IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003474
UI-2024-003475
UI-2024-003476

First Tier Tribunal Nos:
HU/62694/2023;LH/
04016/2024
HU/62705/2023;LH/
04017/2024
HU/62708/2023;LH/
04018/2024

THE IMMIGRATION ACTS

Decisions & Reasons Issued:
On 31 December 2024

Before

UPPER TRIBUNAL JUDGE MAHMOOD
DEPUTY UPPER TRIBUNAL JUDGE STAMP

Between

ML
JR
PV

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr A Chakmakjian, counsel instructed by VePillai & Co

For the Respondent: Mr Thompson, a Senior Home Office Presenting Office

Heard at Field House on 25 November 2024

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identity the appellants. Failure to comply with this order could amount to a contempt of court.

DECISIONS AND REASONS

1. This is the appellants' appeal against the decision of First-tier Tribunal Judge Hoffman (the "Judge") which was promulgated on 17 June 2024. In that decision the Judge rejected the appellants' appeal against the respondent's refusal to extend their leave to remain on Article 8 grounds.

Factual Background

2. The appellants are all nationals of the Philippines. ML, born in 1971, PV her daughter born in 1996 and JR her son born in 2014 from a different relationship.
3. The first appellant married her first husband in the Philippines in 1995 and the relationship broke down due to him being physically, mentally and sexually abusive towards ML and his wider family.
4. The claimed background is that in 2012, ML met a new man ("H2") and in 2013 they began living together and the following year JR was born. Subsequently, H2 started to molest PV and when confronted H2 pushed ML down the stairs and destroyed the contents of the home. H2 tried unsuccessfully to abscond with JR. PV attempted suicide because of the circumstances.
5. The appellants were issued visit visas from 4 May to 4 November 2022. The purpose of the visit was to see ML's mother ("AW"), a British Citizen born in 1943. AW has a number of significant health issues which necessitates continuing care and medical attention.

The Judge's Decision

6. The Judge dismissed the appellants' appeal finding that their removal from the UK would not amount to a disproportionate

interference with their right to a family or private life under Article 8 of the European Convention on Human Rights.

The Appeal to the Upper Tribunal

7. Permission to appeal was initially granted on limited grounds by First Tier Judge Grey on 25 July 2024. This was subsequently extended by Upper Tribunal Judge Kebede to all grounds on 3 September 2024.
8. The first ground contends that the Judge incorrectly applied the Article 8 analysis by applying a standard relevant to Article 3 or otherwise failed to complete a proportionality analysis. Second, the Judge failed to consider material evidence in conducting that proportionality analysis in that (i) ML's subjective fear of her safety and that of children on return to Philippines and the consequent impact on her ability to integrate back in the Philippines were not properly accounted for and (ii) AW's welfare and medical needs were not properly taken into account by the Judge in the proportionality exercise. Third, JR's interests as a child were not considered as a primary consideration or specifically included in the proportionality exercise.

Submissions

9. Mr Chakmakjian, for the appellants, submitted that at critical junctions during the Judge's analysis he applied a test more akin to an Article 3 application rather than Article 8, in particular, at paragraph 25 where the Judge was focused on a "risk of harm on return". In addition, in considering the unjustifiably harsh consequences test the Judge incorrectly focused on the issue of whether AW's case was solely dependent on ML, rather than the consequences for AW's care if ML's assistance was not available, particularly in light of her Alzheimer's and risk of self-negligence.
10. On the second ground it was submitted that no weight was given in the proportionality analysis to the appellants' subjective fear of return to the Philippines given their history and their ability to re-integrate. Mr Chakmakjian acknowledged that this was not raised in the issues in dispute which the Judge summarises in paragraph 8 but submitted that this had been covered in his wider submissions. In addition, the Judge incorrectly failed to take account of the risk to

AW's health of self-neglect incorrectly stating that there was no medical evidence to support this.

