



Upper Tier Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/19811/2014

**THE IMMIGRATION ACTS**

Heard at Field House  
On 21 January 2015

Determination Promulgated  
On 22 January 2015

Before

Deputy Upper Tribunal Judge Pickup

Between

Feliberta Cabayao Arsenio  
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

**Representation:**

For the appellant: Mr K Waterfall, sponsor

For the respondent: Mr S Whitwell, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, Feliberta Cabayao Arsenio, date of birth 28.3.50, is a citizen of the Philippines.
2. This is her appeal against the determination of First-tier Tribunal Judge Metzger promulgated 30.9.14, dismissing her appeal against the decision of the respondent to refuse leave to remain in the United Kingdom outside the Immigration Rules on the basis of Article 8 ECHR. The Judge heard the appeal on 16.9.14.

3. First-tier Tribunal Judge Colyer granted permission to appeal on 20.11.14.
4. Thus the matter came before me on 21.1.15 as an appeal in the Upper Tribunal.

### **Error of Law**

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the determination of Judge Metzger should be set aside.
6. In essence, the grounds of appeal contend that the First-tier Tribunal erred in law with regards to issue of proportionality and the best interests of the children and in particular the appellant's close relationship and bond with her grandchild Summer, one of a pair of twins born prematurely to the sponsor and his wife on 25.8.12. It is suggested that the mental and emotional well-being of the children will be adversely affected by the removal of the appellant, supported by written evidence from witnesses in the health care or medical professions.
7. In granting permission to appeal, Judge Colyer considered it arguable that the reasoning of the decision was insufficient to provide the parties sufficient detail as to the principles on which the Tribunal has acted and the reasons leading to the decision, so that they are able to understand why it reached that decision. The reasons need not be elaborate, and need not deal with every argument presented. "In this appeal it is apparent that a number of issues were raised including the best interests of the appellant's grandchildren. The judge has attempted to make findings on all the issues in only one paragraph (paragraph 12). It is open to argument as to whether this was sufficient in dealing with the essential issues raised in the appeal."
8. The relevant history is set out in the papers but in short the appellant came to the UK as a visitor assist her daughter, the sponsor's wife at the premature birth of their twin daughters on 25.8.12. It is said and not disputed that the appellant provided immense emotional and caring support to the family during this period. She then returned to her own husband, other children and grandchildren in the Philippines, when the twins were about 6 months old. There is also an older child, now 8 years of age. She returned to the UK again, as soon as it was possible, in September 2013, when the twins were just over a year old, and has remained here since. Mrs Waterfall has no other family in the UK to turn to for support. It is said that the parents struggled desperately and were at breaking point. They claim to need the assistance of the appellant, and want her to stay until the twins are about 4 years of age when they can explain why she has to return to the Philippines. Mr Waterfall did not accept that separation at that age would likely be far more disturbing than separation now, when the twins are only two years of age and will in due course have no independent recollection of life at the age of two. Mr Waterfall relied on professional studies as to the effect on mental, physical and emotional health of separation of a child from its carer at a young age.
9. On investigation with Mr Waterfall, he and his wife are in reasonably good health, as are the twins. There is in fact no relevant mental or physical health issue at all. As he

explained it to me, they as parents felt that they could not cope with twins and feel that they needed the help of the appellant. In consequence, she had developed a very close, almost parental bond with one of the twins, because she had taken the primary care of that child which Mrs Waterfall has taken the primary care of the other. There are no other relevant factors other than those set out in the decision of the First-tier Tribunal.

10. I am satisfied that the judge took into account everything that possibly could be urged on the appellant's behalf. No issue was taken with the fact that close bond had been created between grandmother and grandchild, and the judge accepted that there was family life and that her removal would engage Article 8. But the fact remains that there is absolutely nothing exceptional on the facts of this case. I fail to understand why the Waterfalls are in any different situation to any other family with three children, or who have been blessed with twins. No particular reasons have been advanced as to why they as parents are unable to cope without the assistance of the appellant.
11. It follows that it was entirely open to the First-tier Tribunal Judge to assess all of these factors and to consider the proportionality balancing exercise. I can see nothing that has been taken into account that should not have been, and nothing that should have been taken into account but has not. The conclusion is fully justified in the decision with cogent reasons, as set out in §12. It is not necessary for the judge to set these matter out at length, provided it is clear that there has been a fair consideration of the relevant factors. In the circumstances, I can find no error of law either for inadequacy of reasoning or any other reason in the decision of the First-tier Tribunal.

**Conclusion & Decision:**

12. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed.



Signed:

Date: 21 January 2015

Deputy Upper Tribunal Judge Pickup

**Anonymity**

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

**Fee Award**                      **Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award (rule 23A (costs) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007).

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: the appeal has been dismissed and thus there can be no fee award.



Signed:

Date: 21 January 2015

Deputy Upper Tribunal Judge Pickup