Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: IA/01297/2016**

IA/01497/2016

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THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5th December 2017,	**On 29th January 2018**

Before

UPPER TRIBUNAL JUDGE CHALKLEY

Between

RUTH RAFAEL GARCIA
DAVID JR BRAGA GARCIA
DAVIDSAN ROSS RAFAEL GARCIA
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr M Murphy, instructed by Juris Law Solicitors
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are nationals of the Philippines and are respectively the mother, who was born on 25th October 1962, her husband, who was born on 3rd August 1960, and their adult son, who was born on 26th October

1996. They appealed against the decisions of the respondents taken on 27th February 2016, refusing their applications for leave to remain in the United Kingdom. Their appeal was heard by First-tier Tribunal Judge Robinson at Hatton Cross on 24th February 2016.

2. The first-named appellant's immigration history is that she entered the United Kingdom with entry clearance granted as a student valid from 14th September 2009 to 28th February 2012. On 16th May 2011 she submitted an application for leave to remain as a Tier 4 Student which was granted until 29th January 2013. On 28th January 2013 she submitted an application for leave to remain as a Tier 4 Student which was again granted until 30th October 2014. On 30th June 2014 leave was curtailed on 1st September, 2014. The appellant made further application for leave to remain on 1st September 2014 but this was refused on 16th December 2014. The second and third appellants entered the United Kingdom together on 8th July 2011 as the first-named appellant's dependants and were granted leave and further leave to remain for the same period as the first-named appellant.

3. The appellants' appeal before the First-tier Tribunal took place on 24th February 2017 before First-tier Tribunal Judge Robinson. The judge dismissed the appellants' appeal based on their Article 8 rights, but in doing so the appellants assert that he made errors of law.

4. There are three grounds are set out in the grounds of appeal and two of these were very helpfully expanded upon by Mr Murphy. Mr Murphy explained that at paragraph 32 the judge directed himself that for family life to exist in Article 8 terms, there must be what he described as being "emotional dependence" between family members but that of course is a clear error of law.

5. The second challenge was in respect of the judge's misdirection by applying the Tribunal decision in *Gulshan (Article 8 – new Rules – correct approach)* [2013] UKUT 640. As the grounds point out, *Gulshan* was wrongly decided and has since been overturned. Mr Murphy told me that they were his two best challenges although there was a third ground, but the third ground was, he believed, otiose and he said he had difficulty in understanding it, but, essentially it complained that the judge had failed to perform a proper proportionality exercise.

6. I enquired of Mr Murphy how the first two errors could be material. He told me that they were material, because the appellants could succeed under the Immigration Rules under paragraph 276ADE. He suggested also that he would like the matter to be remitted to the First-tier, because he wished to obtain and submit reports on the likely effect on the first-named appellant's niece, with whom the appellants live, in the event of the appellants' removal from the United Kingdom. There is, he submitted, a dependency in that the child is looked after by the appellants when the child's mother is working. I pointed out that the purpose of the hearing was to correct errors in the determination and if this could be done without

the matter being referred back to the First-tier Tribunal then that is how I would proceed. He told me he would like an opportunity to call further evidence and applied for an adjournment. His further evidence would be, he said, a report into the likely effect on the appellant's niece were the appellants to be removed from the United Kingdom, given that the appellant's niece has known them all her life and lived with them all her life. I pointed out to Mr Murphy that this was something that was dealt with by the First-tier Tribunal Judge and has not been challenged. Any such evidence could and should have been presented to the First Tier Tribunal Judge. In the circumstances I was not minded to grant his application.

7. Mr Tarlow indicated that the first two errors of law were accepted by the Secretary of State, but they are not material to the outcome of the appeal. At paragraphs 36 to 40 of the determination, while the judge does not use the word 'proportionality', it is clear that there he has undertaken the proportionality exercise and concluded that the appellants' removal would be proportionate.

8. Mr Murphy suggested that the appellants could not be removed from the United Kingdom, because to remove them would cause difficulties for the first-named appellant and her husband in obtaining a job. He has no job in the United Kingdom because he is not permitted to work, but having been out of the Philippines since 2009, he would find it very difficult to obtain a job were he now to return to the Philippines. I reserved my determination,

9. I am satisfied that the determination does contain errors of law as identified in the first two grounds. However, I have concluded that they are not material errors of law. The judge considered the appellants' relationship with the appellant's aunt and with her children.

