



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

Appeal Numbers: HU/12348/2018  
HU/12343/2018  
HU/12346/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 July 2019**

**Decision & Reasons Promulgated  
On 6 August 2019**

**Before**

**UPPER TRIBUNAL JUDGE KEITH**

**Between**

**'MG'  
'JC'  
'VC'**

**(ANONYMITY DIRECTION MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Not represented

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by three appellants, the lead appellant; his wife and their daughter, against the decision (the 'Decision') of First-tier Tribunal Judge Graham (the 'FtT') promulgated on 12 March 2019, by which she dismissed their appeals against the respondent's refusal on 22 May 2018 of their human rights claims on the basis of the lead appellant's participation in what is referred to as a 'TOEIC' deception and the family's

ability to return to the Philippines, the appellants' country of origin. The minor appellant was born in the United Kingdom on 13 April 2014 but remains a national of the Philippines.

2. In essence, the appellant's claims involved the following issues: whether the respondent had discharged the initial burden, using the evidence of a 'look-up' tool of showing that the lead appellant had been involved in a TOEIC fraud; if so, whether the lead appellant had provided a satisfactory explanation; and the obstacles to the family's integration in the Philippines. The core points taken against the appellants by the respondent related to a stated 'invalid' test result and the fact that the couple had only ever had limited leave to remain in the United Kingdom and there were no identified obstacles to the adult dependants returning to the Philippines where they had lived for the majority of their lives including into their adult years and that their young child, not yet of school age, could return with them.

### **The FtT's Decision**

3. It is clear that the FtT made a careful analysis of the evidence running from paragraphs [9] to [33] of the Decision. The FtT was not impressed by various aspects of the evidence, noting the 'invalid' look-up tool result, as well as the fact that the lead appellant's previous lawyer was said to have arranged the TOEIC test and yet had not produced any statement as to the circumstances in which the test had been taken. The FtT adopted a balance sheet approach, in concluding that refusal of leave to remain was proportionate and that any friendships or family relations could be re-established in the Philippines.

### **The Grounds of Appeal and Grant of Permission**

4. The appellants lodged grounds of appeal which are essentially that there was good evidence that the lead appellant could speak English well before the TOEIC test; the look-up result was merely 'questionable' rather than 'invalid' and the FtT had erred in failing to consider the public interest in the appellants' removal beyond the TOEIC issue. First-tier Tribunal Judge Stephen Smith (as he then was) refused permission, noting an 'invalid' result but permission was granted by Upper Tribunal Judge Eshun on 17 June 2019. Judge Eshun concluded that it was arguable that the FtT had erred in finding that the test result was 'invalid' which infected the rest of the FtT's decision. The grant of permission was not limited in its scope.

### **The Hearing Before Me**

5. Whilst the respondent was represented by Mr Tarlow, the appellants did not attend and were not represented. They failed to attend without explanation. I checked the notice of hearing which had gone to the address which the appellants had provided in the applications for permission to appeal. In essence, the appellants had been provided with

the opportunity of a fair hearing today and had provided no explanation whatsoever for their failure to attend. As a consequence, they have been able to participate in a fair hearing and I regarded it as appropriate to proceed.

6. In terms of submissions on the respondent's part, Mr Tarlow had little more to add to the decision of First-tier Tribunal Judge Smith in refusing to permission, and in particular in relation to the 'invalid' look-up tool result.

### **Decision on Error of Law**

7. I concluded that there are no errors of law in the Decision. Contrary to the grounds submitted to Judge Smith, the 'look-up' test result was not 'questionable' but was in fact 'invalid', something that was clearly indicated at page [87] of the appellants' bundle, and which Judge Smith correctly identified. Whilst the look-up test score at page [89] had a wider set of results, not just for the appellant but for others who took the test, some of which were questionable, nevertheless the record for the appellant himself related to it being 'invalid'. The assertion in the grounds to the contrary is unsupported by any evidence and is simply no more than that, namely an assertion.
8. As the FtT was entitled to find, and in particular where the appellant had legal representation at the time that he arranged the TOEIC test and could have obtained evidence from that firm to support his account as well as seeking a copy of the voice recording, that the explanation provided by the appellant was not credible. The finding discloses no error of law.
9. On the wider appeal in terms of article 8 of the European Convention on Human Rights ('ECHR') and proportionality, nothing has been identified as to the obstacles, let alone very significant obstacles to the family returning as a whole to the Philippines, or any error in the FtT's assessment of proportionality. The FtT carried out an appropriate balance sheet assessment of the appellants' circumstances in the case, and once again was unarguably entitled to conclude, notwithstanding that the third appellant is a minor child, that the public interest in refusing leave was significant where the appellants have never had settled leave to remain in the UK.

### **Notice of Decision**

**The decision of the First-tier Tribunal did not involve the making of an error on a point of law. The decision of the First-tier Tribunal stands.**

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed J Keith

Date 31 July 2019

Upper Tribunal Judge Keith

**TO THE RESPONDENT**  
**FEE AWARD**

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

Signed J Keith

Date 31 July 2019

Upper Tribunal Judge Keith