



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/05872/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 13<sup>th</sup> December 2018

Decision & Reasons Promulgated  
On 15<sup>th</sup> January 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

R L D C  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr R Claire of Counsel instructed by Linda Myers Solicitors  
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the appellant's appeal against the decision of Judge Povey made following a hearing at Newport on 7<sup>th</sup> August 2018.

## **Background**

2. The appellant is a citizen of the Philippines born on 22<sup>nd</sup> May 1956. She arrived in the UK in 1999 with a settlement spouse visa but the marriage broke down and when the visa expired she became an overstayer.
3. After the breakdown of her marriage she applied for leave to remain on compassionate grounds but the application was refused. It was her case that she never received notification of the refusal, in 2001, and that she had tried to contact the Secretary of State but had not been successful.
4. She made her present application for leave to remain in October 2016 which was refused on 6<sup>th</sup> April 2017 and it was this refusal which was the subject of the decision before the Immigration Judge.
5. The judge recorded that the appellant has four siblings in the Philippines who would be able to accommodate her for a short while when she returned. She is educated to degree level and was employed as a teacher in the Philippines and since coming to the UK has worked and continues to work as a health support worker.
6. The appellant has a daughter who is married to a UK citizen and they have a child who suffers from severe cerebral palsy. The appellant has a close relationship with her daughter and with her granddaughter, to whom she offers a great deal of support, both practically and emotionally, visiting three days a week, twice after work and once on her day off. She spends hours playing with her granddaughter and helps her with her physiotherapy and co-ordination. She maintains daily contact with her via Facetime.
7. The judge said that there was no medical evidence before him that the child could not fly and she would be able to visit her grandmother in the Philippines.
8. He was satisfied that there was family life between the appellant and her daughter and her granddaughter because of the support provided by her to the family which constituted a dependency over and above the normal emotional ties of love and affection. He did not accept that the appellant had established a parental relationship with her granddaughter since she had not stepped into the shoes of one of her parents, rather, she was an important addition to the range of care and support afforded to her. The judge said that the impact upon the child required particular consideration as her best interests were at large, but whilst the appellant assisted with her care there was little to suggest that her absence would clinically undermine or diminish the care provided or her physical development as a result. M would naturally miss her grandmother and might struggle to understand where and why she had gone, but that reaction would be the same in any young child.
9. He wrote:-

"To the extent that any grandchild would benefit from having their grandmother living close by it was in M's best interests for the appellant to remain in the UK. But I did not conclude that it was overwhelmingly so".

10. The judge concluded that having regard to all the relevant factors the need to maintain immigration control outweighed the interference caused to the appellant's family life in the UK and on that basis he dismissed the appeal.

### **The Grounds of Application**

11. The appellant sought permission to appeal on the grounds that the judge had in effect applied the wrong test when conducting the balancing exercise in relation to the competing interests at large in this case. There was no requirement for M's best interests to be overwhelming in order for the case to succeed under Article 8.
12. Permission to appeal was granted by Judge Simpson for the reasons stated in the grounds. The judge also observed that, with reference to the best interests of the child assessment, the combined evidence before the judge including medical reports, witness evidence and information in the public domain concerning disability were together sufficient information concerning likely heightened emotional impact on the granddaughter, should her grandmother have to permanently depart the UK of which there was arguable lack of judicial notice.

### **Consideration as to whether there is a material error of law**

13. Mr Tarlow accepted that the judge had applied the wrong test in relation to the assessment of M's best interests but submitted that the error was not material because inevitably the decision would have been the same.
14. I am satisfied that in fact the error was material because on any view this is a finely balanced case. It cannot properly be said that the judge would have inevitably been driven to dismiss this appeal had he applied the correct approach to the assessment of the child's best interests. The judge had already concluded that there was family life between the appellant and her daughter and granddaughter and therefore that there was a particularly strong relationship between them. It is quite clear from the medical evidence that M's disabilities are extensive and require a great deal of support and care.

