



UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBERS: IA/08414/2015  
IA/08429/2015  
IA/08433/2015

THE IMMIGRATION ACTS

Heard at: Field House  
On: 14 June 2016

Decision and Reasons Promulgated on  
On: 29 July 2016

Before

Deputy Upper Tribunal Judge Mailer

Between

RZ  
JC  
AZ

ANONYMITY DIRECTIONS MADE

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr M Sowerby, counsel (instructed by Douglass Simon Solicitors)

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I continue the anonymity direction made by the First-tier Tribunal. It is to remain in place unless and until this Tribunal or any other appropriate court, directs otherwise. As such, no report of these proceedings shall directly or indirectly

identify the appellants or any member of their family. Failure to comply with this direction could amount to a contempt of Court.

2. On 7 May 2016, I set aside the decision of the First-tier Tribunal promulgated on 30 September 2015 dismissing the appellants' appeals against the refusal by the respondent of their applications for leave to remain under Appendix FM, s.EX.1 (Family Life) and paragraph 276ADE (Private Life) of the Immigration Rules. The appellants are a family unit. The first two appellants are the mother and stepfather of the third appellant, AZ, born on 17 October 2004.
3. I found that there was no "lack of certainty" as stated by the First-tier Tribunal Judge that the appellant AZ would be granted British citizenship. Nor had her continuous presence ever been at issue. Further, it was incorrect to have found that no educational documents had been provided beyond 2011. Reports dated July and March 2012 were provided.
4. Accordingly, as at the date of hearing AZ had been in the UK for ten years. That affected the Judge's findings regarding both AZ and her parents.
5. I accordingly set aside the decision of the First-tier Tribunal and directed that the decision would be re-made by the Upper Tribunal. Permission was granted to the appellants to produce updated evidence.

### **Remaking the decision**

#### **Hearing on 14 June 2016**

6. I have had regard to the large bundles of documents produced by the appellant's solicitors, including a bundle containing 465 pages which had been before the First-tier Tribunal. I have also had regard to the bundle produced at the hearing before the Upper Tribunal on 18 April 2016 containing a further 47 pages and a further bundle containing 81 pages produced for the hearing on 14 June 2016.
7. The appellant RZ attended the hearing and gave evidence. She adopted her witness statement at pages 97-99, dated 6 August 2012 and her statement at pages 4-5 signed at the hearing on 14 June 2016. She has set out her address.
8. RZ stated that she entered the UK in September 2002 and has been in the UK ever since. She previously had leave to enter as a visitor. Prior to the expiration of her leave she became pregnant by her former partner. He is the father of her daughter, AZ, who was born on 17 October 2004. Following her birth they broke up; her former partner remained in contact with the child until she was five years old. The last time he saw her was on her fifth birthday.

9. At the end of June 2012, the child's father informed her that 'he would be marrying' and did not wish to have contact with the child. He had not informed his family of the child's existence.
10. Since arriving in the UK, she and her daughter have maintained themselves without recourse to public funds. AZ attends school. Trinity School was her current school at the date of her statement. She is doing well. She is for all practical purposes British.
11. When she arrived in the UK, she was only 22 years old. She has therefore spent a considerable period of her adult life here, more than that which she spent in the Philippines.
12. She originally thought that her relationship with her former partner was stable and thought it would be permanent. She set out problems that would await her and her daughter if they have to return to the Philippines. As at August 2012, the child's school reports and documents showed that she was doing very well.
13. In her recent statement, at pages 4-5, dated 14 June 2016, she stated that her earlier statement was submitted along with her application for leave to remain on 4 December 2012.
14. The current application was made on behalf of her, her partner JC and AZ. That application remained pending for over a year and was finally refused on 11 December 2013 without a right of appeal. That gave rise to a judicial review hearing.
15. The matter was resolved by way of a consent order. It was agreed that the claim would be reconsidered and if a removal decision was made, a right of appeal would also be granted.
16. Since arriving in the UK, she 'sees' no other home with her family. AZ has spent her entire life here. Her school reports show that she is doing very well. She referred to the damage she claimed AZ would suffer were she to be returned to the Philippines.
17. In answer to 'supplementary questions', she repeated that the child has had no contact with her father since her fifth birthday, on October 17, 2009. He has accordingly not seen her for about seven years. He has played no part in her life. He last contacted RZ in 2012 after she asked for his passport when making the application. She does not know where he is now.
18. There was no cross-examination.