10. Before the First-tier Tribunal Judge the three appellants each gave oral evidence as did the first-named appellant's sister. She confirmed that the appellants were living with her rent-free. There appears to have been little or no mention at all of the reliance the sister places on the first-named appellant to look after her child. It is certainly not mentioned in any of the appellants' witness statements, but I accept that if the appellants live with the first-named appellant's sister and family members any infant child of the first-named appellant's sister will have become used to the three appellants being part of the family and on their removal from the United Kingdom there will inevitably be distress on the child's part. However, the child's mother, and here I am referring to the first-named appellant's sister, gave evidence to the First-tier Tribunal that she visits the Philippines every two years and so there is presumably no reason why on a visit to the Philippines the first-named appellant's sister and child could not visit the appellants. No evidence was adduced before the First-tier Tribunal to suggest that the appellant's sister's child would in any way be seriously harmed or psychologically damaged by the appellants' removal.

11. So far as paragraph 276ADE(1)(vi) is concerned Mr Murphy suggested that the appellants would find it difficult to obtain jobs in the Philippines, but that is precisely the point he raised before the First-tier Tribunal. The first-named appellant came to the United Kingdom to study and has undertaken those studies. She completed her Level 3 NVQ in Health and Social Care. The second-named appellant has undertaken part-time employment in the United Kingdom with AXA Insurance, with a building contractor and with the NHS. He has completed his construction qualification and undertaken a first aid course. The third-named appellant has been educated at [..... School] where he undertook his GCSEs and did a one year A level course. He is an otherwise fit young man aged 21 and I do not accept that any of them will have any particular difficulty obtaining employment in the Philippines should they wish to and there is no credible objective evidence before me to the contrary.

12. As the First-tier Tribunal Judge pointed out, the appellants have no health difficulties and they are all adults. The third appellant has been educated in the United Kingdom at school and at college level. What the judge said at paragraphs 36 and 37 of his determination has not been challenged. He said this:

> "36. Integration requires some ability by a person to recognise and adapt to his or her surroundings. The appellant and her husband have managed to support themselves in the UK at the time they had leave to remain. They now rely on the generosity of the appellant's sister for their accommodation and day-to-day living needs. They are both capable of work and have a variety of skills. They claimed that they would not be able to find work in the care sector in the Philippines because there is no such provision there. The national culture involves families caring for elderly relatives at home and not in institutions. Although I recognise that this may be the case I do not accept that it would be impossible for the appellants to find employment in the Philippines. All three have qualifications obtained in the UK. They have a variety of skills and are not of an age where they would need financial help from other family members if they relocated. Their present problems exist because they do not have permission to work in the UK. When they last lived in the Philippines they lived in rented accommodation and I find that there would be no undue problems in their moving to rented accommodation again. They are familiar with the culture, language and customs in their country of nationality and it would be open to them to apply for entry clearance if they wished to further their studies in the UK. I conclude that they do not meet the requirement of paragraph 276ADE(1)(vi).
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> 37. I have considered the appellants' private life under paragraph 117B of the 2002 Act. The need to give weight to the public interest considerations in all cases is emphasised in the wording of Section 117B and this includes the overriding principle that effective immigration control is in the public interest. It is also important that immigration decisions should be consistent and logical and based on all available facts."

13. The judge went on to note that the appellants are able to speak English fluently and have undertaken courses at educational institutions here and have been able to obtain meaningful qualifications. They are not financially independent and they live with the appellant's sister on a temporary basis.

14. I have concluded that the appellants cannot meet the requirements of the Immigration Rules. I have carefully examined the documentation submitted to the First-tier Tribunal and have read the determination of the judge to see whether there might be anything about the appellants or their circumstances which would justify my allowing their appeal on the basis of their Article 8 rights outwith the Immigration Rules. Given the very considerable weight that I am required to give to the interests of the wider public in the maintenance of immigration control I have concluded that there is nothing that would justify my allowing their appeal outwith the Immigration Rules.

15. The making of the decision by First-tier Tribunal Judge P J Robinson did involve the making of errors of law but no such error was material to the outcome of the appeal and the determination shall stand.

Notice of Decision

The appeal is dismissed

No anonymity direction is made.

Richard Chalkley
Upper Tribunal Judge Chalkley

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Richard Chalkley
Upper Tribunal Judge Chalkley