



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2022-006458

First-tier Tribunal No: HU/57369/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 22 September 2023**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**CASEY JAMES MALABANAN**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**(NO ANONYMITY ORDER MADE)**

**Representation:**

For the Appellant: Mr B. Naumann of Laura Devine Immigration  
For the Respondent: Mr E. Tufan, Senior Home Office Presenting Officer

**Heard at Field House on 03 August 2023**

**DECISION AND REASONS**

1. The appellant appealed the respondent's decision dated 27 October 2021 to refuse a human rights claim in the context of an application for entry clearance as a dependent child. Although the appellant was a child at the date of the original application, he is now over 18. For this reason, I have not made an order for anonymity.
2. A First-tier Tribunal decision dismissing the appeal was set aside by the Upper Tribunal in a decision sent on 03 July 2023 (annexed). The appeal was relisted for the decision to be remade in the Upper Tribunal.
3. The appellant's mother, Liza Arevalo, attended the hearing and gave evidence in English. She confirmed the contents of a detailed witness statement in which she explained the course of her relationship with her son's father and the level of

contact and responsibility he has had with him during his childhood. Ms Arevalo was asked a few questions by Mr Tufan by way of clarification but none of her evidence was challenged either by way of cross-examination or in oral submissions. The content of the evidence and oral submissions is a matter of record and is known to the parties, so it is not necessary to set it out in this decision.

4. In short, Ms Arevalo explained that she and her husband had a difficult marriage. They spent time in Italy, but their economic situation became difficult, and Ms Arevalo was often the only person working. Because of this she sent James back to the Philippines to live with her mother. She is the parent who provided financial support and made all the decisions about his upbringing. At some point after the marriage broke down her husband returned to the Philippines. Although he lives in the same area as James, he has had little involvement in his life and only very occasional contact. He is unemployed and lives with his parents. James' father does not provide him save for an occasional gift, and even then, only when James asked e.g. James once asked him for a bike. When James has had health problems his father has not been involved. Nor did he come to his graduation. James' statement is broadly consistent with the picture painted by his mother.
5. Their evidence is supported by James' father and independent evidence from local professionals in the Philippines. Affidavits from different sources have been prepared by the same attorney. As a result, they are in a similar format. The content is consistent with the account given by James' mother. An affidavit from the Director of his school confirm that James' was often accompanied by his grandmother or his maternal uncle. She also confirmed that his mother paid his tuition fees. She had never seen James with his father. Even though his father lives nearby, the only emergency contact that the school had on record was James' maternal grandmother. In a separate letter from the same head teacher, Ms Quintana-Arioder said that it was James' grandmother and mother who took 'full responsibility in all school matters and concerns'. She noted that in the eight years James had been at the school no one at the school had ever met his father. She expressed the opinion that he had been 'completely negligent of his duties as a father to James'.
6. James' paediatrician also swore an affidavit to say that she had been his doctor since 2005 i.e. since he was an infant. She confirmed that he usually attended the clinic accompanied by his grandmother or his maternal uncle. Dr Vergara said that she had never seen James attend the clinic with his father. As a matter of professional courtesy, she had not asked James why his father was not involved in his life. Dr Vergara said that James was an inpatient at the medical centre for five days in October 2021. During that time, she did not see his father come to visit nor did he contact them to ask about his condition.
7. Other evidence in the appellant's bundle supports the assertion that James' maternal grandfather died in 2021 and that his maternal grandmother is suffering from increasing medical problems. There is also some evidence relating to his schooling and payment of fees.
8. The statements prepared by Ms Arevalo and James are detailed and plausible. They were supported by evidence that was not disputed at the hearing. I have been given no good reason to doubt the oral evidence given by Ms Arevalo who appeared to be a credible witness. I am satisfied on the balance of probabilities

that Ms Arevalo is the parent who has had sole responsibility for providing emotional and financial support for her son during his childhood albeit she was assisted in practical terms by her mother who James' lives with. Ms Arevalo is the person who has makes all the major decisions about James' upbringing. Although James has very occasional contact with his father (in his statement he said that he had seen him once that year), the evidence indicates that his father has taken no responsibility for any decisions about his upbringing and has not provided him with any meaningful emotional or financial support. James' father has been separated from his mother since James was an infant. He has not been involved in any decisions about James' upbringing and did not even visit him when he was in hospital for five days. For these reasons, I am satisfied on the balance of probabilities that Ms Arevalo has had 'sole responsibility' for his upbringing and that James met the requirements of paragraph 297(e) of the immigration rules.

9. It is no longer possible to appeal on the ground that a decision is not in accordance with the immigration rules. This appeal is brought on human rights grounds. I am satisfied that, despite the distance between them, James and his mother have always kept in contact through phone calls and visits. I find that there is family life between them for the purpose of engaging Article 8(1) of the European Convention. The provisions of the immigration rules are said to reflect where the Secretary of State considers a fair balance will be struck for the purpose of the proportionality assessment under Article 8(2). Having found that James' met the requirements of the immigration rules, I conclude that the decision is unlawful under section 6 of the Human Rights Act 1998.

