



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

Appeal Numbers: IA/15458/2014  
IA/15462/2014  
IA/15473/2014  
IA/15482/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 30 April 2015**

**Decision &  
Promulgated**

**On 6<sup>th</sup> May 2015**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE APPEYARD**

**Between**

**RHEA LACHICA (FIRST APPELLANT)  
ROMMEL LACHICA (SECOND APPELLANT)  
CHINO ANGELO LACHICA (THIRD APPELLANT)  
CARLO ANGELO LACHICA (FOURTH APPELLANT)  
(ANONYMITY ORDER NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr. S. Kamal, Legal Representative.

For the Respondent: Mr. D. Clarke, Home Office Presenting Officer.

**DECISION AND REASONS**

1. The appellants are all citizens of the Philippines. The first appellant was born on 26 October 1968 and the second appellant on 26 October 1971.

They are husband and wife and the third and fourth appellants are their children born respectively on 9 February 1997 and 18 January 2002. No application has been previously made for anonymity and there is no reason for such an order to be made.

2. They appealed against a decision of the respondent on 14 March 2014 refusing the first appellant's application for leave to remain with the other three appellants being dependent upon her appeal.
3. The first appellant entered the United Kingdom as a visitor and stayed for six months in 2003. She re-entered in 2005, again as a visitor, and then on 1 September 2006 returned with the benefit of a student visa valid until 31 October 2007. Her husband joined her with a valid visa in October 2008 and both their children in January 2009. The first appellant then applied for leave to remain as a student with her spouse and two children and this was granted in 2011.
4. The appeal hearing took place in Birmingham on 9 September 2014 before Judge of the First-tier Tribunal Cheales who in a decision promulgated on 30 September 2014 dismissed the appellants' appeals.
5. The appellants could not meet the requirements of the Immigration Rules which the judge found, at paragraph 11 of her decision, to be recognised within the grounds of appeal. She went on to conclude that there were no arguably good grounds for granting leave to remain that were not recognised within the Immigration Rules themselves taking into account the evidence that she heard from the appellants. The nub of that evidence was to the effect that the appellants preferred the lifestyle in the United Kingdom and wished to remain.
6. Permission to appeal was initially refused by Judge of the First-tier Tribunal Mark Davies, but was subsequently granted by Upper Tribunal Judge Reeds on 12 February 2015.
7. Her reasons for so granting were:-
  - "1. The grounds contend that the judge failed to consider an adjournment application that was made on the appellants' behalf; their barrister having been taken ill the night before. There is no reference in the determination to any application made for an adjournment or the basis of that, however, there is a fax in the court file from the appellants' representatives seeking an adjournment on the basis that the barrister had been taken seriously ill. As this is not dealt with in the determination, nor is there any further evidence, I consider that it is right to grant permission on the ground but that the appellants must provide support in respect of this ground.
  2. The grounds also assert that the judge failed to consider the position of the two minor appellants aged 17 and 12 that had been in the United Kingdom lawfully since 2008 and that there

was no consideration of Section 55 within the determination or the issue of whether it would be reasonable for them to return to the Philippines in the light of their prior lawful residence, the stage they had reached in their education and their particular circumstances. The minor appellants had provided statements and had given evidence and I consider that the grounds are arguable.”

Thus the appeal came before me today.

8. Mr. Kamal referred me to an additional appellants’ bundle which had been filed with the Tribunal for the purposes of today’s hearing. No additional material, as envisaged by Upper Tribunal Judge Reeds, in her grant, was placed before me. Mr. Kamal told me that he had been taken ill the night prior to the appellants’ hearing and hence there had been a request for an adjournment. There is no reference to this within the decision nor the Record of Proceedings. There is on the Tribunal file a fax dated 8 September asking for an adjournment on the basis that the appellants’ barrister had been taken ill the night prior to hearing.
9. Mr. Kamal also handed up two authorities being **JO and Others (Section 55 duty) Nigeria [2014] UKUT 00517 (IAC)** and **Azimi-Moayed and Others (decisions affecting children; onward appeals) [2013] UKUT 00197 (IAC)**. He initially made submissions on the basis that I was rehearing this appeal. I reminded him that my task was to give consideration as to whether the judge materially erred in coming to the decision that she did. He asserted that she had as the decision itself is devoid of any reference to Section 55 and that in any event the judge should not have proceeded in his absence.
10. Mr. Clarke indicated from his file that there was an application made to adjourn but that it had been refused as it was indicated that all facts within the appeal were not in dispute and accordingly there was no cross-examination of any of the appellants by the Home Office Presenting Officer. The appeal hearing had accordingly been a fair one as the factual matrix was not in dispute. The appeal was based on the appellants’ private lives and the judge had not erred as Section 55 duties along with Article 8 considerations were codified within the Immigration Rules.
11. Having been told that the facts were not in dispute I do not find that the judge has materially erred as asserted. The appellants were not prejudiced in any way and the judge has taken proper account of their oral and written evidence along with the bundle of evidence filed on their behalf. The presence of the appellants’ representative, in the circumstances of this particular appeal, would have made no difference to its outcome.
12. The appellants could not meet the requirements of the Immigration Rules. The nub of their case was a private life claim based on, as the judge found

at paragraph 14 of her decision, a preference for the lifestyle in the United Kingdom.

13. Whilst the judge does not specifically refer to Section 55 that in itself is not a material error as she has taken into account and balanced all the factors that needed to be considered when considering issues touching upon Article 8.
14. Whilst I appreciate that the judge has not made reference to **Razgar [2004] UKHL 27** she has nonetheless dealt with all the issues envisaged in Lord Bingham's five questions and subsumed within her analysis of proportionality the issues that fell to be considered in relation to the two minor appellants.
15. The appeal on the agreed factual matrix inevitably had to be dismissed as there was no breach of the appellants' Article 8 rights. Accordingly, even if the judge has erred, and I find that she has not, any such error cannot be said to be material.

#### **Notice of Decision**

16. The making of the decision in the First-tier Tribunal did not involve the making of an error on a point of law.
17. I do not set aside the decision.

Signed

Date 5 May 2015

Deputy Upper Tribunal Judge Appleyard