Upper Tribunal

(Immigration and Asylum Chamber) Appeal Number: HU/24785/2018(P)

HU/24786/2018(P)

THE IMMIGRATION ACTS

Decided Under Rule 34 (P)	**Decision & Reasons Promulgated**
On 27 October 2020	**On 02 November 2020**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

JANEIL [G]

JANSEN [G]

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

For the ENTRY CLEARANCE OFFICER

Respondent

DECISION AND REASONS

Background

1. On 2 October 2020 I set aside the decision of First-tier Tribunal Judge M A Khan promulgated on 3 December 2019 dismissing the entry clearance appeals of these two brothers who sought to join their

mother for settlement on sole responsibility grounds. The Tribunal's finding that there were no serious or compelling circumstances which would make their exclusion from the UK undesirable was upheld due to the lack of any challenge to that part of the decision. A copy of my decision is attached as Annex A. It provides full reasons for why I set aside Judge Khan's decision.

2. In setting aside, the decision on sole responsibility and article 8, I expressed the view that I was minded to proceed to re-make the decision on the papers as the evidence was largely unchallenged and it was sufficient to enable a fresh decision to be made. I also indicated that I was minded to allow the joint appeals. As the parties would not, however, have had any opportunity to make any submissions on the merits of the appeals had I proceeded immediately to make such a decision, I offered them 14 days to put forward any objections they might have to the proposed course of action and to make any submissions on the appeals.

3. My decision was promulgated on 8 October 2020 and the 14-day period expired on 22 October 2020. A response from the appellants' representatives agreeing with my provisional view was received on 16 October 2020. As of today, I am not aware of any response having been received from the respondent. Having satisfied myself that the determination and included directions had been properly served on the respondent on 8 October 2020, I now proceed to re-make the decision.

Findings and reasons

4. I have considered all the evidence before me. I apply the civil standard of proof. The burden is on the appellants to make out their case as at the present date.

5. I am satisfied that the evidence shows that the sponsor meets the TD Yemen test; that is to say, that she has had "*continuing control and direction over the child's upbringing*" and/or has been responsible for the making of "*all the important decisions in the child's life*". It is accepted that the appellants have been living with their maternal grandmother since the sponsor's departure from the Philippines, other than her visit back. However, there has been no challenge to the evidence that it was always the sponsor's intention to send for her children as soon as she was able to do so and that the arrangement, in that sense, was viewed as a temporary measure. Nor has there been any challenge to the evidence in the statements prepared by the sponsor, her mother and the sponsor's husband that the sponsor had always been aware that her mother was ageing and that her ability to provide care would be limited in time due to that fact.

6. The claim that the appellants' father had packed up and left the family home several years ago was made by the sponsor, her mother

and the appellants in their statements. The respondent's criticism of this claim was limited to questioning why the sponsor had not investigated the reasons for his departure. It was not suggested that he had not left and nor was it maintained that the appellants or their grandmother had lied about this in their evidence. I, therefore, find that the appellants have not had any contact with their father since he left them in 2009 and that he has not since played any role in their lives.

7. Ample evidence of correspondence between the appellants and the sponsor has been adduced. The appellants' bundle contains photographs of the appellants and the sponsor, substantial evidence of WhatsApp/social media communication and statements from the appellants testifying to regular contact. The sponsor also testified that she contacted the appellants in some form or other on a daily basis and this is confirmed by her husband in his statement. Further evidence of contact is contained in the December 2018 bundle. None of this evidence has been challenged.

8. There are also letters from the school and college attended by the appellants which confirm that the sponsor is supporting them. The letter from Sorsogon National High School confirms that the sponsor is the main contact person in case of emergency and other matters that may arise and that she regularly monitors her son's progress in school.

9. I have also seen evidence from the appellants' GP confirming that the sponsor is the main contact person for the appellants.

10. It has not been disputed that the appellants are financially supported by the sponsor.

11. I have also seen medical evidence relating to the appellants' grandmother confirming numerous medical problems including osteoarthritis, severe lumbar spondylosis and other degenerative issues which have increased in severity with age. There is also confirmation that she had a total hip replacement. There has been no suggestion from the respondent that this evidence is unreliable.

12. In my view, the evidence shows that despite her absence, the sponsor has maintained regular contact with her children, that she has retained control and direction for them and that she is the one who makes the important decisions in their lives as the various examples given of decision making in her statements show.

