Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: HU/12461/2019
HU/12466/2019

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
Remotely by Skype	
On 5 November 2020	**On 13 November 2020**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

CHRISTOPHER OCLARET TAER
CHRISTOPHER TABIGUE TAER

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr P Draycott instructed by Douglass Simon Solicitors
For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The first appellant is a citizen of the Philippines who was born on 8 January 1977. The second appellant is also a citizen of the Philippines and was born on 28 November 1999. The first appellant is the father of the second appellant.

2. The first appellant entered the United Kingdom on 4 July 2011 with a Tier 4 visa with leave valid until 27 September 2012. On 26 September 2012,

the first appellant applied for further leave to remain as the spouse of Zuena Lagasi Sahidjuan. On 22 March 2013, the Secretary of State refused that application. That decision was subsequently reconsidered and on 3 February 2014, the first appellant was granted limited leave to remain as a spouse under the 10-year route under Appendix FM of the Immigration Rules (HC 395 as amended) valid until 3 August 2016.

3. On 12 July 2016, the first appellant applied for further leave to remain as a spouse. On 31 August 2016, the first appellant was granted leave as a spouse under the 5-year route in Appendix FM valid until 22 March 2019.

4. On 28 February 2019, the first appellant made an application for indefinite leave to remain on the basis of his marriage. That application was refused on 8 July 2019.

5. The second appellant, who is the first appellant's son, entered the United Kingdom on 1 August 2015 with a visa to join his father. His leave was valid until 3 August 2016.

6. On 12 July 2016, the second appellant applied for further leave to remain as a dependant on his father's spouse application. On 31 August 2016, in line with his father's successful application, the second appellant was granted leave until 22 March 2019.

7. On 1 March 2019, the second appellant made an application for indefinite leave to remain as the dependant of his father and in line with the first appellant's application for leave for ILR which had been made the previous day.

8. On 8 July 2019, the Secretary of State refused the second appellant's application for indefinite leave to remain.

9. The appellants appealed to the First-tier Tribunal. In a determination sent on 25 February 2020, Judge Hussain dismissed each of the appellant's appeal under Art 8 of the ECHR.

10. The appellants sought permission to appeal and, on 22 April 2020, Judge Easterman granted each of the appellants permission to appeal on the basis that it was arguable, that although the first appellant did not meet the requirements in Appendix FM of the Immigration Rules for ILR, he met the requirements for limited leave and that, therefore, the decision to remove him (and the second appellant) was not proportionate.

11. The appeals were listed before me on 5 November 2020. The hearing was conducted remotely by Skype for Business. I was based in the Cardiff Civil Justice Centre and Mr Draycott, who represented the appellants and Ms Rushforth who represented the Secretary of State, joined the hearing remotely.

12. At the outset of the hearing, Ms Rushforth conceded that the judge had erred in law in dismissing both appellants' appeals under Art 8 of the ECHR. She accepted that the first appellant met the requirements for

limited leave as a spouse under Section R-LTRP 1.1(a) – (c). Those are the necessary requirements in order to succeed under the so-called 5-year route and which entitles the first appellant to the grant of limited leave for a period not exceeding 30 months under section D-LTRP 1.1. Ms Rushforth accepted that the judge had been wrong in failing to approach the first appellant's appeal on the basis that he met the requirements of the Rules.

13. Mr Rushforth further conceded that the first appellant's appeal should succeed under Art 8 of the ECHR as there was no public interest in removing him given that he met the requirements in Appendix FM on the five-year route as a spouse.

14. Finally, Ms Rushforth conceded that the second appellant's appeal, which was dependent on the first appellant's appeal, should be treated in the same way. The judge's decision should be set aside and the second appellant's appeal should also be allowed under Art 8.

15. I accept Ms Rushforth's concession that the first appellant meets the requirements of the Rules in Appendix FM for limited leave as a spouse under the 5-year route. (Mr Draycott accepts that the first appellant is not entitled to ILR under the Rules.) The second appellant's claim falls to be decided in line with that. The appellants' appeals were only on the ground that the decisions breached Art 8 as a result of ss.82 and 84 of the Nationality, Immigration and Asylum Act 2002 (as amended). However, in TZ (Pakistan) and Another v SSHD [2018] EWCA Civ 1109, Sir Ernest Ryder, the Senior President of Tribunals (with whom Longmore and Moylan LJJ agreed) said at [34]:

> "... where a person satisfies the Rules, whether or not by reference to an Article 8 informed requirement, then this will be positively determinative of that person's Article 8 appeal, provided their case engages Article 8(1), for the very reason that it would then be disproportionate for that person to be removed."

16. There is no doubt that Art 8.1 is engaged in this appeal because of the "family life" between the appellants and the first appellant's spouse. As the first appellant meet the requirements of the Rules, what was said by the court in TZ (Pakistan) applies. It is accepted the second appellant succeeds on the same basis. Both appellants were, before the First-tier Tribunal, and are, now on appeal in the Upper Tribunal, entitled to succeed under Art 8 of the ECHR as Ms Rushforth conceded.

Decision

17. The decision of the First-tier Tribunal to dismiss each of the appellants' appeals involved the making of an error of law. That decision cannot stand and is set aside.

18. I remake the decision allowing each of the appellants' appeals under Art 8 of the ECHR.

Signed

Andrew Grubb

Judge of the Upper Tribunal
10 November 2020

TO THE RESPONDENT
FEE AWARD

I have allowed each of the appellants' appeals and, it is clear, their appeals should have been allowed by the First-tier Tribunal on the evidence before it. In these circumstances, I make a fee award of any fee paid or payable in respect of the appellants' applications.

Signed

Andrew Grubb

Judge of the Upper Tribunal
10 November 2020