



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

First-tier Tribunal No:
HU/04209/2020

THE IMMIGRATION ACTS

Decision & Reasons Promulgated
On 14 March 2023

Before

UPPER TRIBUNAL JUDGE ALLEN
DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

JOSEFINO JR DELA CRUZ QUIBOLOY
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Uddin instructed by Jasvir Jutla & Co Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House on 9 December 2022

DECISION AND REASONS

1. This is the rehearing of the appellant's appeal against the Secretary of State's decision of 9 March 2020 refusing a human rights claim. An appeal to the First-tier Tribunal was dismissed, but in a decision promulgated on 21 June 2021 Upper Tribunal Judge Allen found errors of law in that decision and the matter was relisted for a full hearing before the Upper Tribunal.
2. The appellant gave evidence. He adopted his previous witness statements of 25 June 2020 and 16 September 2021.

3. In the earlier witness statement he referred to the facts of his conviction and sentencing in 2019 to five years' imprisonment for two sexual offences and the making of a deportation order against him and the refusal of his application for leave to remain. He referred to his great remorse and regret. He was sincerely sorry for what had happened and should have thought and put his family first above his selfish interests. The reactions had caused a very bad impact on his family and they had been struggling financially and at the time of writing that statement his wife was on maternity leave. He also referred to the anxiety that was being suffered by his daughter. He had managed to obtain several qualifications while in prison and had done several courses and programmes. He was a member of the prison council working as a bridge between other prisoners and the governor and was a DRM (dialogue road map) facilitator under the Centre for Peaceful Solutions which is a charity outside the prison. He had applied to, and been accepted on an Open University course and various other courses also.
4. Since he had entered the United Kingdom in December 2009 he had been working at Domino's Pizza. He had a degree in marketing management from the Philippines. He had been an area manager of Domino's Pizza before he went to prison. He said that he had a very good reputation in his career in the UK and felt there were opportunities awaiting him on release. If he was taken from his family he did not know how they would cope in their lives on a daily basis. He referred to the disability of his daughter, who suffers from cerebral palsy. His family life would be ruined and devastated if he was deported back to the Philippines. Life for him in the Philippines would not be easy. The only ties he had there were his parents who were in their 80s and his brothers and sisters were already married and had their own families who are also abroad. He had been away for more than ten years and did not know what the Philippines was like anymore. The courses he had done in prison would not help him gain employment back in the Philippines and at the current time the employment rate was very high due to the pandemic. He said that his parents only had a small two bedroom house which was not big enough for his whole family and that was why he had gone to work abroad. They had never thought of going back to the Philippines. You could not put your children in a very good school in the Philippines unless you had a lot of money to pay for tuition. He thought that the medical care needed by his daughter would cost a lot in the Philippines and it was needed monthly and they would not be able to afford it all. He referred to the fact that his daughter was prone to epilepsy. Her cerebral palsy would get more severe the more she aged and she would eventually be bedridden.
5. His daughter had started her new school and very excited at being there. She was very bright and was doing well in her education. He referred to the help he was able to give his daughter in assisting, showering and dressing before she goes to school and collecting her afterwards. He would help her do assignments and school projects. His daughter always called for him to do things at home rather than calling on her mother. With her disability and being anxious all the time he did not know how she was going to cope. She had told him how much she missed him and he missed her and the rest of the family also. She had adapted totally to the UK way of life, having come to the UK at a very young age.
6. At the time his current contact with his children was through written correspondence and telephone calls but he was in the process of obtaining level 4 access where there would be no restriction. He said that as a family they were fully adjusted into UK culture and had integrated into the society. His wife was struggling, especially on the financial side. They had managed to get a mortgage

holiday because of the pandemic. He referred to the fact also that he missed his wife very, very much and also missed his friends and colleagues.

7. In his supplementary witness statement dated 16 September 2021 the appellant referred to changes in his and his family's lives since his previous appeal in September 2020. He was to have his first face to face meeting with his wife and children on 25 September 2021. He referred to problems his daughter was experiencing with her disability and feeling inferior compared with other children around her, especially in school. He said that he had found out about her that she was having suicidal thoughts and this had devastated him. His wife was really struggling. Her depression was getting worse and her fears about her daughter were very badly affecting her wellbeing and mental health. His son was by now almost 2 and unfortunately could not say even a single word and this was concerning them as well. The pandemic had really affected him and his family. He had kept himself busy doing a lot of courses. They did not think of going back to the Philippines as a family. They would not be able to put the children in a very good school in the Philippines as you could not do so unless you had a lot of money to pay for tuition and also there was the issue of lack of resources and support for his daughter's disability. It would be hard for him to integrate into the Philippines as the only ties he had there was his parents as his siblings were married and had their own families and lived abroad. He was experiencing very great remorse and regret with respect to the crime he had committed.
8. In his oral evidence the appellant said that he and his family could not relocate to the Philippines, as his life was already here and also his family's life, particularly his daughter who was disabled. She had cerebral palsy and it was like a stroke and she could not move the right side of her body and this restricted her mobility.
9. His son had been assessed in respect of his learning as he was almost 3 and could not talk. It would be very hard in the Philippines for them and they would need a lot of money for the cost of his daughter's treatment and the schools were not great. His daughter would get everything here. He had no ties in the Philippines, no family and no financial support. He had been living abroad for the last twenty years. He had come to the United Kingdom in 2009 from Dubai, having lived there from 2005.
10. He no longer had any family members in the Philippines. His parents lived in Dubai now with his sister, having moved there in September 2022.
11. He did not have a family home in the Philippines he could move to. It was occupied by his other sister and was not his house. There was no house he could go to in the Philippines.
12. He was asked whether he and his wife would be financially able to buy or rent in the Philippines and he said financially it was really hard for them as tuition costs were high and the education system was worse than in the United Kingdom. His daughter had come to the United Kingdom when she was 4 and was now 15.
13. He was asked whether family and friends in the United Kingdom could not support him financially if he went back and he said no, they had their own families and it was not easy for him to beg and it was not an option.
14. He was asked whether his daughter would still have access to the hospitals and medical appointments she might need and he said that in the Philippines there was nothing. She had it all here. They had taken care of her since she had come