13. Whilst the appellants have resided with their grandmother it is settled by case law that due to the geographical separation, there will inevitably be others in the country of origin who *are required to* ‘look after’ the children and who will have some responsibility; 'sole responsibility' cannot, therefore, sensibly be interpreted in an

absolute or literal way. It follows that a parent who has settled in the UK may retain sole responsibility for a child even where the day-to-day care or responsibility for that child is undertaken by a relative abroad. In Emmanuel v SSHD [1972] Imm AR 69, it was held that financial support and the retention of a close interest in, and affection for, the child were important matters. The evidence in the present case that the sponsor financially supported the appellants and that she retained interest in and affection for the appellants is indisputable.

14. I am satisfied, for these reasons, that the requirements of the Immigration Rules have been met with respect to sole responsibility. That is a relevant consideration for the article 8 assessment which I undertake following the five Razgar steps:

> *Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?*
>
> *If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?*
>
> *If so, is such interference in accordance with the law?*
>
> *If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?*
>
> *If so, is such interference proportionate to the legitimate public end sought to be achieved?*

15. Clearly there is family life between the appellants and the sponsor. This has continued throughout the period she has been living in the UK and is evidenced by substantial correspondence between them and by way of their statements. The decision to refuse them permission to join their mother does potentially engage article 8 but such interference is in accordance with the law and has a legitimate public aim. However, I find that it is not a proportionate interference for the following reasons.

16. As a starting point the best interests of the appellants is to live with both or at least one of their parents. This has not been the case since 2009 when their father left them but their mother is now in a position to sponsor their applications for entry clearance and they have met the requirements of the Immigration Rules. In the absence of any countervailing factors put forward, therefore, there does not seem to me to be any legitimate reason to prohibit their entry. The sponsor has lived here for many years and has made a life for herself here with her husband, a British national. Whilst it may have been reasonable to expect her to return to live with her children in the Philippines if she had been single, it would be unreasonable to expect

her to do so as a married woman as this would involve leaving behind her husband. His reasons for not being able to relocate to a country that is alien to him are set out in his witness statement and are unchallenged. I find that it would not be reasonable to expect him to abandon his life here and accompany the appellant to the Philippines.

Decision

17. The decision of the First-tier Tribunal was set aside with the exception of the preserved finding on the 'exclusion undesirable' issue. I now re-make the decision and allow the appeals on article 8 grounds.

Anonymity

18. No order for anonymity has been sought at any stage and I see no reason to make one.

Signed

R. Kekić
Upper Tribunal Judge

Date: 27 October 2020

Annex A

Upper Tribunal

(Immigration and Asylum Chamber) Appeal Number: HU/24785/2018(P)

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THE IMMIGRATION ACTS

Decided under rule 34 (P) **Decision & Reasons Promulgated**

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Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

JANEIL [G]

JANSEN [G]

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

For the ENTRY CLEARANCE OFFICER

Respondent

Representation (by way of written submissions)

For the appellant: AJA Solicitors. No submissions received.

For the respondent: Mr A Tan, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

1. This appeal comes before me following the grant of permission to appeal to the appellants by First-tier Tribunal Judge Fisher on 6 April 2020 against the determination of First-tier Tribunal Judge M A Khan promulgated on 3 December 2019 following a hearing at Harmondsworth on 14 November 2019.

2. The appellants are nationals of the Philippines born respectively on 21 September 2000 and 19 December 2003. They appeal against the decision of the respondent on 9 November 2019 to refuse their applications for entry clearance to join their mother, the sponsor, for settlement.

3. The respondent refused the applications because it was not accepted that the sponsor had sole responsibility for the welfare and upbringing of the appellants. The ECO noted that the appellants had been living with other relatives since the sponsor's departure and that at best the evidence suggested a shared responsibility between the sponsor and other family members. Although it was claimed that the appellants' grandmother was no longer able to care for them due to health conditions, no evidence of ill-health had been adduced. It was considered that the decision caused no further interference with family life than had existed since the sponsor left the Philippines and that it merely maintained the status quo. It was not accepted that there were any serious or compelling circumstances surrounding the application which would make the appellants' exclusion from the UK undesirable. The applications were also considered under article 8 on the basis that the decision could or would result in unjustifiably harsh consequences for the appellants and their family. Their best interests were considered. However, it was found that there was no evidence of any exceptional circumstances and the applications were therefore refused.