### **Remaking the Decision**

15. Mr Tarlow accepted that M benefitted from the presence of her grandmother but submitted that her best interests were outweighed by her poor immigration history and the public interest in immigration control. He observed that this could be a case where it might be sensible to adjourn for better medical evidence but said that he was not seeking to challenge either the medical evidence or indeed the oral evidence which was given in the hearing and in the witness statements.
16. I saw no reason to adjourn this case. There are no credibility issues and the assessment can be made now more expeditiously than putting the parties and indeed the State to the expense of a remittal to another judge.

17. Mr Claire submitted that the medical needs of M were extensive and he provided more up-to-date information about her recent operation.
18. The medical evidence is set out in the original appellant's bundle. The first medical report is dated 18<sup>th</sup> June 2015 when M was 15 months old. It states that she has full range of movement in her upper and lower limbs but is not able to reliably sit without support. She has severe speech production difficulties impacting on her communication skills and a delay in her play skills associated with her physical difficulties.
19. There is a further report dated 18<sup>th</sup> July 2017 when M was 3½ years old. She still needed support for sitting and was not yet able to pull to stand. She could get around by rolling but did not really crawl. She could not load food onto a spoon, but if it was loaded she could get it into her mouth. Her language skills were clearly much improved and there was no concern with her spine or with her hearing. She was still in nappies.
20. The final report is dated 22<sup>nd</sup> May 2018 and refers to an operation which M has had on her hips. The medication which she is on was causing them to become swollen. She was an inpatient for eight days following an operation to try to align her hips more successfully. She still needs a mobility wheelchair at all times.
21. The evidence in the witness statements, both from the appellant and her daughter, are unchallenged. The granddaughter suffers from permanent bilateral cerebral palsy and the appellant's daughter is her primary registered carer. She would not be able to leave her daughter in the care of another or bring her to the Philippines to visit her for practical reasons.
22. The appellant plays an active and integral role in the welfare and upbringing of her only grandchild who requires constant care and attention. She also provides essential support, guidance and respite to her daughter and her partner.
23. It is not argued by Mr Claire that the appellant can bring herself within the requirements of the Immigration Rules. There is no challenge to the judge's conclusions that there would be no insurmountable obstacles to her returning to the Philippines, even though she has been in the UK for such a lengthy period.
24. When deciding whether the appellant could succeed outside the Immigration Rules I am required to take into account the public interest consideration set out in paragraph 117B. The maintenance of effective immigration controls is in the public interest and the appellant has been in the UK without leave for over fifteen years.
25. She does speak English and she is not a burden on the taxpayer because she has worked here, but these are neutral factors rather than factors going in her favour.
26. She has been here for a very long time but her private life has always been precarious, or indeed unlawful, and therefore little weight should be given to it.

27. She does not have a parental relationship with a qualifying child.
28. That said, M's best interests are manifestly best served by the appellant remaining in the UK. This little girl has very severe, physical problems. It is absolutely clear from all of the evidence that her grandmother is an integral part of her care, not only providing love and support to M herself, but also respite care to her daughter and her husband.
29. M's medical condition is such that it would be extremely harsh to require her to be separated from her grandmother when she has always been a central part of her daily routine that. The practical difficulties in getting M to the Philippines are obvious. It would also be extremely difficult for the appellant's daughter to visit. In effect the grandmother's removal would be the severance of a relationship which is integral to M's life over and above the effect it would have on any other child because of her extreme physical needs.
30. The best interests of M are overwhelmingly in favour of the appellant being allowed to remain in the UK and, in this particular case, outweigh the interests of the respondent in the appellant's removal.

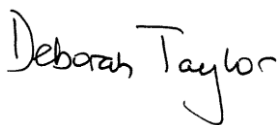
**Notice of Decision**

31. The original judge erred in law. His decision is set aside. It is remade as follows:-

The appellant's appeal is allowed.

**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 her or any member of her 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 4 January 2019

Deputy Upper Tribunal Judge Taylor