19. Mr JC attended the hearing and gave evidence. He adopted his witness statement at page 5A of the large bundle, which he signed at the hearing. He had read the statement of his partner before preparing his statement and confirmed that he agrees with the contents. He referred to his statement made on 4 December 2012 at page 99A of the bundle.
20. He said that three years after arriving in the UK, he met RZ. They had previously known each other in the Philippines but did not pursue any relationship there.
21. When they met in the UK she informed him that she had a young daughter, AZ who was then less than a year old. After he met the child, they formed a close bond. Accordingly his commitment was therefore not only to RZ but to AZ as well.
22. His relationship with them now spans over ten years. He has “taken parental responsibility” for AZ. Any income he receives is shared as a family. The child looks to him as a father. He does normal things that a father/daughter would do together. He helps her with her homework.
23. The child considers herself to be “British”. She does not speak Tagalog and her understanding of that language is very basic.
24. He was only 26 when he arrived in the UK and is now about 40 years old. He has therefore practically grown up in the UK.
25. In his statement signed at the hearing he confirmed that they have been living together as a family in the UK. They are closely knit and dependent on each other for love and support on a daily basis.
26. He referred to the submission of an application on 1 June 2015 on the child's behalf under s.1(4) of the British Nationality Act 1987. AZ has now been registered as a British citizen and the British passport was produced.
27. There was no cross examination.

### **Further documentation**

28. I have also had regard to the evidence produced which was not before the First-tier Tribunal. There is a letter dated 14 March 2016 sent by the appellants' solicitors to the Presenting Officers' Unit notifying them of the successful application of AZ for registration as a British citizen. They were also informed that she has now obtained a British passport. A copy of that passport and registration certificate was supplied, set out at pages 46-47. It is recorded that AZ, who was born on 17 October 2004, has

been registered as a British citizen on 11 November 2015. A British passport was issued to her on 3 December 2015.

### **Submissions**

29. On behalf of the respondent, Mr Walker stated that the situation now is that there are significant factors. In particular, the child is now a British citizen. There is no evidence of any criminality by any of the appellants; moreover, the child has lived all her life in the UK and will be 12 in October 2016.
30. Mr Walker referred to the respondent's guidance relating to Appendix FM, dated August 2015. At paragraph 11.2.3, under the heading "Would it be unreasonable to expect a British child to leave the UK?" the policy is that save in cases involving criminality, the decision maker must not take a decision in relation to the parent or primary carer of a British citizen child where the effect of that decision would be to force that British child to leave the EU, regardless of the age of that child. This reflects the European Court of Justice's judgment in Zambrano.
31. Mr Walker accordingly submitted that given the respondent's own guidelines applicable to the circumstances of this case, even though he is not in the position to concede that the appeal should be upheld, he accepted that 'it would not be right' for the child AZ to have to leave the UK.
32. On behalf of the appellants, Mr Sowerby relied on the skeleton argument before the First-tier Tribunal. He referred to E-LTRP.2.2 relating to relationship requirements under Appendix FM regarding the requirements to be met for limited or indefinite leave to remain as a parent or partner.
33. The child of the applicant must be under the age of 18 at the date of application, living in the UK and is a British citizen, and paragraph EX.1 applies.
34. The latter section refers to exceptions to certain eligibility requirements for leave to remain as a partner or parent. The paragraph applies if the applicant has a genuine and subsisting parental relationship with a child who is under the age of 18, is in the UK and is a British citizen, and that it would not be reasonable to expect the child to leave the UK.
35. He accordingly submitted that those conditions apply and the appeal should be allowed under the rules.

36. He also relied on Article 8. In the respondent's decision dated 11 December 2013, the respondent stated that they have carefully considered whether EX.1 applies in respect of the appellant JC's application to remain as the partner of a settled British citizen. It was acknowledged that he has a genuine and subsisting parental relationship with AZ but his application fell for refusal under the eligibility requirements of the rules as his partner did not fulfil the requirements for leave to remain under Appendix FM. He accordingly could not benefit from EX.1.
37. In the current reasons for refusal dated 10 February 2015, it was accepted that although he may play a role in the child's life and live in the same household, he has not provided evidence to demonstrate that he is a parent in line with the definition of paragraph 6 of the Immigration Rules. A parent there includes the stepfather of a child whose father is dead and the reference to stepfather includes a relationship arising through civil partnership.
38. He submitted that there is no reason in the rules to prohibit a stepfather benefiting from the parental relationship with a British child. EX.1 applies if the applicant has a genuine and subsisting parental relationship with a child under 18, in the UK, who is in the UK and is a British citizen, and that it would not be reasonable to expect the child to leave the UK.
39. He submitted that the appellant has a clear and subsisting parental relationship with the child and that he should benefit from EX.1 of Appendix FM.
40. He referred to the provisions of s.117A and B of the 2002 Act.
41. He also submitted that the best interests of the child under s.55 had to be considered as a first consideration. Continued regard must be had to the policy that it would be unreasonable to expect the child to leave the UK.

### **Assessment**

42. Although Mr Walker was unable to concede that the appeal should be upheld, he very fairly accepted that following the decision in Zambrano, the decision maker should not, save in cases involving criminality, make a decision in relation to the parent or primary carer of a British citizen child where the effect of that decision would be to force that British child to leave the EU, regardless of the age of the child. RZ is her mother.
43. It is now accepted that AZ is a British citizen.
44. I accordingly consider the appeal under the provisions of Appendix FM, under EX.1.