4. Judge Khan, in determining the appeals, accepted that the appellants had been financially supported by the sponsor but found that they lived with their grandmother who had continued to care for them over the last ten years despite any health issues, that the evidence of communication between the sponsor and the appellants was irregular and that the sponsor's evidence over the claim that the appellants had been abandoned by their father was vague. He took account of TD Yemen [2006] UKAIT 00049 but found that the sole responsibility rules had not been met. He also found that there was no breach of article 8.

5. The appellants successfully sought permission to appeal. They argued: (i) that the judge had failed to adequately assess sole

responsibility or adequately reason the final conclusions; (ii) that the fact that day to day responsibility was provided by someone else did not mean that the sponsor did not have sole responsibility as per TD Yemen; (iii) that there was no clear finding as to what role, if any, the judge considered the appellants' father played in their lives; (iv) that there were no clear findings of fact on whom it is said had direction and control of the appellants' lives; and (v) that the judge appeared to conflate living in the care of an adult with sole responsibility.

Covid-19 crisis: preliminary matters

6. The matter would ordinarily have then been listed for a hearing but due to the Covid-19 pandemic and need to take precautions against its spread, this could not happen and instead directions were sent to the parties on 9 July 2020. They were asked to present any objections to the matter being dealt with on the papers and to make any further submissions on the error of law issue within certain time limits.

7. The Tribunal has received written submissions from the respondent dated 22 July 2020. No response has been received from the appellants' representatives. I now consider whether it is appropriate to determine the matter on the papers.

8. In doing so I have regard to the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Rules), the judgment of Osborn v The Parole Board [2013] UKSC 61, the Presidential Guidance Note No 1 2020: Arrangements during the Covid-19 pandemic (PGN) and the Senior President's Pilot Practice Direction (PPD). I have regard to the overriding objective which is defined in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as being "*to enable the Upper Tribunal to deal with cases fairly and justly*". To this end I have considered that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues (Rule 2(2) UT rules and PGN:5).

9. I have had regard to the respondent's submissions and to all the evidence before me before deciding how to proceed. I note from the respondent's submissions that she was informed by the appellants' representatives that they intended only to rely on the grounds for permission to appeal and that no other submission would be made. I am satisfied, from that indication and from the fact that the file shows that the directions were properly served on the representatives and on the appellants themselves that they were aware of the opportunity they had to put forward any further submissions. I take the view that a full account of the facts are set out in the papers, that the

arguments for and against the appellants have been clearly set out and that the issues to be decided are uncomplicated. There are no matters arising from the papers which would require clarification and so an oral hearing would not be needed for that purpose. I have regard to the importance of the matter to the appellants and consider that a speedy determination of this matter is in their best interests given the time that has already lapsed since their applications were made. I am satisfied that neither party has raised any objection to the matter being determined on the papers although they have had ample opportunity to do so. I am satisfied that I am able to fairly and justly deal with this matter in that way and now proceed to do so.

Submissions

10. Mr Tan in his submissions for the respondent opposes the appellants' appeals. He submits that the grounds do not challenge the finding of the judge that there were no serious or compelling family or other considerations which made the exclusion of the appellants from the UK undesirable. The sole issue under challenge was that of sole responsibility and it is submitted that the judge correctly directed himself to TD Yemen and the guidance contained therein. It is submitted that the findings at 24-31 of the judge's determination must be read as a whole since they set out the context in which the conclusions were reached. It is submitted that had the judge misdirected himself to sole responsibility being simply a matter of living in the care of a particular adult, given that it was not in dispute that the appellants had been living with their grandmother since the sponsor's departure, that would have been the end of the matter.

11. It is submitted that instead, the judge considered and made findings on further issues such as the fact that the sponsor had left the Philippines in 2008 and had not returned until 2017 and that even then that had not been for the sake of the appellants but for immigration reasons. The judge rejected the assertion that the care of the grandmother provided to the appellants was a temporary measure given that it had been in place for 10 years. He noted that there was limited evidence of contact between the sponsor and the appellants, that it was not continuous and that there were lengthy gaps in communication. The judge considered the letters from educational institutions but noted that there was nothing detailed as to the extent of support provided by the sponsor. Whilst the judge accepted that the sponsor had been financially supporting the appellants, financial support was not determinative of sole responsibility. The judge also considered the medical evidence and found that despite some health issues, the appellants' grandmother had continue to care for them with the assistance of the extended family.

