



IAC-AH-LEM-V1

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

Appeal Numbers: IA/47662/2014  
IA/47651/2014  
IA/47652/2014  
IA/47653/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15<sup>th</sup> January 2016**

**Decision & Reasons Promulgated  
On 27<sup>th</sup> January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**ROWENA RUTH DIMAYUGA (FIRST RESPONDENT)  
ANDREI NIQUOLE DIMAYUGA (SECOND RESPONDENT)  
ARD (THIRD RESPONDENT)  
AD (FOURTH RESPONDENT)  
(ANONYMITY DIRECTION NOT MADE)**

Respondents

**Representation:**

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer  
For the Respondents: Miss K Reid of Counsel

**DECISION AND REASONS**

**Introduction and Background**

1. The Secretary of State appeals against the decision of Judge Oakley of the First-tier Tribunal (the FTT) promulgated on 8<sup>th</sup> June 2015.
2. The Respondents before the Upper Tribunal were the Appellants before the FTT and I will refer to them as the Claimants.
3. The Claimants are citizens of the Philippines. The first and second Claimants are married and are the parents of the third and fourth Claimants who were born in August 2005 and July 2008 respectively.
4. The Claimants appealed against the Respondent's decision made on 7<sup>th</sup> November 2014 to remove them from the United Kingdom following refusal of their applications for further leave to remain based upon family and private life.
5. The appeals were heard together on 2<sup>nd</sup> June 2015 and allowed under the Immigration Rules, specifically paragraph 276ADE(1)(vi).
6. This caused the Secretary of State to apply for permission to appeal to the Upper Tribunal. In summary it was contended that the FTT had erred in law in allowing the appeals pursuant to paragraph 276ADE(1)(vi) because the third and fourth Appellants could not be considered under that paragraph, as they were not 18 years of age. They should have been considered pursuant to paragraph 276ADE(1)(iv) which had not been considered by the FTT.
7. In addition, the FTT had erred in law when considering paragraph 276ADE(1)(vi) by considering the test of significant obstacles, rather than considering the correct test of very significant obstacles to integration.
8. Permission to appeal was granted by Judge Chohan of the FTT on 18<sup>th</sup> August 2015. There was no response from the Claimants pursuant to rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008.
9. Directions were subsequently issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FTT had erred in law such that the decision must be set aside.

### **The Secretary of State's Submissions**

10. Mr Bramble relied upon the grounds contained within the application for permission to appeal.

### **The Claimants' Submissions**

11. Miss Reid accepted that the FTT had referred to a significant obstacles test rather than very significant obstacles, but submitted that the error was not material. It was also accepted that the third and fourth Claimants could not satisfy paragraph 276ADE(1)(vi) and that their appeals could only succeed under Article 8 outside the Immigration Rules. Nevertheless Miss Reid submitted that the FTT had not erred materially, because consideration had been given to the best interests of the third and fourth

Claimants who are minors, and the FTT had not erred in deciding that their best interests would be to remain in the United Kingdom.

### **My Conclusions and Reasons**

12. I announced at the hearing that the FTT had materially erred in law and that the decision must be set aside for the following reasons.
13. The FTT allowed the appeals of all four Claimants under the Immigration Rules and this was wrong in law. The FTT erred in considering all four Claimants under paragraph 276ADE(1)(vi) which was wrong in law. The third and fourth Claimants could not be considered under that provision because to satisfy (vi) an individual must be aged 18 years or above, and both the third and fourth Claimants are under 18 years of age.
14. The FTT applied the wrong test when considering the appeals of the first and second Claimants pursuant to (vi). The correct test is to decide whether there would be very significant obstacles to integration into the country to which the individuals would have to go if required to leave the UK. The FTT did not demonstrate that this test had been applied, referring throughout the decision to 'significant obstacles', which is a lower test and is wrong in law.
15. The third and fourth Claimants could not succeed under any of the provisions of paragraph 276ADE(1), not being able to succeed under (iv) because they had not lived continuously in the UK for at least seven years.
16. Therefore their appeals could only succeed under Article 8 outside the Immigration Rules. This would have entailed considering section 117B of the Nationality, Immigration and Asylum Act 2002. The FTT did not consider Article 8 outside the Rules, nor was there any consideration of section 117B.
17. The FTT decision is therefore set aside. Neither representative submitted that it would be appropriate to preserve any findings. No findings are preserved.
18. Miss Reid submitted that there needed to be extensive fact-finding, and indicated that there would be five witnesses to give evidence and therefore it would be appropriate to remit this appeal to the FTT. Mr Bramble did not oppose that suggestion.
19. I considered paragraph 7.2 of the Senior President's Practice Statements which for ease of reference I set out below:
  - 7.2 The Upper Tribunal is likely on each such occasion to proceed to remake the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that;
    - (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact-finding which is necessary in order for the decision and the appeal to be remade is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

20. In my view the extent of the judicial fact-finding that is necessary, means that it is appropriate for this appeal to be remitted to the FTT.
21. The appeal before the FTT will take place at the Hatton Cross hearing centre. The parties will be advised of the time and date in due course. An indication has been given that there are five witnesses to give oral evidence and the time estimate is three hours. An indication has been given that no interpreter is required. If it transpires that an interpreter is required the Claimants must notify the Tribunal immediately. The appeal is to be heard by a First-tier Tribunal Judge other than Judge Oakley.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error of law such that it is set aside. The appeals are allowed to the extent that they are remitted to the First-tier Tribunal with no findings of fact preserved.

### **Anonymity**

The FTT did not make an anonymity direction. There was no request for anonymity and the Upper Tribunal makes no anonymity order.

Signed

Date 19<sup>th</sup> January 2016

Deputy Upper Tribunal Judge M A Hall

### **TO THE RESPONDENT FEE AWARD**

The issue of any fee award will need to be considered by the First-tier Tribunal.

Signed

Date 19<sup>th</sup> January 2016

Deputy Upper Tribunal Judge M A Hall