



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

Appeal Numbers: IA/51350/2013  
IA/51360/2013  
IA/51371/2013  
IA/51378/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
on 20 November 2015**

**Decision and Reasons  
Promulgated  
on 25 November 2015**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA**

**Between**

**MR CLAUDIO MERCEADO NAVARRO  
MRS ELEANOR HEMADY NAVARRO  
MS CLAUDEAN MARIE ALEXIS HEMADY NAVARRO  
MR CLAUDE ALEJANDRE NVARRO NAVARRO  
(Anonymity directions not made)**

Appellant

**and**

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

Respondent

**Representation:**

For the appellant: Ms R Sharma of Counsel

For the respondent: Mr K Kandola, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellants are citizens of the Philippines born on 26 February 1966, 25 August 1965, 6 April 1993 and 5 February 1995, respectively. They are

husband and wife and their adult son and daughter. They appealed to the First-tier Tribunal against the decision of the respondent dated 27 August 2013 to refuse to grant them leave to remain under paragraph 276 ADE of the Immigration Rules.

2. First-tier Tribunal Judge A. Martins dismissed that appellant's appeals. Permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge J. M. Holmes stating that it was arguable that the Judge did not consider ordeal with Article 8 even if it means they may be ultimately unsuccessful.
3. There is no dispute between the parties that the Judge did not specifically consider Article 8 in her determination. Mr Kandola argued that it is not a material error of law and the Judge having found that there are no significant obstacles for the appellants to return to the Philippines, there was no need for the Judge to consider the appellant's private life in this country. He argued that there are no compelling circumstances where the Judge should have considered the appellant's appeal outside the Immigration Rules.
4. Mr Sharma argued that there are many factors in the appeal which are not catered for under paragraph 276 ADE and therefore there should be a freestanding evaluation under Article 8.
5. Mr Kandola submitted that the whole family are overstayers since August 2012. Any private life established has been without any legal status. They are all adults and I must consider paragraph 117B (5). Their private life therefore must carry little weight. The Judges found that there are explanations for why they cannot return to the Philippines is not credible. They are all adults that they can go back to the Philippines. They are a financial burden on the state because the children are studying in this country. There are no exceptional circumstances in this appeal when they should be allowed under Article 8.

**Decision as to whether there is an error of law in the determination**

6. The only ground of appeal for me to consider in this appeal is whether the Judge materially erred in law by not considering the appellants private life rights pursuant to Article 8 in the United Kingdom.
7. There is no dispute that the appellants do not meet the requirements of the Immigration Rules which are Article 8 compliant. Is it then incumbent on the Judge to consider the appellant's Article 8 appeal, notwithstanding the Judges findings that the appellants who have been in this country only since 2009 and without leave since 2007, have a private life worthy of protection under Article 8 of the European Convention on Human Rights.

8. The evidence before the Judge was that the appellants have been overstayers in the United Kingdom since August 2012. Therefore any private life that they may have established has been without any legal status. The Judge made many adverse credibility findings against the first and second appellant, who are husband and wife. The first appellant entered the United Kingdom as a student and the other family members followed him as his dependents. The Judge noted that all the family members came to this country based on the first appellant's student visa and they all stated that they understood that it was their intention to return to the Philippines at the end of their studies.
9. The judge noted that the only reason given for why the family cannot return to the Philippines is because of the debts owed by the first appellant. The Judge found that the appellant's evidence that they cannot return to the Philippines because the first appellant has unpaid debts in that country was not credible and the Judge did not believe it. The judge properly found that the first appellant's wife remained in the Philippines for a year before joining her husband in this country and there was no evidence that the appellant's wife experienced any difficulties on account of not paying back the debt. The Judge was also not satisfied that the appellant's do not have family members in the Philippines as he found the evidence is consistent. The Judge found that the appellants have spent the majority of their lives in the Philippines and can return as a family.
10. The appellants' complaint now is that the Judge did not consider their Article 8 rights. The case of **Nasim and others (Article 8) [2014] UKUT 00025 (IAC)** focused on the issue of private life within Article 8. The headnote states:

"The judgments of the Supreme Court in **Patel and Others v Secretary of State for the Home Department [2013] UKSC 72** serve to re-focus attention on the nature and purpose of Article 8 of the ECHR and, in particular, to recognise that Article's limited utility in private life cases that are far removed from the protection of an individual's moral and physical integrity".
11. Where an area of the Rules does not have such an express mechanism, the approach in **R (Nagre) v Secretary of State for the Home Department [2013] EWHC 720 (Admin)** ([29]-[31] in particular) and **Gulshan (Article 8 - new Rules - correct approach) [2013] UKUT 640 (IAC)** should be followed: i.e. after applying the requirements of the rules, only if there may be arguably good grounds for granting leave to remain outside them is it necessary for Article 8 purposes to go on to consider whether there are compelling circumstances not sufficiently recognised under them."
12. Therefore it is not always necessary to engage the five step process in **Razgar** when it is obvious that the appellants do not have a private life in

the United Kingdom which requires protection. There were no arguably good grounds for granting leave to remain outside the Immigration Rules.

13. The appellants are overstayers in the United Kingdom. The first appellant came to this country as a student. The family could not have had an expectation that they could continue to live in this country when they could not satisfy the Immigration Rules for further leave to remain. They have not identified any exceptional circumstances which have not been catered for within the Immigration Rules.
14. At the hearing, the appellants' representative said that there are circumstances in the appellant's appeal which have not been catered for under the Immigration Rules but was not able to tell me what these exceptional circumstances are other than to say the daughter is partially blind and the second appellant does community service. This does not constitute exceptional circumstances such as their appeal should be considered pursuant to Article 8.
15. I find that there is no material error of law in the determination and the determination stands. There was no requirement for the Judge to have considered the appellants appeals pursuant to Article 8 of the European Convention on Human Rights given his findings pursuant to the Immigration Rules.
16. Even if I was to remake the decision, considering the appellants circumstances, I would find that they do not have a private life in the United Kingdom which requires protection. The appellants have not demonstrated that there are any arguably good grounds for granting them leave to remain outside the Immigration Rules and to consider whether there are compelling circumstances not sufficiently recognised under them. The first appellant has been in this country since 2009 and his family members joined him a year later.
17. I would also find that it is entirely proportionate to immigration control that the appellants are required to leave the country and replicate whatever private life they have in their home country.
18. The Judge has not made a material error of law in not specifically considering the appellants Article 8 rights, in respect of their private lives pursuant to the European Convention on human rights. The Immigration Rules are Article 8 compliant and the Judge carefully considered all the evidence in this appeal and found that the appellants, who are unlawfully in the United Kingdom do not have a private life which requires protection.

## **Decision**

Appeals dismissed for all four appellants

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Dated this 23<sup>rd</sup> day of November

2015  
Signed by

Mrs S Chana

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A Deputy Judge of the Upper Tribunal Chana