12. It is submitted that the grounds do not argue that the judge failed to consider certain aspects of the evidence but rather focus on a finding

that the sponsor's evidence was vague and unconvincing regarding the abandonment of the appellants by their father. It is submitted that the grounds are misguided in arguing that the judge should have made a finding on whether the father had sole or joint responsibility because the judge was required only to accept or reject the claim of abandonment. It is submitted that it was open to the judge to find that the sponsor had failed to explain why she had made no enquiries as to why the father had left and why he had ceased communication with the appellants.

13. It is submitted that the judge had not conflated the test of sole responsibility as argued in the grounds. He had accepted this as the starting point but beyond the accepted evidence that the grandmother was responsible for the daily care of the appellants, the burden of proof was on the sponsor and the appellants to demonstrate that the sponsor held sole responsibility. It is submitted that the judge was entitled to conclude that the evidence was not indicative of the sponsor having control and direction and making the important decisions in the lives of the appellants. It is submitted that the grounds are a mere disagreement with the conclusions of the judge.

Discussion and conclusions

14. I have considered all the evidence, the determination, the grounds for permission and the respondent's submissions. I would note at this stage that the respondent has failed to fulfil her duty to the Tribunal and the appellants to provide an appeals bundle. The only evidence of the applications and the documents submitted in support has been prepared by the sponsor and is contained in a bundle dated 8 December 2018. That is a separate bundle to that prepared and submitted for the hearing. It will be clear from what I say below that the judge does not have appeared to have considered the documents in the December 2018 bundle.

15. I am satisfied for the reasons given below that the judge's determination is rendered unsustainable due to errors of law. In that context, I am satisfied that the appellants have not been prejudiced by the absence of submissions by their representatives to the Tribunal's directions although it would have been courteous for a reply to have been sent.

16. I note that as pointed out by Mr Tan the appellants have not challenged the judge's finding that here are no serious or compelling family or other conclusions which make their exclusion from the UK undesirable. Nor does it appear that the appeals were argued on that basis. That finding, therefore, stands.

17. I consider first the findings of the judge at paragraphs 24-31 which Mr Tan argued were sufficient to justify the conclusion that the sole

responsibility rules had not been met. It would have been preferable had the judge commenced his findings with consideration of TD and the very helpful guidance it provides rather than leaving that to the end as he did as that may have better focused his mind to the relevant test and assisted him in his consideration of the issues he was required to determine. It is helpful here to set out that guidance and the approach that should be taken when assessing evidence on sole responsibility cases.

18. At paragraph 52 of TD, the Upper Tribunal advised that questions of "sole responsibility" under the immigration rules should be approached in the following way:

    i. *Who has "responsibility" for a child's upbringing and whether that responsibility is "sole" is a factual matter to be decided upon all the evidence.*

    ii. *The term "responsibility" in the immigration rules should not to be understood as a theoretical or legal obligation but rather as a practical one which, in each case, looks to who in fact is exercising responsibility for the child. That responsibility may have been for a short duration in that the present arrangements may have begun quite recently.*

    iii. *"Responsibility" for a child's upbringing may be undertaken by individuals other than a child's parents and may be shared between different individuals: which may particularly arise where the child remains in its own country whilst the only parent involved in its life travels to and lives in the UK.*

    iv. *Wherever the parents are, if both parents are involved in the upbringing of the child, it will be exceptional that one of them will have sole responsibility.*

    v. *If it is said that both are not involved in the child's upbringing, one of the indicators for that will be that the other has abandoned or abdicated his responsibility. In such cases, it may well be justified to find that that parent no longer has responsibility for the child.*

    vi. *However, the issue of sole responsibility is not just a matter between the parents. So even if there is only one parent involved in the child's upbringing, that parent may not have sole responsibility.*

    vii. *In the circumstances likely to arise, day-to-day responsibility (or decision-making) for the child's welfare may necessarily be shared with others (such as relatives or friends) because of the geographical separation between the parent and child.*

viii. That, however, does not prevent the parent having sole responsibility within the meaning of the Rules.

ix. The test is, not whether anyone else has day-to-day responsibility, but whether the parent has continuing control and direction of the child's upbringing including making all the important decisions in the child's life. If not, responsibility is shared and so not "sole".

