



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/00840/2015**

Appeal Numbers:

HU/00839/2015

HU/00841/2015

HU/00842/2015

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 5 February 2018

Promulgated

On 12 February 2018

Before

UPPER TRIBUNAL JUDGE LANE

Between

**RP (FIRST APPELLANT)
AP (SECOND APPELLANT)
RCP (THIRD APPELLANT)
PP (FOURTH APPELLANT)
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Khan, instructed by Wisestep

For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of the Philippines who were born in 1977, 1980, 2008 and 2010 respectively. The first and second appellants are married to each other and the third and fourth appellants are their children. The appellants made human rights applications to remain in the United Kingdom but, by a decision dated 2 January 2015, their applications were refused by the Secretary of State. They appealed to the First-tier Tribunal (Judge Dineen) which, in a decision promulgated on 23 January 2017, dismissed the appeals. The appellants now appeal, with permission, to the Upper Tribunal.
2. The issue in the appeal is whether the judge applied the relevant law, including Section 117 of the 2002 Act (as amended) and the decision of the Court of Appeal in *MA (Pakistan)* [2016] EWCA Civ 705. The third appellant was 7 years old and had lived throughout his life in the United Kingdom at the date of the First-tier Tribunal hearing. However, as the judge noted [30] the third appellant had not completed seven years of residence in the United Kingdom as at the date of the application to the Secretary of State (see paragraph 276ADE(1)(iv)). The judge concluded that none of the appellants qualified for leave under the Immigration Rules and in his analysis of the appeal on Article 8 ECHR grounds, he concluded that it would be reasonable for the third and fourth appellants to leave the United Kingdom together with their parents [31] and for the first and second appellants to return to the Philippines with the family. The judge also found that the first and second appellants enjoyed family life with relatives in the United Kingdom which “goes beyond emotional ties because they are materially supported by them” [36]. Mr Tufan, for the Secretary of State before the Upper Tribunal, challenged that finding which he said was wrong in any event. Mr Khan, who appeared for the appellants before the Upper Tribunal, submitted that the judge had not addressed adequately or at all the provisions of Section 117B(6) of the 2002 Act:
 - (6) In the case of a person who is not liable to deportation, the public interest does not require the person’s removal where—
 - (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
 - (b) it would not be reasonable to expect the child to leave the United Kingdom.
3. In the light of *MA*, it was necessary for the respondent to consider that there were “strong reasons”, for removing a child who had been living in the United Kingdom for more than seven years (a “qualifying child” for the purposes of Section 117). Mr Tufan submitted that, in the light of the Court of Appeal judgment in *AM (Pakistan)* [2017] EWCA Civ 180, there were public interest considerations which would need to be weighed against the seven year residence of the third appellant and that this was a case in which the first and second appellants had demonstrated a blatant disregard for immigration law giving rise to a substantial public interest in

their removal. Mr Tufan provided helpful submissions but I do not agree that the inadequate analysis of Judge Dineen in this instance can be saved. I am well aware that it is of little consequence if a judge fails to refer in terms to statutory provision or jurisprudence provided he or she properly applies the relevant principles of law and statute to the facts as found in the given case. Having read the decision carefully, I am not satisfied that Judge Dineen has had the provisions of Section 117B(6) in his mind when he dismissed the appeal on Article 8 grounds. At [30], the judge notes that the third appellant had not resided in the United Kingdom for at least seven years at the date of the application and then stated:

In any event, I am satisfied it would be reasonable for both the third and fourth appellants to leave the UK together with their parents, if there were no reasonable grounds for the parents not to return.

4. The judge went on to say at [32]:

The children are young enough to adapt to living in a different country as do many children whose parents choose to migrant internationally. In the present case, the parents were extremely familiar with the Philippines having spent most of their lives there.

5. At [40], Judge Dineen wrote:

I take into account under Section 117B of the 2002 Act that the maintenance of effective immigration controls is in the public interest and that little weight should be given to private life established by an adult at a time when they are in the UK unlawfully, or when their immigration status is precarious.

6. Judge Dineen did not err by noting that paragraph 276ADE requires a period of seven years' residence in the United Kingdom to have been completed by the date of application. However, it is not at all clear whether the judge took any account of the seven year residence of the third appellant (which would have been achieved by the date of the First-tier Tribunal hearing) in determining the appeal on Article 8 ECHR grounds. Indeed, he makes no mention of the child's long residence in the context of that Article 8 appeal. Instead, the only lesson which he appears to draw from Section 117 is that public interest considerations are relevant in the analysis as is the precarious nature of the immigration status of the first and second appellants. Section 117B (6) provides that "the public interest does not require" the removal of the third appellant's parents in circumstances where it would not be reasonable to expect the third appellant to leave the United Kingdom. The judge was correct to record that public interest considerations arise, but the reason he gives (briefly) at [31] for finding that it would be reasonable is that there were no "reasonable grounds for the parents not to return". Again, at [32], although he legitimately observes that the children are "young enough to adapt to living in a different country", the focus is again on the parents who had "spent most of their lives [in the Philippines]". Significantly, the judge does not refer to other public interest considerations such as those

raised by Mr Tufan before the Upper Tribunal, namely the “blatant disregard” by the first and second appellants of immigration law. Likewise, although the judge finds that the two adult appellants enjoy a family life with adult relatives in the United Kingdom, he leaves that point unresolved as he does any detailed consideration of the private lives of any of the appellants. Further, as Judge Bruce noted when granting permission, there is no assessment of whether there exists “strong reasons” for the removal of the third appellant or how such reasons might be analysed within the context of Section 55 of the Borders, Citizenship and Immigration Act 2009 or Section 117 of the 2002 Act. I note that, although the hearing before Judge Dineen took place on 10 March 2016, his decision was not promulgated until 23 January 2017; it is possible that the paucity of the analysis is a consequence of the judge’s completion of the decision after a very lengthy delay.

7. For the reasons I have given above, I am not satisfied that the judge has delivered a cogent decision in this instance. I set aside the decision. There will need to be further fact-finding to update the family circumstances and that is an exercise better conducted in the First-tier Tribunal. Whilst it is unfortunate in light of the long delays in this case, the appeal will have to be remitted to the First-tier Tribunal which will remake the decision.

Notice of Decision

8. **The decision of the First-tier Tribunal which was promulgated on 23 January 2017 is set aside. The appeals are returned to the First-tier Tribunal (not Judge Dineen) for that Tribunal to remake the decision.**

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 8 February 2018

Upper Tribunal Judge Lane