Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/07386/2015
& HU/07389/2015

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision and Reasons Promulgated**
on 28 September 2017	**on 02 October 2017**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

GINALYN [M]
&
[M A]
(Anonymity direction not made)

Appellants

and

ENTRY CLEARANCE OFFICER, Manila

Respondent

For the Appellant: [AM], the sponsor
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are mother and daughter, citizens of the Philippines, born on 25 June 1988 and [ ] 2006. The sponsor, the husband of the first appellant, is a UK citizen. The first appellant and the sponsor have a son,

born on [ ] 2010, who is a dual citizen. At the time of the FtT hearing he was living here with his father.

2. The ECO refused the appellants' applications for entry clearance for reasons set out in decisions dated 7 September 2015.

3. First-tier Tribunal Judge Doyle dismissed the appellants' appeals for reasons set out in his decision promulgated on 17 October 2016.

4. The appellants sought permission to appeal to the UT by an application (out of time) presented by the sponsor. The gist of the grounds is that the judge did not carefully consider all the documents provided and should have found the article 8 case was established, based on the sponsor's inability to work and support his family in the Philippines, his ability to provide for his family here, his wife's ability to work here, and the better education and prospects available to the two children.

5. On 24 August 2017 FtT Judge Simpson extended time and granted permission, on the view that arguably the judge "leap-frogged" the 5-stage approach required by *Razgar* by addressing the question of compelling circumstances at the outset rather than at the end of the proportionality assessment; notwithstanding reference to *ZH* and to *Zoumbas*, failed to make a real assessment of the best interests of the two children in the case; and had insufficient regard to the nature and force of family ties between the sponsor and his sister.

6. [AM], who of course is not a lawyer, adopted the points suggested by the grant of permission. He described the wish of the four family members to live together in Scotland, and submitted that the judge failed to appreciate what the case really involved for them.

7. I explained to [AM] that the first question for the UT was whether the FtT made any error of law, based on the facts evidenced at the time of the FtT hearing – not on any further evidence about those facts, or on the position today. That would be relevant only if the FtT decision was found to be wrong on a point of law, and had to be remade. However, I did find out from him some of the more up-to-date facts. His son missed his mother. When they last visited the Philippines, his son remained with her and is there now. The applications to the respondent which lead to these proceedings failed due to shortfall in the minimum income requirements, although not by much. The sponsor has for the last 4 months been employed in a job which would meet those requirements (and so fresh applications might well be made, once 6 months of financial proof is available). He preferred to proceed with these appeals, hopes having been raised by the grant of permission, as that might be a more rapid route, and would not involve the delay, expense and uncertainty of further applications.

8. Mrs O'Brien submitted that the grant of permission was based on natural sympathy rather than on legal error, and that none was to be found in the

decision. Even if it was possible that another judge might have decided otherwise, that was beside the point. It had been conceded that the cases did not meet the terms of the immigration rules. The rules were purposefully to the effect that some families could not live together in the UK unless their terms were met. Such outcomes are not generally overridden by article 8. There might be better facilities for the two children in the UK, but nothing had been shown by which relative advantage to them might have been so strong as to change the outcome. The relationship between the sponsor and his sister was another sympathetic aspect of the case, but not such as to give rise to a finding of family life between siblings qualifying for article 8 protection. The judge had not left anything relevant out of account or failed to appreciate the facts; his assessment was based on the realities. There was nothing compelling which might have justified a favourable outcome on human rights grounds. Based on the essential finding, properly open to the judge, that the family had a choice where to live, the outcome was plainly proportionate. There was no error of law which would entitle the UT to interfere.

9. [AM] in reply said that although the judge found that it was a choice whether the family lived in Scotland or the Philippines, in truth there was no choice. He was permitted to be in the Philippines only as a visitor, not in the long term, and not to work. It took 3 years to obtain a work permit. That had to be based on establishing a business and the conditions were such as he was unlikely to meet. The small business set up had been run by his wife, not by him, and was destroyed by the typhoon.

10. I reserved my decision.

11. I have considerable sympathy for the position of the appellants and of the rest of the family. It is worth recording that although this has been without doubt a trying situation, [AM] presented the appellants' case moderately and sensibly, and that he and his family have always sought scrupulously to comply with the immigration rules.

12. There is no legal requirement to work through all the preliminary stages of *Razgar*, in a case which arrives at the final question.

13. On the best interests of the children, there was only the vague notion that education and prospects must be better in the UK. There was nothing to show that the children would not thrive with their parents, wherever they chose to settle; and it appeared there was a choice. There was no basis on which the appeal might have succeeded in respect of the children's interests.

14. The situation of the sponsor's sister was never likely to demonstrate that the appellants had a right of settlement in the UK.

15. There was scant evidence of the relative difficulty of the family establishing itself in the Philippines. There was some evidence that had

already been tried and proved unsuccessful, but no evidence, for example, of the immigration law of the Philippines to show difficulty in the future.

16. There is nothing to suggest that the finding that the family had a realistic choice was not properly open to the judge, on the evidence before him at the time. Based on that finding, the proportionality assessment is one which was plainly open to the FtT.

17. Thus, the outcome is as I warned was likely: there is no error on a point of law in the decision of the FtT, such as might entitle the UT to set it aside.

18. There was some discussion at the hearing of the possibility of further applications to the respondent. It was made clear that it is not the function of the tribunal or of a presenting officer to offer advice, that applications will be assessed on their own merits, and that no assumption should be made of success. However, I think it is appropriate to record that it may well be that the appellants within the relatively near future will be in a position to apply again, with apparently reasonable prospects, and that although their appeals to the FtT and to the UT have failed, nothing has emerged which should be in any way prejudicial to future applications.

19. The decision of the First-tier Tribunal shall stand.

20. No anonymity direction has been requested or made.

29 September 2017
Upper Tribunal Judge Macleman