Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/14118/2014
IA/14121/2014
IA/14123/2014
IA/14126/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 4 December 2014	**On 5 January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE E B GRANT

Between

HONEYLET DE VILLA DELGADO
ANDREA MAE DE VILLA DELGADO
ARNOLD MONTALBO DELGADO
VON HARVEY DE VILLA DELGADO

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr E Waheed, Counsel
For the Respondent: Ms A Holmes, Senior Presenting Officer

DETERMINATION AND REASONS

The Background to this Appeal

1. The appellants are a family of four comprising mother, father and two children. Their youngest child is 7 years of age and Von Harvey De Villa Delgado is 9 years old.

2. The appellants applied for leave to remain outside of the Immigration Rules under Article 8. In a letter dated 6 March 2014 the respondent refused their applications and at the same time issued decisions to remove the appellants to the Philippines. The appellants appealed those decisions and their appeal was heard by First-tier Tribunal Judge M R Oliver at Richmond on 10 October 2014. In a determination promulgated on 16 October 2014 he dismissed their appeal against the respondent's immigration decisions.

3. On 3 November 2014 a First-tier Tribunal Judge granted permission to appeal in the following terms:

> *"1. The appellants seek permission to appeal, in time, against a decision of First-tier Tribunal Judge Oliver who, in a determination promulgated on 16 October 2014 dismissed the appellants' appeals against the respondent's decision to refuse to grant leave to remain.*
>
> *2. Having had regard to the grounds for permission to appeal and the determination, I am satisfied that in reaching his decision the judge arguably made an error of law for the following reasons:-*
>
> *a. It is arguable that in assessing the best interests of the children that the judge failed to pay adequate regard to the respondent's guidance.*
>
> *b. It is arguable that in assessing the 'ties' of the family (and in particular, of the children) to the Philippines the judge failed to have adequate regard to the guidance in the decision of* ***Ogundimu*** *(**Article 8 - new Rules) Nigeria [2013] UKUT 60 (IAC)**.*
>
> *3. Accordingly I am satisfied that the grounds and determination disclose an arguable error of law."*

4. Thus the matter came before me to determine whether the decision of the Immigration Judge contains an error of law.

Submissions for the Appellants

5. The appellants' submissions are set out in the grounds of appeal which I set out in full below:

> *"THERE IS A LACK OF SUFFICIENT REASONING FOR THE REJECTION OF THE CLAIMANTS' APPEAL UNDER THE IMMIGRATION RULES APPENDIX FM R-LTRPT.1.1 AND SPECIFICALLY THE SECRETARY OF STATE OWN GUIDANCE ON EX.1. 'Consideration of a child's best interest under family Rules and in Article 8 claims where the criminality threshold in paragraph 399 of the Rules DO NOT apply' (to be found at http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/chp-8-annex/ex1guidance-1pdf?view=Binary)*
>
> *CRITERIA AT PARAGRAPHS 14-15 FOR 'Where a non-British child has been in the UK for more than seven years' was not considered.*
>
> *14. The seven year threshold recognises that over time children start to put down roots and integrate into life in the UK to the extent that being required to leave the*

UK may be unreasonable. You need to consider whether in the specific circumstances of the case it would be reasonable to expect the child to live in another country. You will need to consider the facts for each child within that family and for the family in the round. You should also engage with any issues explicitly raised by the family or by or behalf of each child. Relevant considerations are likely to include:

i. whether there would be a significant risk to the child's health: For example, if there is evidence that the child is undergoing a course of treatment for a life threatening or serious illness and treatment is not be available in the country of return;

ii. whether the chid would be leaving with its parent(s)? It is generally the case that it is in a child's best interests to remain with its parents. Unless specific factors apply it will generally not be unreasonable to expect a child to leave the country with its parents, particularly if the parents have no right to remain in the UK;

iii. the extent of wider family ties in the UK - you should consider the extent to which the child is dependent on wider family members in the UK;

iv. whether the chid is likely to be able to be able to (re)integrate into life in another country? Relevant factors weighing in favour of successful (re)integration include:

- *whether the parent(s) or child is a citizen of the country and so able to enjoy the full rights of being a citizen in that country;*
- *whether the parents and/or child have lived in or visited the country before for periods of more than a few weeks - the question here is hw having visited or lived in the country before that the child would be able to adapt and/or the parents would be able to support the child in adapting to life in the country;*
- *whether the child or parents have existing family or social ties with the country - a person who has extended family or networks of friends should be able to rely on them for support to help reintegrate on return;*
- *whether the child or parents have relevant cultural ties to the country - you should consider any evidence of exposure to and the level of understanding of the cultural norms in the country. For example, a period of time spent living mainly amongst a diaspora from the country may in of itself give a child an awareness of the culture in the country;*
- *whether the child can speak, read and write in a language of that country; or is likely to achieve this within a reasonable time period. Fluency is not required - an ability to communicate competently with sympathetic interlocutors would normally suffice.*
- *whether the child has attended school in that country;*
- *any country specific risks (refer to relevant country guidance);*

vi. other specific factors raised by or on behalf of the child.

15. Families or children may highlight the differences in quality of education, health and wider public services and economic or social opportunities between the UK and the country of origin and argue that these work against the best interests of the child. Other than in exceptional circumstances, this would not normally be

regarded as a relevant consideration, particularly if the parent(s) or wider family have the means or resources to support the child on return or the skills, education and training to provide for their family on return, or if AVR support is available."

