



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

Appeal Number: HU/16148/2016

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre

Decision & Reasons

On 28 September 2018

**Promulgated
On 9 January 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**GERALDINE [S]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Shastry

For the Respondent: Mr McVeety

DECISION AND REASONS

1. The appellant, Geraldine [S], was born on 3 July 1985 and is a female citizen of the Philippines. She appealed against a decision of the respondent dated 16 June 2016 refusing her leave to remain in the United Kingdom. The First-tier Tribunal (Judge Beg) in a decision promulgated on 29 November 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. The appellant entered the United Kingdom on a visit visa and then overstayed. She last entered on 10 December 2015 with leave to remain

until 17 May 2016. The appellant's husband (Steven [S]) is a British citizen. The couple have a child (S) who is also a British citizen. S is now 5 years old. The appeal turned upon whether it was reasonable for S and her parents to live in the Philippines or alternatively for the appellant to return to the Philippines to make an out of country application for entry clearance.

3. I am rather puzzled by the grant of permission in this instance which reads as follows:

"It is arguable that the evidence of the sponsor and the appellant was that the sponsor's earnings were sufficient to meet the substantive requirements of the Rules. Documentary evidence submitted fell short of that required. Although it was open to the judge to reject the evidence (with reasons) or find that it was insufficient to discharge the burden of proof it is arguably unclear what she made of it and how she factored it into the assessment of proportionality."

4. The judge was well aware that the appellant did not comply with the Immigration Rules. She did factor the appellant's ability (or lack of ability) to comply into the assessment of proportionality. I am not certain how the judge's grant of permission takes the matter any further forward.

5. Otherwise, the submissions centre upon the familiar authority of *Chikwamba* [2008] UKHL 40. There is much in the grounds regarding Section 55 of the 2002 Act and assertions that separation of the parent from the mother or, indeed, a temporary removal of the child S to the Philippines would be impossible (because of limitations on visit visas in the Philippines and also interference caused with S's schooling) or unreasonable and disproportionate.

6. Surprisingly, the grounds of appeal also contain the following paragraph at [31]:

"The appellant's intention was always to reside permanently in the UK. This is not just an assertion. This intention can be inferred from the appellant's behaviour and her husband's behaviour. Although the child was born in the UAE they chose for her to obtain only a UK passport. At this point in time the appellant could have elected to obtain a Philippine passport as well as a passport of the United Kingdom. This action means that the intention was permanently to reside in the United Kingdom. What is not known was the actual time it would occur."

7. This paragraph is surprising given that the appellant last entered the United Kingdom on a visit visa. In her application for that visa, the appellant will have made a statement or declaration to the effect that she intended to leave the United Kingdom at the end of her visit. It is clear that it was never her intention to return. In the assessment of the appellant's appeal on Article 8 ECHR grounds, the public interest in removing an individual who blatantly seeks to breach the immigration laws of this country must be significant.

8. Judge Beg has produced a detailed determination which deals thoroughly with all the issues raised. She considered *Chikwamba* (see above) and refers also to *Chen (Appendix FM - Chikwamba - temporary separation - proportionality) IJR* [2015] UKUT 00189. She notes that the appellant and sponsor were well aware of the consequences of the appellant entering the United Kingdom on a visit visa and seeking thereafter to remain. The precariousness of the appellant's immigration status was manifest.
9. The judge has set out in some detail the provisions of Section 117 of the 2002 Act and has applied the provisions to the facts as she found them. On those facts, it was open to the judge to conclude that, whilst there may be "some disruption to family life" the appellant should be required to return to the Philippines to make an entry clearance application. She concluded (as she was clearly able to do on the facts) that the consequences of that course of action would not be unjustifiably harsh for any member of the family. The grounds of appeal, in essence, seek to re-argue the case which the judge, supporting her conclusion with clear and cogent reasons, has rejected. I cannot identify any error of law in the judge's approach to this case or application of the law to the facts as she found them. In the circumstances, the appeal is dismissed.

Notice of Decision

10. This appeal is dismissed.
11. No anonymity direction is made.

Signed

Date 20 October 2018

Upper Tribunal Judge Lane

TO THE RESPONDENT FEE AWARD

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

Signed

Date 20 October 2018

Upper Tribunal Judge Lane