IAC-TH-WYL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers:
IA/33031/2013

IA/33033/2013
IA/33041/2013
IA/33046/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22nd October 2014	**On 24th November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE PEART

Between

JOSEFINA ARCALA CESA
JOSELITO ARABA CESA
FLORENCE CESA
ALESSANDRA JOY CESA
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Ms Poynor of Counsel
For the Respondent: Mr Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of the Philippines, born as to Mrs Josefina Arcala Cesa on 24th June 1969, Mr Joselito Araba Cesa on 17th March 1963, Miss Florence Cesa on 12th October 1996 and Miss Alessandra Joy Cesa on 11th November 2010.

2. On 25th June 2013 Josefina Arcala Cesa applied for further leave to remain in the United Kingdom. The other appellants are her dependants. It was accepted by the appellants' solicitors that they did not meet the requirements of the Immigration Rules but that on the basis that they had lived in the United Kingdom since November 2007 and had enjoyed private and family lives here, that the respondent's refusal and their removal to the Philippines would breach the United Kingdom's obligations under Article 8.

3. In refusing the application, the respondent gave consideration to the appellants' private lives which from 19th July 2012 fell to be considered under paragraph 276ADE of the Rules. The Secretary of State was not satisfied the appellants could meet the requirements of Rule 276ADE. Josefina Arcala Cesa entered the United Kingdom as a student in 2007 and remained here on a series of visas with temporary categories which did not lead to settlement. The respondent considered whether the application raised any exceptional circumstances consistent with the right to respect for private and family life contained in Article 8 which might warrant consideration by the Secretary of State of the grant of leave to remain here outside the requirements of the Immigration Rules but decided that it did not. The applications of the dependants were refused in line with Josefina Arcala Cesa.

4. The appeal came before Judge of the First-tier Tribunal Majid. In a determination promulgated on 26th August 2014, he dismissed the appeal.

5. The grounds claim the judge arguably failed to consider the Immigration Rules, carried out a flawed assessment of private life under Section 117B and carried out a flawed assessment of the best interests of the children.

6. In granting permission to appeal, First-tier Tribunal Judge Ford whilst acknowledging that it was unarguable the appellants did not meet the requirements of the Rules, found it was unclear from the determination whether the judge considered there were circumstances that might have rendered the decision unduly harsh or unreasonable so as to lead him to consider the proportionality of the decisions outside the Rules. Further, it was arguable that the judge might have made a material error of law in his consideration of the best interests of the children

given that the Secretary of State gave no detailed consideration to those best interests. It was arguable that it was unclear why the judge found that the appellants would be a burden on the public purse in the short term if allowed to remain, given that they had always been self-supporting here. Further, that it was arguable the judge accepted improperly in putting questions to the second appellant. Judge Ford said that the grounds relating to S.19 of the Immigration Act 2014 were not arguable as the judge was obliged to apply the revised provisions of S.117 and the appellants' representative should not have been taken by surprise in that regard.

7. The respondent submitted a Rule 24 response. It was clear that the appellants did not meet the requirements of the Immigration Rules. The oldest child came to the UK aged 14, had been present for less than four years at the time of the hearing and was always here under precarious circumstances as the dependant of a short term migrant such that there was no expectation of further leave.

8. The judge correctly referenced the provisions of Section 117B of the 2002 Act as provided as S.19 of the 2014 Act.

9. For the appellants to succeed outside the Rules, very compelling circumstances would need to be demonstrated. See **MF (Nigeria) [2013] EWCA Civ 1192**. The only issue of any slight note was the academic ability of the appellant's eldest daughter, however, the issue of the education of minor dependants was address in **EV (Philippines) [2014] EWCA Civ 874** at [60]. The appellants' circumstances were very different. None of the family was British. None of the family had the right to remain here. If Josefina Arcala Cesa was removed, none of the other family members had the right to remain. If the parents were removed, then it was entirely reasonable to expect the children to go with them because it was obviously in their best interests to remain with their parents. The desirability of being educated at public expense in the United Kingdom could not outweigh the benefit to the children of remaining with their parents in their own country. Just as the United Kingdom cannot provide medical treatment for the world, it cannot educate the world.

Submission on Error of Law

10. Ms Poynor relied upon the grounds. Mr Bramble submitted that there were errors in the determination, however, they were not material.

Conclusion on Error of Law

11. I find that the judge took into account irrelevant issues, failed to consider relevant issues, carried out a flawed assessment of the appellants' circumstances including the best interests of the children and overall, failed to give adequate reasons. Merely because the appellants could not succeed under the Immigration Rules was no reason not to go on to carry out an appropriate assessment under Article 8.

12. The appellants have shown errors of law in the determination such that the decision of the First-tier Tribunal should be set aside, and heard again de novo.

13. Directions are attached to this short determination.

14. No anonymity direction is made.

Signed Date 30 October 2014

Deputy Upper Tribunal Judge Peart