



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

Appeal Number: HU/09293/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 27 July 2017
Prepared 27 July 2017**

**Decision & Reasons Promulgated
On 11 August 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**Q S S
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs Jocelyn Sumibcay

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of the Philippines, date of birth [] 1977, appealed against the Respondent's decision dated 14 October 2015 to refuse leave to remain. His appeal against that decision came before First-tier Tribunal Judge M A Khan who, on 30 November 2016, dismissed the appeal under the Immigration Rules and Article 8 ECHR.

2. Permission to appeal was given by First-tier Tribunal Judge Landes on 8 June 2017.
3. Given the rights of appeal the key issue was the consequence and impact of proportionality on the Appellant's compliance with the Immigration Rules and also the extent to which the Judge properly assessed Article 8 ECHR as a consideration since it was a human rights based appeal. The permission to appeal gave permission it seems on limited grounds but those ultimately are not material or not as material as might have been the case.
4. On 29 June 2017 the Respondent made a Rule 24 response.
5. Given the fact that the Appellant is in person and assisted by his wife who has done the advocacy on his part, I briefly set out what has been said about the grounds of appeal which plainly were settled with some help.
6. The general criticism in ground 1 is not without some validity but ultimately makes no material difference to the outcome of the appeal. It is so much more a criticism generally of the care taken by the First-tier Tribunal Judge in dealing with the matter. The second ground relates to the fact that the Appellant had as at the date of hearing undertaken and successfully completed the appropriate English language test. That information was before the Judge and was raised as an issue. The Judge was provided with a copy of the certificate showing international standard CEFR level A1 with merit and that the appropriate exam had therefore been undertaken. In the circumstances whilst that had not been completed at the date of the Respondent's decision the fact was given that it was a human rights based appeal it was a relevant consideration in assessing the case. The Judge simply did not address it properly and to that extent it is now accepted fairly on behalf of the Respondent that the evidence was before the Judge of those matters.

7. So far as the third ground is concerned, the Appellant's status was precarious and remains precarious even though he has obviously been here a period of time and thus that conclusion by the Judge is not an error. However, in considering the Article 8 claim it is clear that the Judge failed to address, albeit it is somewhat limited, the evidence that was advanced showing that the Appellant's stepson but a family member Mark Lawrence Velasco, date of birth 10 July 1999, was at the date of the hearing under 18, he still lives at home and on the evidence it appears that he is still effectively, although now, an adult dependent on his mother and stepfather. In addition, there is the child Ruth Elaine, date of birth 20 November 2014, who has since the date of the Judge's decision become a British national but was at the time a child in the care of the Appellant and his wife. The Judge's analysis of their best interests which were material to the assessment of proportionality was simply not addressed. I can only assume unfortunately that was the product of the fact that neither party at the hearing of the appeal was represented and no-one took the Judge to the importance of the issue. In the alternative, the omission is an oversight or a product of other aspects of the way the matter was addressed. In the circumstances Mr Bramble takes the matter no further and accepts it is for me to assess the position.
8. I have formed the view that the Original Tribunal made a material error of law in failing to address relevant considerations. It is fair to say to him that the evidence, because it was effectively homemade, was less than full as would be helpful. I have concluded therefore that the appropriate course is for this matter to be sent back for further findings of fact particularly addressing the human rights based claim in the context that the English language test is no longer an issue and that is plainly a factor to which weight can be given in assessing the Article 8 proportionality.
9. In these circumstances the Original Tribunal's decision cannot stand and the matter will have to be re-made in the First-tier Tribunal.

DIRECTIONS

1. Return to the First-tier Tribunal at Hatton Cross, not to be put before First-tier Tribunal Judge M A Khan nor First-tier Tribunal Judge Landes.
2. List for hearing one and a half hours.
3. No interpreter is required.
4. Further evidence needs to be served by or on behalf of the Appellant not later than fourteen days before the further hearing and any reply thereto by the Respondent not later than seven days before the hearing.
5. Such evidence may include further information relating to the upbringing and education of the children of the family, the family arrangements for the care of the children and their education, evidence as to current educational needs or studies taking place, any other evidence relating to third parties who know of the Appellant's family and/or children, such as the Appellant's son Mark's college, and any further references relied upon by the family in support of their claim to remain in the UK and any other relevant information that they wish to provide.

ANONYMITY

An anonymity order is appropriate.

DIRECTION REGARDING ANONYMITY - RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify

him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 8 August 2017

Deputy Upper Tribunal Judge Davey