11. Further, the Judge's focus on employability prospects and ability to re-integrate was akin to applying a test appropriate for a deportation as set out in Kamara v Secretary of State for the Home Department [2016] EWCA Civ 813 at paragraph 14.
12. Finally, the interests of JV, as a child, were not properly considered as a primary consideration – in particular there was a failure to apply Kaur v Secretary of State for the Home Department [2017] UKUT 00014 at paragraph 18 that a child's best interests could not be devalued by reference to a parent's immigration status. In addition, JV's best interests were not specifically taken into account in the Article 8 balancing exercise.
13. Mr Thompson relied on the respondent's review. On the first ground, he said that there was no evidence to suggest the Judge had misapplied the Article 8 test. Paragraphs 37-40 clearly set out the considerations he correctly included in the balancing exercise.
14. On the second ground, Mr Thompson said that the Judge clearly considered all relevant information including the previous history of the appellants while in the Philippines and AW's medical evidence. The Judge was entitled to conclude as he did and take into account the employability of PV and ML in the Article 8 balance and, equally, in relation to AW that she has been in the UK since 1973 and there was support for her from the NHS and the Sheltered Living arrangements provided by the Local Authority.
15. Finally, the Judge did consider the child's best interest specifically at paragraph 39(f) and the Judge's conclusions are consistent with KO (Nigeria) v Secretary of State for the Home Department [2018] UKSC 53 at paragraph 19 in that the best interests of the child were to be considered in the real world in which children find themselves. If ML and PV are not entitled to remain that is the background in which the test is to be applied.

Analysis and Appeal

Ground 1

Applying the incorrect test in Article 8 analysis/incomplete proportionality

16. The issue is whether the Judge misdirected himself in applying a test more relevant to asylum or Article 3 cases rather than Article 8 in determining the appellant's case.
17. The Judge at paragraphs 21 to 28 of his judgement analyses whether, for the purpose of paragraph 276A DE (i)(iv) of the Immigration Rules, the appellants were able to show that there were very significant obstacles to their integration in Philippines. If this could be established it would enable them to take advantage of appropriate exception to be granted entry clearance.
18. The Judge also considered the impact of his conclusions on the appellants' failure to meet the very significant obstacles test as part of the Article 8 proportionately balancing test at both paragraphs 18 and 24. On the basis that the requirements for entry under the Immigration Rules were not met, he concluded this strengthened the public interest element of the Article 8 test but that was only one of the elements to be considered. At paragraph 24(a):

> "I take into account the appellants do not meet the requirements of the Rules, which is important, although not a determinative conclusion".

Consequently, the Judge did not consider the outcome of the very significant obstacles test to be definitive or a separate test and hence it cannot be said that he failed to properly apply the proportionality balancing exercise recognising that other factors, if sufficient compelling, could have outweighed it.

19. It was additionally contended that the Judge failed to take account of the impact on AW of ML no longer being capable of providing care and family support to her. In particular, the fact that such care and

support was significantly in excess of that which the State could provide.

20. The Judge in his analysis correctly applied the law to the situation of the precarious family life and the removal of non-national family members as set out in Agyarko V Secretary of State for the Home Department [2017] UKSC 11 referred to in paragraph 35 of his judgement. Accordingly, he had concluded the appellants' removal would not lead to unjustifiably harsh consequences for them when weighed against the "weighty public interest considerations". The fact that AW's care was not solely dependent on ML was a relevant factor that the Judge was entitled to take account of in analysis of the issue. In the context of his judgement as a whole it is clear that Judge had taken the fact that AW would receive a lesser standard of care than provided by ML into account, in particular at paragraph 35 and his conclusions on this were correctly fed into his analysis on the wider Article 8 issues set out in paragraphs 37 to 39. Accordingly, we find that there is no merit to Ground 1.

Ground 2

The Judge failed to give sufficient weight to ML's and PV's subjective fears on return arising from the traumatic sexual and domestic violence they had repeatedly suffered.

21. The Judge in paragraph 25 clearly sets out his conclusion having considered all the evidence:

> "I do not therefore accept that the evidence of the appellants suggests that they face a risk of harm on return from either H1 or H2 [being the previous husband and partner] and, even if they did, based on their previous experiences, I find that they could reasonably be expected to rely on the barangay and their neighbours to help them or else call the police".

22. Accordingly, in applying the Article 8 balancing exercise, the Judge had concluded the Immigration Rules on whether there had been significant obstacles to integration had been correctly applied.
23. In relation to the treatment of the appellants' subjective fears this was not a point put in issue before the Judge. In accordance with Lata (FtT: principal Controversial Issues) [2023] UKUT 00163, given this issue would not fall within the Robinson obvious exception, an error of law cannot occur on the basis that the Judge failed to take account of a point that was not raised as a matter for appeal. It is not for a Judge to trawl through papers to identify relevant issues. It is clear however, that in any event, even if the subjective fear of ML and PV had been referred even more expressly in the proportionality exercise given the strong public policy considerations in favour of removal and the fact that the appellants had not made out their case that they would objectively be subject to harm, it is unarguable that their subjective fears would have had any or any material impact on the Article 8 analysis.
24. The second element of Ground 2 was that the Judge failed to give sufficient emphasis in the proportionality exercise of AW's medical condition. In particular, the risk of self-neglect if family support was removed.
25. Whilst we note that the Judge incorrectly stated in paragraph 36 that the risk of "self-neglect" referred to Mr Islam's letter of 22 March 2024 was not echoed in the medical evidence, this was not material.
26. The letter from Brunswick Medical Centre dated 23 November 2023 refers to:

> "[AW's] dementia makes her a vulnerable person at the risk of self-neglect and she is under the [Local Authority] Memory Service and has been under the care of the frailty team".