45. It has been acknowledged by the respondent that JC has a genuine and subsisting parental relationship with the child.
46. In the decision dated 11 December 2013, although accepting a genuine and subsisting parental relationship with the child, his application fell for refusal under the eligibility requirements. In the decision dated 10 February 2015, it was considered that the phrase “genuine and subsisting parental relationship” went beyond a strict legal definition of “partner” under paragraph 6 of the Rules and encompasses situations in which the applicant is playing a genuine parental role in a child's life, whether that is recognised as a matter of law or not.
47. I find from the undisputed evidence that the appellant JC does have a genuine and subsisting parental relationship with AZ, for the purposes of EX.1. I find that he has played a genuine parental role in her life.
48. The child is under 18, resides in the UK and is a British citizen.
49. Having regard to the decision properly made by Mr Walker, I find that it would not be reasonable to expect AZ to leave the UK.
50. I find that all three appellants have resided in the UK as a composite family unit. AZ is now a British citizen.
51. I consider the appellants' claims based on Article 8 of the Human Rights Convention outside the rules. RZ entered the UK on 11 September 2002 and JC entered in or about October 2002. JC began a relationship with RZ when the child, AZ, was less than a year old.
52. Since then, he has lived with them as a family and has a relationship amounting to parental responsibility for the child.
53. Their applications for further leave to remain constitute a joint application. In the judicial review proceedings, all three appellants had the status of claimants. That arose out of the application made on 4 December 2012 which was also a joint application for leave to remain under the provisions of Appendix FM and paragraph 276ADE of the rules.
54. I find that the claims of the appellants are interlinked and following the decision of the Upper Tribunal in PD and Others (Article 8- conjoined family claims) Sri Lanka [2016] UKUT 108 (IAC), it would be artificial and unrealistic to determine them on their individual merits without reference to the other claims.

55. I find on the evidence that to separate the child, AZ, from her mother and JC is not a viable proposition. There is no evidence that she would remain in the UK and reside here with relatives or friends.
56. The third appellant's appeal succeeds under the Rules. She has British citizenship and cannot be removed.
57. I have regard to her best interests as a primary consideration. She has spent over 11 years in the UK. She has been involved in the prevailing culture, living standards, language and education. Her best interests are clearly served by her remaining in the UK. That is expressly noted in the respondent's own policy, to which I have referred.
58. Moreover, her best interests are to maintain and continue a stable settled family life in the family unit which has prevailed over a number of years. Those interests would be best served by continuing to live in the UK with both the first and second appellants.
59. The first and second appellants' presence in the UK has largely been unlawful. They have nevertheless established private lives in the UK and have spent a greater proportion of their lives in the UK.
60. If their appeals were to be dismissed, that would clearly interfere with their right to respect for their private and family lives. The decisions are in accordance with the law and in the pursuit of a legitimate aim, namely the maintenance of immigration control.
61. I consider the question of proportionality. In that respect I have had regard to s.117A(2) where I am obliged to have regard to the considerations listed in s.117B of the 2002 Act.
62. The public interest in the maintenance of effective immigration control is engaged. The appellants are capable of speaking English.
63. If the first and second appellants remain in the UK, they will have the capacity to access publicly funded services and benefits. Little weight can be given to the private and family lives established in the UK.
64. Under s.117B(6) in the case of a person who is not liable to deportation, the public interest does not require that that person should be removed where the person has a genuine and subsisting parental relationship with a qualifying child and it would not be reasonable to expect the child to leave the UK. Clearly, AZ is such a qualifying child by virtue of her British citizenship.



65. Accordingly, the question is whether it would be reasonable to expect the third appellant to leave the UK. I have had regard to the secretary of state's policy referred to, at 11.2.3. If the first and second appellants were required to leave the UK, the effect of that decision would be to force the third appellant to leave the EU regardless of her age. That would be an impermissible and unlawful decision following the judgment of the European Court in Zambrano.
66. The main countervailing factor is that the first and second appellants have no legal right to remain in the UK. Their status is that of unlawful overstayers. That is a factor of considerable weight. However, the child's best interests should not be compromised on account of the misdemeanours of her parents – PD and others, supra, at [41].
67. Having regard to the evidence as a whole, I find that it would not be reasonable to expect the third appellant to leave the UK.
68. I accordingly find under s.117B(6) that the public interest does not require the removal of the first and second appellants, given that they have genuine and subsisting parental relationships with the third appellant and it would not be reasonable to expect her to leave the UK.

### Notice of Decisions

I re-make the decision of the First-tier Tribunal by allowing the appellants' appeals.

Anonymity directions are continued.

Signed

Date 28 July 2016

Deputy Upper Tribunal Judge C R Mailer