19. The judge did, at paragraph 30, set out the test identified at 52(ix) above but he had already made his findings before that and they do not, unfortunately, show that he had this test in mind because nowhere does he make any findings as to who had "*continuing control and direction over the child's upbringing*" or who was responsible for the making of "*all the important decisions in the child's life*". That was the crucial test that he had to apply and his determination fails to demonstrate any fact finding on those questions.

20. The judge's first finding is that the arrangement between the sponsor and her mother to care for the appellants was not temporary because the appellants had been living with their grandmother for the last ten years (at 24). He finds that it is not "*credible or consistent*" that this could have been considered a temporary measure. Whilst it is correct that the appellants have been living with their grandmother for a lengthy period, this finding completely disregards the unchallenged evidence that it was always the sponsor's intention to send for her children as soon as she was able to do so and that it was in that sense that the arrangement was said to be temporary. Moreover, the evidence indicates that the sponsor had always been aware that her mother was ageing and that her ability to provide care would be limited in time due to that fact. This evidence is contained in the statements prepared by the sponsor, her mother and the sponsor's husband. It has not been taken into account when the judge made his finding. Nor is there any clarification as to where the inconsistency the judge refers to lies.

21. The second finding is that the sponsor did not return to visit her children whilst she was studying here (at 25). That is not so much a finding as a setting out of the sponsor's evidence. The judge does not then clarify what the significance of this is as far as the sole responsibility issue is concerned. If he means to say that an absence of visits during this period demonstrated that the sponsor was not solely responsible for the appellants, he should have said so and explained why such a conclusion was reached.

22. At paragraph 26 the judge made his third point. This was that the sponsor's evidence was vague as to her ex-husband leaving the family home and relinquishing any responsibility for the appellants. The judge does not explain what was vague about the evidence. The

sponsor was in the UK when this event occurred and she related what she was told by her mother. The appellants confirm in their statements that their father just packed up and left and there has been no finding that they were not telling the truth. Again, it is unclear what the judge means to say when he makes this point. If he was suggesting that the appellants' father had not really left the home, he should have made a clear finding as to why he did not accept the unchallenged evidence of the appellants who confirmed what their mother had said. The sponsor was not asked why she had not made enquires of her ex-husband. Had this been a concern, the judge could have raised the matter with the sponsor at the hearing.

23. At 27 the judge finds there is limited evidence of contact and lengthy gaps in communication. No further details are given. The judge does not specify where the gaps are or why he finds the evidence of contact is limited. The appellants' bundle contains photographs of the appellants and the sponsor, substantial evidence of WhatsApp/social media communication and statements from the appellants testifying to regular contact. The sponsor also testified that she contacted the appellants in some form or other on a daily basis and this is confirmed by her husband in his statement. Further evidence of contact is contained in the December 2018 bundle. The judge does not refer to any of this evidence. Nor does he acknowledge that none of this evidence was challenged.

24. At paragraph 28, the judge finds that the letters from the school and college confirm that the sponsor is supporting the appellants but that they give no details of the nature of the support. That is incorrect. The letter from Sorsogon National High School (at AB:26) clearly confirms that the sponsor is the main contact person in case of emergency and other matters that may arise and that she regularly monitors her son's progress in school.

25. The judge accepts that the appellants are financially supported by the sponsor (at 28).

26. At paragraph 29 the judge states that the only medical evidence relating to the grandmother is at AB:24 and dates from April 2018. That is not correct. There is additional evidence in the December 2018 bundle of documents which the judge has not considered. There is a medical certificate dated 27 November 2018 certifying that due to osteoarthritis, a total hip replacement[1] and severe lumbar spondylosis, the sponsor's mother cannot take care of the appellants. Two X-ray results of 28 November 2018 confirm degenerative changes and there is a further document dated 26 November 2018 which would appear to be a prescription. The judge finds that despite her problems (which it can be seen have not been properly considered), the appellants' grandmother has continued to care for them. No consideration has been given to the severity of the

[1] Not a hip removal as recorded by the judge

grandmother's condition or to the fact that she has degenerative issues which have increased in severity with age. Whilst the judge finds that other relatives have helped, he does not clarify who these relatives are, what help has been provided or on what evidence that finding was based.

