



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Numbers: IA/11303/2014**

**IA/11304/2014**

**IA/11305/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House, London**

**Determination**

**On 10 February 2015**

**Promulgated**

**On 11 March 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

**Between**

**MARY ANN RIVERA  
PACIFICO BERNARDINO AGUILAR  
ELIZABETH RIVERA AGUILAR**

Appellants

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr D Gillard, Visa Inn

For the Respondent: Mrs A Holmes, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellants, nationals of the Philippines, appealed to the First-tier Tribunal against the decisions of the Secretary of State of 18 February 2014 to refuse to vary their leave to remain and to remove them from the UK. First-tier Tribunal Judge Bird dismissed the appeals and the appellants now appeal with permission to this Tribunal.
2. The background to these appeals is that the first appellant, Ms Rivera, entered the UK on 29 December 2009 as a Tier 4 General Student and was granted

leave to remain until 31 December 2013. She was joined by her husband and elder child (the second and third appellants) on 16 October 2010 who were given leave to remain in line with hers. The first and second appellants have a younger child born in the UK on 8 June 2012. On 17 December 2013 the appellants' representatives applied on the appellants' behalf for leave to remain outside the Immigration Rules. The basis of the application was that the appellant had entered the UK to undertake a course in Tourism and Management with the London School of Management and Technology but that the college closed down in 2011 and that appellant did not complete her qualification and was unable to enrol at another college without a CAS. The appellants also sought leave to remain under paragraph 276ADE of the Immigration Rules on the basis of their private life and under Article 8 of the European Convention on Human Rights on the basis of their family life. The respondent refused the applications deciding that the appellants did not meet the requirements of Appendix FM or paragraph 276ADE.

3. The First-tier Tribunal Judge considered the appeals on the documentary evidence in accordance with the appellant's request. The Judge decided that the appellants could not meet the requirements of Appendix FM and paragraph 276ADE of the Immigration Rules. The Judge went on to consider Article 8 of the European Convention on Human Rights and found that the decisions to remove the appellants are proportionate.
4. There are three grounds of appeal against the First-tier Tribunal Judge's decision. Permission to appeal was granted in respect of the third ground only. For completeness I find that there is no merit in the first or second grounds of appeal. The first ground contends that the First-tier Tribunal Judge erred in her consideration of section 117B (5) of the Nationality, Immigration and Asylum Act 2002 in concluding that the appellants applied for leave to remain under Article 8 when their leave to remain was 'precarious'. However by the time they applied for leave to remain in December 2013, although they had leave to remain until 31 December 2013, the first appellant had not been studying since her college closed down in 2011. The Judge was entitled in these circumstances to conclude that the first appellant and her family had remained in the UK in breach of their conditions as the first appellant was no longer studying and that their leave to remain was therefore precarious.
5. The second ground contends that the First-tier Tribunal Judge failed to assess the children in her determination and therefore failed to apply section 55 of the Borders, Citizenship and Immigration Act 2009. However the Judge did refer to the children's best interests at paragraph 20 of the determination. There was no evidence before the Judge as to the children's best interests. In the absence of evidence to the contrary, there was no other conclusion open to her than that, as they had been in the UK for a relatively short time and were to be removed with their parents, it is in the children's best interests to be with their parents.
6. Permission was granted in relation to the third ground. This contends that the Judge erred in failing to consider paragraph 276ADE (vi) of the Immigration Rules. The grounds cite the version of paragraph 276ADE which came into force on 28 July 2014. This is misleading as this version was not in force when the applications were made or the decisions issued. In fact the version

relevant to this appeal was that in force prior to 28 July 2014 which provides that an appellant;

‘(vi) is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but has no ties (including social, cultural or family) with the country to which he would have to go if required to leave the UK.’

7. The First-tier Tribunal Judge dealt with the evidence before her on this issue at paragraph 21 of the determination. This included the fact that the first appellant had been in the UK only since 2009 and the others since 2010; the first and second appellants have lived all their lives in the Philippines; it is more than likely they have still family there; it would not be unreasonable to expect them to re-establish their ties in the Philippines; it was their choice to sell their house before coming to the UK; the first and second appellants have family living in the Philippines who can provide them with support to re-establish themselves. The Judge concluded that the appellants still have ties with the Philippines. This was a conclusion entirely open to her on the evidence before her.

8. I am therefore satisfied that the decision of the First-tier Tribunal Judge does not contain a material error of law.

Conclusion:

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

The decision of the First-tier Tribunal shall stand.

Signed  
2015

Date: 10 March

A Grimes  
**Deputy Judge of the Upper Tribunal**