### **Notice of Decision**

The appeal is ALLOWED on human rights grounds

**M.Canavan**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

22 August 2023

(ANNEX)



**IN THE UPPER TRIBUNAL**  
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**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**CASEY JAMES MALABANAN**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**(ANONYMITY ORDER NOT MADE)**

**Representation:**

For the Appellant: Mr B. Naumann of Laura Devine Immigration  
For the Respondent: Ms S. Cunha, Senior Home Office Presenting Officer

**Heard at Field House on 12 June 2023**

**DECISION AND REASONS**

1. The appellant appealed the respondent’s decision dated 27 October 2021 to refuse a human rights claim in the context of an application for entry clearance as a dependent child. Although the appellant was a child at the date of the original application, he is now over 18. For this reason, I have not made an order for anonymity.
2. First-tier Tribunal Judge Fox (‘the judge’) dismissed the appeal in a decision sent on 20 June 2022. The judge was not satisfied that the sponsor mother had ‘sole responsibility’ for the appellant. The judge highlighted inconsistencies that he found in the evidence relating to the contact that the appellant might have with his father and raised question marks about the reliability of some of the evidence. The judge concluded that no other ‘serious or compelling circumstances’ made the appellant’s exclusion undesirable. The judge accepted that the appellant and the sponsor had a family life that engaged the operation of Article 8(1) of the

European Convention. However, the judge took into account the fact that family life continued in separate countries while the sponsor sought to regularise her status in Italy before relocating to the UK. The judge concluded that the decision did not interfere with the existing arrangement. The appellant did not meet the requirements of the immigration rules and no exceptional circumstances that might justify a grant of leave outside the rules were disclosed in this case. For these reasons, the judge concluded that the decision to refuse entry clearance was proportionate for the purpose of Article 8(2).

3. The appellant applied for permission to appeal to the Upper Tribunal. The grounds are lengthy and largely make a series of general submissions. The following points can be discerned:
  - (i) The First-tier Tribunal made a material error of fact at [22], in wrongly believing that the appellant's father returned to the Philippines in 2007, where there was no evidence to suggest that he did.
  - (ii) The First-tier Tribunal based findings relating to the level of contact the appellant might have had with his father at the time when the sponsor's marriage was annulled. The finding was based on undue speculation that was not supported by evidence. The judge should have asked the sponsor whether both parties to the marriage needed to be involved in the annulment if the issue was a matter of concern.
  - (iii) The First-tier Tribunal made inferences about the level of contact that the appellant might have with his father that were outside a range of reasonable responses to the evidence. The appellant did not seek to argue that he had no contact with his father, but that his mother had sole responsibility. It was submitted that occasional contact was insufficient to show that his father played any significant part in his upbringing.
  - (iv) The First-tier Tribunal failed to give adequate reasons for findings, made confused findings, and failed to consider sworn affidavits.
  - (v) The First-tier Tribunal's suggestion that two pieces of evidence might have been contrived was an 'irrational belief in a conspiracy'.
4. I have considered the First-tier Tribunal decision, the evidence that was before the First-tier Tribunal, the grounds of appeal, and the submissions made at the hearing, before coming to a decision in this appeal. It is not necessary to summarise the oral submissions because they are a matter of record, but I will refer to any relevant arguments in my findings.

### **Decision and reasons**

5. At the start of the hearing, Ms Cunha indicated that the respondent did not oppose the appeal. She accepted that the evidence produced in support of the appeal did not appear to put forward a case to say that the appellant had no contact with his father. The judge's findings relating to the credibility of the sponsor's evidence appeared to be predicated on the assumption that the appellant had no contact with his father [24][34].
6. It is not necessary to give detailed reasons for this decision because the appeal is unopposed. It is still a matter for the Upper Tribunal to decide whether the First-

tier Tribunal decision involved the making of an error of law. The grounds make generalised submissions on the facts and evidence. At least one of the grounds made an inappropriate submission entitled 'irrational belief in a conspiracy' in response to findings that related to the reliability of evidence produced in support of the appeal. It is open to a judge to make observations and to evaluate evidence before them.

7. However, whilst many of the findings were likely to be open to the judge to make, it is clear from the evidence contained the witness statements that it was not asserted that the appellant was completely estranged from his father or had 'severed' ties with him. It was asserted that he had been an absent father who had occasional contact but no meaningful involvement in his upbringing. At more than one point in the decision it appears that the judge proceeded on a mistaken understanding of the case put forward by the appellant. This would appear to have influenced the rest of his findings about the credibility of the sponsor's evidence and the reliability of affidavits that were sworn by different people, but with the same notary. Although it is a borderline decision, I find that the mistaken understanding of the appellant's case was a matter that made a material difference to the assessment of the evidence.
8. For these reasons, I find that the First-tier Tribunal decision involved the making of an error of law and must be set aside.
9. The usual course of action is for the Upper Tribunal to remake the decision. The sponsor did not attend the hearing. Mr Naumann said that the sponsor would want to give evidence and that she did not need the assistance of an interpreter. It will be necessary to hear from the sponsor to evaluate the evidence as a whole. The decision will be remade at a resumed hearing in the Upper Tribunal on a date to be notified.

### **DIRECTIONS**

10. **The parties** shall file and serve any up to date evidence at least 14 days before the resumed hearing.

### **Notice of Decision**

The First-tier Tribunal decision involved the making of an error on a point of law

The decision will be remade at a resumed hearing in the Upper Tribunal.

**M.Canavan**  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber

12 June 2023