27. The judge then cites TD and concludes that from the evidence it is clear that "*the appellants have lived in the care of their grandmother and not the sponsor*" (at 31). He finds, therefore, that the rules have not been met. Essentially on that basis, he then finds that for the purposes of article 8, there are no "*considerable or compelling and compassionate circumstances*" (at 35), that the appellants have "*extended family members in locality*", have been studying and that it would not be in their best interests to "*up route* (sic) *them from an environment to which they are use* (sic) *to*" (at 36). Accordingly, he dismisses the appeal.

28. Despite Mr Tan's able submissions, I cannot agree that these findings come anywhere near what would be adequate for an acceptable consideration of sole responsibility and the numerous typographical/grammatical errors raise concerns that the matter has not been given anxious scrutiny. There are no findings on whether the sponsor has control and direction for the appellants and whether she makes the important decisions in their lives and, if not, who does. There is no consideration of the various examples given of decision making by the sponsor in her statements (in two bundles). There is no reference to the evidence from the appellants' GP confirming that the sponsor is the main contact person for the appellants. There is no finding on whether the sponsor and her husband were credible witnesses or on whether the appellants' evidence is accepted. The sponsor's mother's evidence has not been considered either. Even looking at all the judge's findings, his conclusions appear to be based on the fact that the appellants live with their grandmother and not the sponsor (at 31). There is no application of the guidance in TD and no findings are made on whether the crucial test identified by the panel in that case has been met. The findings are wholly inadequate given the abundance of evidence and not what an appellant is entitled to expect from the Tribunal.

29. The appellants are right to complain that the judge conflated the issue of residence with sole responsibility. In doing so he has disregarded the fact, settled by decades of case law on the matter, that there will inevitably be others in the country of origin who *de facto* 'look after' the children. Common sense dictates that some responsibility must rest with the carer in the country of origin; "sole responsibility" cannot, therefore, sensibly be read in an absolute or literal way. Thus, a parent who has settled in the UK may retain sole responsibility for a child even where the day-to-day care or responsibility for that child is undertaken by a relative abroad. In Emmanuel v SSHD [1972] Imm AR 69, it was held that financial

support and the retention of a close interest in, and affection for, the child were important matters. The judge accepted that the sponsor financially supported the appellants and, although he did not accept it, the evidence points to the undisputed retention of interest in and affection for the appellants by the sponsor.

30. Although not raised in the grounds, the judge's article 8 findings are similarly inadequate. There is no attempt to follow the Razgar steps, no finding on whether there is family life between the appellants and the sponsor and no satisfactory proportionality assessment. No reasons are given for why the judge considers it is in the children's best interests to keep them apart from their mother. No consideration is given to the life the sponsor has established here with her British husband and whether they would be able to relocate to the Philippines. These are all matters that were raised in the skeleton argument which does not appear to have been considered either.

31. The judge's decision is, therefore, set aside as flawed and unsustainable other than the fact that the finding under the "exclusion undesirable" limb is maintained due to an absence of challenge.

32. I have considered whether it is possible to re-make the decision on the basis of the available evidence given that there is enough available to make a fresh decision, that much of the evidence is unchallenged and that the facts are largely not in dispute. Were this an oral hearing, I would have proceeded to do so. However, as the parties will have no opportunity to make any submissions I issue the directions below instead.

Decision

33. The decision of the First-tier Tribunal contains errors of law and it is set aside with the exception of the preserved finding above (at 31). The decision shall be re-made by the Upper Tribunal in accordance with the directions below.

Anonymity

34. No order for anonymity has been sought at any stage and I see no reason to make one.

Directions

35. Given the unchallenged nature of much of the substantial documentary and oral evidence, and the fact that all that is now required is the application of the law to the facts and evidence, I am

minded to proceed to re-make this decision on the papers and to allow the appeals.

36. Should either party have any objections to that proposed course of action they should forward those, with reasons, by email to the Upper Tribunal no later than **14 days** after this decision is sent out. Any agreement to my provisional view should also be sent within that period.

37. Submissions filed in response to these directions shall be filed and served as follows:

(i) On the Upper Tribunal, by or attached to an email to [email] using the Tribunal's reference number (found at the top of these directions) as the subject line.

(ii) On the Secretary of State, by or attached an email to [email]; and

(iii) On the appellant, in the absence of any contrary instruction, by use of any address apparent from the service of this determination.

Signed

R. Kekić
Upper Tribunal Judge

Date: 2 October 2020