



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/07410/2016**

Appeal Numbers:

THE IMMIGRATION ACTS

**Heard at Field House
On 17 January 2018**

**Decision and Reasons
Promulgated
On 09 February 2018**

Before

Deputy Upper Tribunal Judge MANUELL

Between

**Mr JOWARD VILLAMER
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Krushner, Counsel
(Direct Access)

For the Respondent: Mr D Clarke, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant appealed with permission granted by Upper Tribunal Judge Hanson on 16 October 2017 against the determination of First-tier Tribunal Judge R Hussain who had dismissed the appeal of the Appellant seeking leave to remain as a partner and

parent on Article 8 ECHR grounds. The decision and reasons was promulgated on 3 March 2017.

2. The Appellant is a national of the Philippines, born on 29 July 1989. He is married to a British Citizen by whom he has two British Citizen children, both born in the United Kingdom. The Appellant last entered the United Kingdom on 26 May 2015, with a six month visit visa, at the expiry of which he became an overstayer. The Appellant admitted that he was unable to meet the Immigration Rules but argued that section 117B(6) of the Nationality and Asylum Act 2002 applied because of his relationship with his children whom it would not be reasonable to expect to leave the United Kingdom. Judge Hussain found that there were no exceptional circumstances. The Immigration Rules were not met and family life could be continued without difficulty in the Philippines. It was reasonable to expect the children to leave the United Kingdom with their parents. He dismissed the appeal on that basis.
3. Permission to appeal was initially refused in the First-tier Tribunal but was granted in the Upper Tribunal because the judge had failed to consider the fact that both of the Appellant's children were British Citizens, particularly in the light of the Secretary of State for the Home Department's policy regarding the removal of British Citizens from the United Kingdom.
4. Standard directions were made by the tribunal. A rule 24 notice in letter form dated 3 November 2017 opposing the appeal was filed by the Respondent.
5. At the hearing Mr Clarke for the Respondent informed the tribunal that the Respondent on reflection had decided that the grant of permission to appeal by Upper Tribunal Judge Hanson had identified a material error of law. The two British Citizen children could not be removed under Home Office policy and the Appellant had a strong relationship with them. It was in effect an exceptional situation. The appeal was thus conceded. The Respondent accepted that the decision and reasons should be set aside and remade, allowing the original appeal. Mr Krushner confirmed that his client was content.

6. In the light of the concession, the tribunal accordingly finds that there was the material error of law identified by Upper Tribunal Judge Hanson. The onwads appeal is allowed. The original decision and reasons is set aside and is remade, allowing the original appeal.

DECISION

The appeal is allowed

The making of the previous decision involved the making of a material error on a point of law. The decision is set aside.

The original appeal is allowed

Signed
2018

Dated: 6 February

Deputy Upper Tribunal Judge Manuell