



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

**Appeal Number: EA/03246/2019
& EA/03247/2019**

THE IMMIGRATION ACTS

Heard at George House, Edinburgh
On 29 July 2020

Decision & Reasons Promulgated
On 7 August 2020

Before

Upper Tribunal Judge Macleman

Between

P R J TARAYA & N E TARAYA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the appellants, Mr Winter, Advocate, instructed by EMLC, Glasgow
For the respondent, Mr Diwyncz, Senior Presenting Officer

DETERMINATION AND REASONS

1. By a decision issued on 5 June 2020, the UT set aside the decision of FtT Judge Kempton, promulgated on 16 September 2019, because it was common ground that she misunderstood or misapplied *MS* [2019] EWCA Civ 580.
2. The UT said at [2], "*The real remaining issue is whether without the first appellant her mother would be obliged to leave the EEA or whether that would be a matter of choice*".

3. The hearing on 29 July 2020 was conducted from a hearing room at George House, where I was present. No members of the public attended, in person or remotely. Representatives and the first appellant attended remotely, by *Skype for Business*. There were some interruptions in communications and the quality was at times less than ideal, but in the end both sides were satisfied that a fair hearing had been achieved. I am obliged to Mr Winter and Mr Diwyncz for their clear and concise presentation of the case.
4. Updating statements from the witnesses had been filed. All their statements to date were deemed to have been adopted. There was no cross-examination.
5. Having heard the submissions, I indicated that the appeals would be allowed.
6. The FtT Judge found at [36] that *“if the [first] appellant left the UK, her mother would inevitably have to leave with her, in order to be looked after by her.”* However, she thought that *MS* was against her, given that finding, and that because *“it was clear that the appellant would take her mother to the Philippines ... to look after her there ... the EEA regulations would not be met.”*
7. The SSHD has not suggested that the finding about the appellant’s mother having to leave was not reasonably open to the FtT.
8. That finding was supported by the evidence before the FtT, as a whole, and most strongly by the Social Work Report. The evidence before the UT is similar, or a little stronger. The legal test is demanding, but it is a matter of lack of practical choice rather than of literal and absolute impossibility.
9. The dependence of the first appellant’s mother upon her is such that she cannot, as a matter of practical choice, remain in the UK without her. There is no practical alternative of provision of care by relatives in Germany.
10. The conclusion which flows from the appellant’s mother having to go with her to the Philippines is the contrary of what the FtT thought. The terms of the regulations are met.
11. It is common ground that the two appeals stand or fall together.
12. The decision of the First-tier Tribunal has been set aside. The decision substituted is that the appeals, as originally brought to the FtT, are **allowed**.
13. No anonymity direction has been requested or made.

Hugh Macleman

UT Judge Macleman
30 July 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.