



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

Appeal Number: HU116402016

THE IMMIGRATION ACTS

Heard at Newport (Columbus House)

**Decision & Reasons
Promulgated
On 12 June 2017**

On 31 May 2017

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

QUIRICO S MAJADUCON JR

Respondent

Representation:

For the Appellant: David Mills, Home Office Presenting Officer

For the Respondent: Not represented

DECISION AND REASONS

1. The Secretary of State appeals against a decision of the First-tier Tribunal (Judge D Taylor) allowing the respondent's appeal under Art 8 of the ECHR.
2. The respondent is a citizen of the Philippines who was born on 14 February 1973. On 15 September 2007, the respondent married a British national, Marie Grace Majaducon in the Philippines. They have a residential house in the Philippines. The respondent and his wife have two children who were born on 16 September 2008 and 8 November 2011 in the Philippines. The respondent's children lived with him in the Philippines until he came

to the UK on 25 September 2015. It appears that the respondent's wife had returned to the UK some time earlier in 2013.

3. The respondent entered the UK on a visit visa valid until 25 March 2016. On 16 January 2016, the respondent applied for leave to remain under the Rules and Art 8 of the ECHR. On 15 April 2016, the Secretary of State refused the respondent's application for leave to remain.
4. The respondent appealed to the First-tier Tribunal. In his determination, Judge Taylor concluded that the respondent could not succeed under Appendix FM of the Rules (see para 24). In addition, he concluded that the respondent could not establish a claim under para 276ADE (see para 25). At paras 26-42, the judge considered the respondent's claim outside the Rules under Art 8 taking into account the children's best interests and the factors set out in s.117B of the Nationality, Immigration and Asylum Act 2002. At para 41, the judge accepted that the decision involved a "significant interference with the rights to family life of those affected" but went on to find that the "interference is clearly not disproportionate". The judge's determination thereafter concludes with the following:

"Notice of Decision

The appeal is dismissed under the immigration rules

The appeal is allowed on human rights grounds

No anonymity direction is made.

No fee award is made."

5. The Secretary of State sought permission to appeal on the basis that the judge had clearly intended to dismiss the appellant's appeal on human rights grounds, namely under Art 8 as was clear from his findings in relation to the relevant Rules and that any interference with family life was "clearly not disproportionate".
6. On 27 March 2017, the First-tier Tribunal (Judge Dineen) granted the Secretary of State permission to appeal on that ground.
7. At the hearing before me, the respondent was not represented and I explained to him the basis of the Secretary of State's appeal.
8. Mr Mills, who represented the Secretary of State relied on the grounds and submitted that prior to the decision in Katsonga ("Slip Rule"; FtT's general powers) [2016] UKUT 228 (IAC) the judge's error would have been corrected under the 'slip' rule but that avenue was now not open as a result of Katsonga. Mr Mills invited me to find there was an error of law and remake the decision, in accordance with all the judge's factual findings, dismissing the appeal on human rights grounds.
9. There has been no challenge to any of the judge's adverse findings in his determination. Those findings clearly demonstrate that the judge was not

satisfied that the respondent met the requirements of any of the relevant Rules and was satisfied that any interference with his family life was “not disproportionate”. The judge plainly intended to dismiss the respondent’s appeal not only under the Immigration Rules but also under Art 8. For reasons that are not clear, he wrongly (perhaps inadvertently) stated the outcome of the appeal on human rights grounds in a way plainly inconsistent with his factual findings.

10. Consequently, I am satisfied that the judge erred in law in stating that the respondent’s appeal was allowed on human rights grounds. I set aside the judge’s decision.
11. I remake the decision dismissing the appeal under the Immigration Rules and on human rights grounds.

Signed

A Grubb
Judge of the Upper Tribunal

Dated 9 June 2017

TO THE RESPONDENT
FEE AWARD

As the appeal is dismissed, no fee award is made.

Signed

A Grubb
Judge of the Upper Tribunal

Dated 9 June 2017