



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

Appeal Numbers: OA/11604/2012
OA/11611/2012

THE IMMIGRATION ACTS

**Heard at North Shields
On 21st June, 2013**

**Determination
Promulgated
On 18th July 2013**

Before

Upper Tribunal Judge Chalkley

Between

**GABRIEL PAULO GARGANTOS EVORA
ROBIE FRANCISCO GARGANTOS EVORA**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Ficklin, Counsel

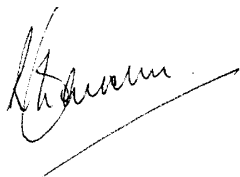
For the Respondent: Mr Clive Dewison

DETERMINATION AND REASONS

1. The appellants are nationals of the Philippines and they are brothers. Their mother, is Jeny Josielyn Gairgantos , (“the sponsor”) a citizen of the Philippines, who has indefinite leave to remain in the United Kingdom. The appellants sought entry to settle in the United Kingdom with their mother

under paragraph 297(1) of Statement of Changes in Immigration Rules, HC 395, as amended (“the immigration rules”). This application was refused by the respondent Entry Clearance Officer on 22nd May, 2012. The appellants appealed that decision and their appeal was heard by First-tier Tribunal Judge Katherine E Gordon at North Shields on 12th February, 2013. In her determination, promulgated on 25th February, 2013, she dismissed the appellant’s immigration appeals.

2. There were several challenges to the determination, the first of which was that the judge failed to consider the best interests of the appellants and their rights under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. It was, in my view entirely properly, conceded by Mr Dewison that the judge should have had regard to the United Nations Convention of the Rights of the Child, in respect of this appeal, involving as it does the admission of children under the age of 18, however, the judge failed to do that.
3. There were five other challenges in respect of the decision made under the Immigration Rules. I was addressed at some length by Counsel in respect of all the challenges, and afterward by Mr Dewison. Mr Dewison accepted the error in respect of the first challenge, as a result of which Counsel withdrew the challenges to the decision made under the Immigration Rules. I indicated to the parties’ representatives that I was minded to exercise my powers under Section 12(2)(b)(ii) of the 2007 Act and remit the appeals for hearing afresh before a Judge of the First-tier Tribunal other than Judge Katherine Gordon. Both representatives agreed with this course.
4. I am satisfied that this is a case which falls squarely within paragraph 7 of the Senior President’s Practice Statement given the length of time the parties would have to wait for the matter to be relisted before me in North Shields or Field House, and that it could conversely be heard relatively speedily by the First-tier Tribunal. In view of the overriding objective informing the onward conduct of this appeal, I have decided that the appeal should be remitted to the First-tier Tribunal for hearing afresh before a First-tier Tribunal Judge, other than Judge Gordon.



Upper Tribunal Judge Chalkley