



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

Appeal Number: IA/22835/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 26 October 2017**

**Decision &**

**Promulgated**

**On 3 November 2017**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LATTER**

**Between**

**A E M A E  
(ANONYMITY DIRECTION MADE)**

**and**

Appellant

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

Respondent

**Representation:**

For the Appellant: Ms D Krushner, Counsel

For the Respondent: Mr P Deller, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the appellant against a decision of the First-tier Tribunal dismissing his appeal against the respondent's decision of 15 April 2015 refusing him leave to remain on human rights grounds.

Background

2. The background to this appeal can briefly be summarised as follows. The appellant is a citizen of Egypt born on [ ] 1983. He came to the UK in 2012 with a transit visa as part of a karate team. Instead of travelling on from the UK, he remained unlawfully.
3. He first met his current partner in September 2013. She came to the UK from the Philippines in November 2004 as a student nurse and was granted indefinite leave to remain in 2010. She became a British citizen in 2014 and she has a child from a previous relationship, a son born on 17 October 2010. The appellant and his partner were engaged in September 2014 and they married on 20 December 2014. They now have a young child, a daughter, born on 20 May 2016.
4. On 21 February 2015, the appellant made a human rights application for leave to remain on the basis of his marriage. The respondent was not satisfied that his relationship with his partner was genuine or subsisting or that he could meet the requirements of appendix FM and in particular para. EX.1. Further, she was not satisfied that the application raised any exceptional circumstances which merited a grant of leave outside the requirements of the Rules.

#### The hearing before the First-tier Tribunal

5. At the hearing before the First-tier Tribunal the judge accepted that the marriage was subsisting and that the appellant had a genuine and subsisting parental relationship with the two children of the family. He found that it would not be reasonable for the appellant's stepson to go to Egypt but that it would be reasonable for the children to go to the Philippines. He accepted that to remove the appellant would have a considerable impact upon his wife, stepson and daughter and noted that his wife had lived in the UK for the previous 12 years and had put down strong roots. She was a nurse and so performed an important public service but the judge commented that she was clearly aware that the appellant did not have status in the UK from an early stage in their relationship and he found that the appellant's removal would be proportionate to a legitimate aim.

#### The Grounds of Appeal.

6. In the grounds of appeal, it is argued that the judge had erred by finding that it would be reasonable for the children to go to the Philippines when the only differences between Egypt and the Philippines were familiarity with the local language and the existence of an extended family in the Philippines. It is further argued that the judge was wrong to find that the stepson's first language was Tagalog simply on the basis of a comment that this was the language spoken at home and he had erred in finding that his wife's extended family in the Philippines were in a position to support them if they returned there.

7. Mr Krushner submitted that the judge had erred in his assessment of reasonableness by applying too stringent a test when he said at [19] that matters did not point so overwhelmingly in favour of both children remaining, that he could be satisfied that it was not reasonable to expect them to leave the UK. He further submitted that the judge had erred by regarding Tagalog as the stepson's first language when that was not in fact the case and he had also failed to take into account the fact that the appeal raised specific issues arising from it being a mixed language marriage.
8. Mr Deller did not seek to resist the appeal. He commented that the judge had found that it would not be reasonable for the appellant's stepson to return to Egypt but he had failed to give adequate consideration to whether it was reasonable in the light of her British citizenship for the appellant's daughter to go to the Philippines. He accepted that there had been no adequate analysis of the best interests of the children or of whether it would be reasonable for them to leave the UK in their particular family circumstances.

#### The Error of Law

9. I am satisfied that Mr Deller's concession is properly made and that the judge has accordingly erred in law by failing to take proper account of the British citizenship of the appellant's daughter and the relatively unusual family background. It follows that a number of relevant matters have been left out of account when assessing whether it would be reasonable for his stepson and daughter to leave the UK and whether removing the appellant in the light of the family circumstances as a whole would be proportionate within article 8(2).
10. Both representatives accepted that the errors were such that the decision should be set aside and that the proper course would be for the appeal to be remitted to the First-tier Tribunal for a full rehearing. I am satisfied that this is the proper course to take in the circumstances of this appeal.

#### Decision

11. The First-tier Tribunal erred in law and the decision is set aside. The appeal is remitted to the First-tier Tribunal for a full rehearing by a different judge.

Signed: H J E Latter  
October 2017

Date: 30

Deputy Upper Tribunal Judge Latter