6. In oral submissions Mr Waheed submitted that the basis of the appeal concerned Von Harvey De Villa Delgado, a child who has now lived in the United Kingdom for over seven years. It has been submitted that in paragraphs 19 and 20 of the determination the judge has given no proper analysis as to whether it is reasonable to expect Von Harvey to leave the United Kingdom.

7. Reliance was placed by Mr Waheed on a determination of the Tribunal in **Ogundimu (Article 8 - new Rules) Nigeria [2013] UKUT 60 (IAC)**. The judge has not properly considered that Von Harvey has no ties to the Philippines. He has not properly considered the evidence that was placed before him including a letter from the headteacher at page 27 of the appeal bundles. Von Harvey is entrenched into the United Kingdom and all his social ties are in the United Kingdom. Mr Waheed relied on paragraph 14 of the respondent's policy as set out in the grounds. In summary the judge erred in law because the appellant has no "**Ogundimu**" ties with the Philippines.

8. Ms Holmes on behalf of the respondent submitted there was nothing wrong with the determination. The grounds criticise the judge because they say he did not take note of the guidance issued to the respondent's officers but the issue is whether the guidance was ever raised as an issue before the judge. The judge has in any event covered all the points he needed to cover. He starts his findings at paragraph 13 and finds the family cannot satisfy the requirements of the Immigration Rules and at paragraph 15 looks at Von Harvey and mentions Section 55 of the Borders Act. It is clear from the determination that the judge had in mind the best interests of Von Harvey and the judge then went on to remind himself of relevant case law. The judge found he did not accept the parents' evidence and he did not accept that the parents would have to pay for the children to attend State schools in the Philippines. He takes into account guidance of the Supreme Court in **ZH (Tanzania)** that it is important for children to have contact with their own culture. In summary the judge did not believe all of the parents' evidence and has considered all he needed to consider. The guidance is not fully in the appellants' favour and it is only guidance. **Ogundimu** is not relevant to the facts of the appeal before me. **Ogundimu** is a deportation decision and the proposal was to remove **Ogundimu** on his own with no family members to accompany him. In this appeal two children will be returned with their parents. Even if **Ogundimu** has any application to these appeals it does not prevent the judge finding as he did.

9. Ms Holmes made reference to **Zoumbas v SSHD [2013] UKSC 74**. In **Zoumbas** the children were aged 7 years, 4 years and 5 months. The Supreme Court found there was no irrationality in the conclusion that it was in the children's best interests to go with their parents to the Republic

of Congo. No doubt it would have been possible to have stated that, other things being equal, it was in the best interests of the children that they and their parents stayed in the United Kingdom so that they could obtain such benefits as healthcare and education which the decision maker recognised might be of a higher standard than would be available in the Congo. But other things were not equal. They were not British citizens. They had no right to future education and healthcare in this country. They were part of a close knit family with highly educated parents and were of an age when their emotional needs could only be fully met within the immediate family unit. Such integration as had occurred into United Kingdom society would have been predominantly in the context of that family unit. More significantly the decision maker concluded that they could be removed to the Republic of Congo in the care of their parents without serious detriment to their wellbeing.

My Findings

10. Although the findings of the judge in relation to Von Harvey De Villa Delgado, which are at paragraphs 15 to 19 of the determination are somewhat brief, I have no difficulty in concluding that he reached the only decision open to him on the evidence before him and he did not err in law in coming to that conclusion. The judge was fully aware that the parents were reliant upon the level of integration and education Von Harvey had achieved in the United Kingdom not least because he is now 9 years of age something the judge also recognised at paragraph 1 of the decision. Although he failed to make mention of the guidance of the Tribunal in **EV (Philippines) [2014] UKUT** [reference] he plainly followed the guidance set out therein which is also in accordance with a decision of the Supreme Court in Zoumbas referred to by Ms Holmes before me. It is clear from the decision that the judge did have in mind the education of the children and he did not accept the parents' evidence that State schools in the Philippines charge for tuition. He had placed before him a letter from the headteacher indicating that Von Harvey was well settled at school and that any move at this stage of his education would be disruptive but that is something which goes without saying when the proposal is to remove a child who has settled well into primary school education in the United Kingdom. Any move will be disruptive for the child. The judge was not unaware of that nor was he unaware of the submissions before him that the children only spoke English. Indeed he said that they were of an age where they could easily pick up a language to which they have inevitably been to an extent exposed at home. He noted that the parents and children are Filipino not British and he concluded that it is in the best interests of the children to return with their parents as an intact family unit.

11. It is submitted that by coming to this conclusion the judge erred because he failed to follow the respondent's guidance. I have read the note of proceedings carefully and no reference to the respondent's guidance was ever placed before the Tribunal. It is not an error of law to fail to take into

account matters not placed before the judge. However even if it had placed before the judge it is difficult to see that the judge could have come to any conclusion other than the one that he did. The guidance is directed to the decision maker not to the judge. It can be seen from the refusal letters that the respondent properly took into account the best interests of the children and the application of paragraph 276ADE at paragraphs 21 to 25 of the refusal letter. The policy itself makes it clear that where a child is leaving with its parents it is generally the case that it is in the child's best interests to remain with its parents. Unless specified factors apply it will generally not be unreasonable to expect a child to leave the country with its parents particularly if the parents have no right to remain in the UK.

12. It can be seen from the determination that this is the conclusion the judge came to and his findings, whilst brief are entirely sustainable and were open to him on the evidence before him.

13. I therefore find that the judge did not err in law in his decision and his decision will stand.

Conclusions

14. The decision of the First-tier Tribunal stands.

15. I do not set aside the decision.

Signed Date

Deputy Upper Tribunal Judge E B Grant