- iii) Lengthy residence in a country other than the state of origin can lead to development of social cultural and educational ties that it would be inappropriate to disrupt, in the absence of compelling reason to the contrary. What amounts to lengthy residence is not clear cut but past and present policies have identified seven years as a relevant period.*
- iv) Apart from the terms of published policies and rules, the Tribunal notes that seven years from age four is likely to be more significant to a child than the first seven years of life. Very young children are focussed on their parents rather than their peers and are adaptable.*
- v) Short periods of residence, particularly ones without leave or the reasonable expectation of leave to enter or remain, while claims are promptly considered, are*

*unlikely to give rise to private life deserving of respect in the absence of exceptional factors. In any event, protection of the economic well-being of society amply justifies removal in such cases.*

### **Onward appeals**

*(2) Duties to have regard as a primary consideration to the best interests of a child are so well established that a judge should take the point for him or herself as an obvious point to be considered, where the issue arises on the evidence, irrespective of whether the appellants or the advocates have done so.*

*(3) Although in some cases this may require a judge to explore whether the duty requires further information to be obtained or inquiry to be made, the judge primarily acts on the evidence in the case. Where that evidence gives no hint of a suggestion that the welfare of the child is threatened by the immigration decision in question, or that the child's best interests are undermined thereby, there is no basis for any further judicial exploration or reasoned decision on the matter. ..."*

### **Discussion**

12. I accept that this family has not overstayed and that the Article 8 application was made when they still had extant leave. However, the children are extremely young: one of them is barely 1 year old and the other only a little over 5. They are of an age where the Tribunal was entitled to find that they could be expected to adapt to living with their parents in their country of nationality.
13. Contrary to Mr Bhuiyan's submissions, the First-tier Tribunal Judge had evidence before him on which he was entitled to find that the appellants had family and property in the Philippines and there is no challenge in the grounds of appeal to those findings of fact. The finding by the First-tier Tribunal that the links between these appellants and their British grandmother, whilst they may amount to private life, do not amount to family life stands unchallenged in the grounds of appeal.
14. The wife was aware throughout that at the end of her studies she and her little family would have to return and begin living in the Philippines again and the First-tier Tribunal did not even arguably err in law in the detailed and careful reasoning by which it upheld the respondent's decision that the time had now come when she should be removed with her family to begin her life again in the Philippines. There is no want of reasoning in the First-tier Tribunal in relation to Article 8 outside the rules or section 55: there was very little evidence before the Judge in relation to the children, save that they exist and one of them has started primary school and has friends. The adult appellants have transferable skills and are young and healthy, and have accommodation and family support in the Philippines.
15. There is no material error of law in the First-tier Tribunal determination and I dismiss these appeals.

**Conclusions**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I do not set aside the decision.

Signed

Date

Upper Tribunal Judge Gleeson