This is echoed in a letter from the Ampthill practice dated 3 August 2022, which the Judge also did not refer to.

27. The issue is whether this amounts to an error of law in that such error was material to the outcome of the decision. The Judge expressly considered the letter from Mr Islam dated 22 March 2024. In our judgment the reference by the Judge in this way was not material. The matter of weight was for the Judge. In view of the background to this family's recent arrival in the UK as visitors on visit visas and their ability to seek appropriate treatment in their home country, the proportionality assessment could not conceivably have reached a different result.
28. In any event, taking the evidence at its highest, even if the Judge had given greater weight to this evidence it is unarguable that a different result could have been reached in respect of the conclusions on the Article 8 analysis. Mr Islam's letter refers to ML playing a "pivotal" role in AW's care but there is no suggestion that social care would not otherwise be available to AW. Indeed, this is a clear implication in his earlier letter of 18 July 2023. This would not be at the same level as family support but, in the context of the unjustifiably harsh consequences test and reminding ourselves of the decision of the Supreme Court in to Agyarko V SSHD the fact that AW would receive a lesser form of care than that supplied by her family would not disturb the weighty public interest.

Ground 3

JP's best interests, as a child were not considered or specifically weighed and incorporated into the Article 8 balancing exercise.

29. Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Secretary of State in exercising any function in relation to immigration, asylum or nationality to have regard to the need to safeguard and promote the welfare of children who are in the United Kingdom.
30. The Judge at paragraph 39(f) concluded that the best interest of JR would be to remain with his mother and half-sister and return with them to the Philippines. Accordingly, JR's best interests were considered, and the issue is whether the proportionality exercise was flawed because JR's interests were not given the necessary weight as part of that exercise. In particular, whether separating JR from AW and returning him to a country where ML and PV had concerns about their ability to integrate would, once factored into the proportionality analysis, have resulted in a different outcome.

31. Whilst the Judge did not expressly refer to the primary interest of JR in conducting his balancing test in paragraph 39 but did conclude at paragraph 38 that the appellants' removal would not interfere with family life enjoyed between the three of them, given they would be returned to the Philippines as a family unit. Whilst he did not expressly refer to JR's best interests as part of the proportionality exercise it is our clear view that in light of the public interest grounds in favour of removal it is unarguable that the matter have resulted in a different conclusion.
32. Zoumbas [2013] UKSC 74 makes it clear that whilst a best interest's assessment is integral to the proportionality assessment, a child's best interests are primary and not paramount and, accordingly, whilst no single consideration can be treated as more important a number of factors are capable of outweighing them. Again, the Judge had well in mind the limited time that the family had been in the UK and that they would be returning as a family unit.
33. The appellants' reliance on Kaur [2017] UKUT 00014 must be considered in light of Supreme Court's decision in KO (Nigeria) v Secretary of State for the Home Department. The best interests of the child have to be considered in the real-world context that the child finds himself in. In this case, given that the Judge's conclusions that ML and PV had no right to remain under Article 8, the best interests of JR had to be viewed in this light.
34. We also have in mind the Court of Appeal's dicta in Volpi v Volpi [2022] EWCA Civ 464 that it is not the role of an appellate court to come to its own conclusions on the evidence before the Judge. It is essential that there is appropriate judicial restraint before interfering with the decision of the expert first instance judge.
35. The Judge's conclusion was that that best interest of JR was to be with his immediate family. JR's private life to be with AW, who he had only known for a relatively short time, as well as his immediate family was not of such significance to outweigh the various public interest factors in removal of ML and PV. We also note the limited time that the appellants had been present in the country. Accordingly, we find no merit to this ground of appeal.
36. The grounds do not establish the Judge's decision involved an error of law and the grounds fail to disclose any basis for us to interfere with the decision of the Judge.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of a material error of law and therefore the decision which had dismissed the appellants' appeals stands.

M Stamp

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

Date 19 December 2024