



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/19166/2018
HU/19171/2018
HU/19179/2018
HU/19185/2018

THE IMMIGRATION ACTS

Heard at Field House
On 14 June 2019

Decision & Reasons Promulgated
On 3 July 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE APPEYARD

Between

MRS B J M
(ANONYMITY DIRECTION MADE)

First Appellant

and

MR F P M
(ANONYMITY DIRECTION MADE)

Second Appellant

and

MISS K A M
(ANONYMITY DIRECTION MADE)

Third Appellant

and

MISS K A M
(ANONYMITY DIRECTION MADE)

Fourth Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Malik, Counsel.

For the Respondent: Ms S Cunha, Home Office Presenting Officer.

DECISION AND REASONS

1. The first and second Appellants are wife and husband and the third and fourth Appellants are their children. They appealed against a decision of the Respondent on 4 September 2018 refusing to grant them leave to remain in the United Kingdom.
2. That appeal was heard by Judge of the First-tier Tribunal Wright who, in a decision promulgated on 24 January 2019, dismissed it. The Appellants sought permission to appeal which was initially refused but a renewed application was made and granted by Upper Tribunal Judge G A Black in a decision dated 22 May 2019. Her reasons for so doing were: -

"1. The appellants, who are citizens of Philippine, appealed against the respondent's decision made on 4.9.2018 to refuse their human rights claims based on applications for leave to remain under the immigration Rules (private life) and Article 8 ECHR. The 3rd and 4th appellants (born on 27.12.2010 & 6.3.2005 respectively) are "qualified" children.

*2. **First-tier Tribunal Judge Wright (FTTJ) dismissed the appeals in a decision promulgated on 24th January 2018.** The FTTJ found that it was reasonable for the two children (3rd & 4th appellants) to return to the Philippines and that section 117B(6) did not apply.*

3. Permission was refused by First-tier Judge Saffer on 18.2.2019.

4. The grounds argue that the FTJ erred in concluding that the 7 year period applied at the date of application rather than at the date of hearing. The FTJ failed to consider paragraph 276ADE(1)(vi) and EX 1(a). The 4th appellant will complete her 10 year residence requirement in December 2020 and be eligible to apply for citizenship. The FTJ failed to take into account principles in Azimi-Moayed & others (decisions affecting children; onward appeals) 2013 UKUT 197 (IAC). The FTJ failed to give proper regard to the issue of where the best interests of the children lie. The FTJ failed to appreciate that the previous decision and reasons was a starting point. The FTJ failed to properly consider Article 8 outside of the Rules and the approach under section 117B was flawed. The reasoning given was inadequate.

5. The grounds of appeal have merit and all are arguable."

3. Thus, the appeal came before me today.
4. At the outset Ms Cunha conceded that the Judge had materially erred for all the reasons set out in the grounds and grant of permission to appeal and that as a consequence the Respondent invited me to remake the decision in relation to all four appeals by allowing them on human rights grounds.

5. Mr Malik, in the circumstances, did not address me at length. He invited me to allow the appeal for the reasons stated by Ms Cunha. He emphasised ground (d) of the grounds seeking permission to appeal and the references there to how the First-tier Tribunal Judge should have given proper regard to the third and fourth Appellants' best interests and the case law therein cited.
6. In the circumstances I am effectively faced with a consent application which invites me to set Judge Wright's decision aside and allow the appeal. That, I find, considering the factual matrix found by Judge Wright is the way forward.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remake the decision in these appeals by allowing them.

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

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

Signed

Date: 1 July 2019

Deputy Upper Tribunal Judge Appleyard

TO THE RESPONDENT **FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make a whole fee award of £140.00.

Signed

Date: 1 July 2019

Deputy Upper Tribunal Judge Appleyard