



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

Appeal Numbers: IA/01260/2021
IA/01262/2021
IA/01263/2021

[UI-2021-001452, UI-2021-001453, UI-2021-001454]

THE IMMIGRATION ACTS

Heard at Field House

**On 20 April 2022
Extempore**

**Decision & Reasons
Promulgated
On 27 June 2022**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

**MISS DARRY MAE GABISAN LUNA (FIRST APPELLANT)
MR DANNY BOY GABISAN LUNA (SECOND APPELLANT)
MR DEXTER GABISAN LUNA (THIRD APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr P Richardson, Counsel instructed by Lawmatic Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have given only brief reasons because this appeal was conceded by the respondent.
2. The appellants are siblings from the Philippines.
3. In 2015 their mother, who had been in the UK since 2005, married an EEA national. I will refer to him as Mr R.
4. In 2017 the appellants came to the UK as family members and were issued residence cards. In 2019 their mother's marriage to Mr R ended.
5. In 2020 the appellants applied for permanent residence cards. Their applications were refused. They appealed against this decision.
6. The appeal came before Judge of the First-tier Tribunal Behan, who dismissed the appeal on the basis that:
 - (a) the appellants did not fall within the ambit of Regulation 10(5) of the Immigration (EEA) Regulations 2016 ("the 2016 regulations") because that provision only applies to former spouses; and
 - (b) the appellants had not resided long enough in the UK to qualify for permanent residence.
7. The grounds do not challenge the finding that the appellants had not resided long enough in the UK to qualify for permanent residence. However, they challenge the finding that the appellants fall outside the scope of Regulation 10(5) because they are not Mr R's spouse. The grounds rely on the wording of the underlying Directive 2004/38/EC and on the respondent's guidance.
8. In a Rule 24 response the respondent conceded that she was in error to argue in the First-tier Tribunal that only a former spouse falls within Regulation 10(5). It was noted, however, that the appellants were not entitled to permanent residence as they have not lived for a sufficient length of time in the UK.
9. At the hearing before me Mr Lindsay accepted that the judge erred in law and that the appellants fell within the scope of regulation 10(5) as children of a former spouse of an EEA national.
10. With respect to re-making of the decision Mr Lindsay accepted that as of the date of the hearing the appellants had lived continuously for 5 years in the UK and that the conditions of Regulation 10(5) and 10(6), as well as Regulation 15, were satisfied such that the appeal should be allowed.
11. I note for completeness that Mr Richardson informed me that two of the appellants have been granted settled status.

Notice of decision

12. The decision of the First-tier Tribunal involved the making of an error of law and is set aside. I remake the decision by allowing the appeal.

Signed

D. Sheridan

Upper Tribunal Judge Sheridan

Dated: 5 May 2022