here. She had had a recent operation to lengthen her foot, last October. She had been limping and had very bad mobility and it was like a person who had had a stroke. At the moment she was wearing a splint after the operation and was waiting for an assessment.

15. He was asked how it would impact on the family if he had to go back to the Philippines alone. He said it would impact in particular on his daughter as it would devastate them especially when he was not living with them and it would be like when he was in prison. His daughter had a suicidal tendency. He had seen a lot of that inside. He questioned what would happen to his daughter. His son was only 3 but had learning difficulties and he did not know what would happen with him. He was the father figure with them. They were struggling financially. His wife worked part-time and could not leave their daughter alone as she could not look after herself. The house was mortgaged. His wife suffers from depression. She had had a panic attack before they had come to court today. For the sake of his family it was very hard to be parted from them.
16. He was asked how it would impact on his daughter being separated from him and he said that he was her hero and they did a lot of things. When she had come to the United Kingdom they had done everything in school and her disability had not bothered her as she knew he was there. Everything had gone down when he went to prison. She would rather stay at home than go to her friends and it was not easy to part ways with her.
17. As to how his wife was coping with the two children he said it was really hard for her. Her son had his problems and they were waiting for an assessment when he was having speech therapy. His wife had a part-time job and was suffering from depression and anxiety.
18. When cross-examined the appellant said that he had been released on bail on 19 November 2022 and had therefore been away from his family for nearly three and a half years. As regards visits there had been some via video call once a month but they could not visit physically during the pandemic. As regards how many visits there had been from the family in the three and a half years, they had been once a month, but the prison was locked down for about one and a half years.
19. It was the case that his parents and sister had relocated last month to Dubai. He had no evidence or letters to prove that.
20. His wife had family, including siblings, in the Philippines. He was asked whether if the family returned they could help with reintegration and said he did not think they would get any support from them. Two of her siblings were abroad and he did not think he and his family would be relocated there. He was asked why they would not offer support and said they had their own families as well to support and they did not want to be there to be supported by others.
21. It was put to them that his wife's mother had come to the United Kingdom to help with the childbirth and he said yes that was during Covid.
22. He was asked about the reference in his evidence to his daughter having epilepsy. He said that he had written that because if you had cerebral palsy if you were anxious or stressed then there was a tendency to have a seizure. He did not have any evidence of her suffering from epilepsy.

23. He agreed that it was right that he was well educated. He was asked why he could not use his skills, having been an area manager in Domino's Pizza. He said that the livelihood in the Philippines was not suitable for them and the cost of tuition for his daughter would be very high. You can get a good education in the United Kingdom. They would have to spend a lot of money in respect of her disability.
24. He was asked whether his daughter had been treated for her cerebral palsy in the Philippines and said he believed so. He was asked why that could not happen again, and he said the cost of living was very high and they could not afford it and it was not an option to go back to Philippines and jeopardise their children's future. It was put to him that he could be in the Philippines and support them in the United Kingdom and he said that that was not the case. Although he was well educated, the cost of living in the Philippines was really high and he would earn a small amount of money to send back but he could not support them financially.
25. He was asked whether he had any evidence of the cost of living or medical costs and education in the Philippines and said he did not believe so.
26. He agreed that it was the case that another sister owned the house in the Philippines and his parents and the other sister had gone to Dubai. As regards any possible help from his sister in the Philippines he said they had four children and their family living there. It was not right for them to be supported by other family.
27. It was put to him that he could apply for the facilitated return scheme and he said it was not an option for him. He was asked whether he would not apply if the appeal was unsuccessful and said he was not saying that, but it was not an option for him to be parted from his family in the United Kingdom. He was asked whether he was saying that if he lost the appeal he would not return to the Philippines and he said it was not an option for them to be parted.
28. On re-examination the appellant said there was no NHS system in the Philippines. So he would have to pay if his daughter needed to go for an appointment. He was asked whether if he was relocated to the Philippines and got a job could he maintain and afford the medical expenses and said no. It was really expensive in the Philippines for medical treatment. If you earned £500 equivalent a month you would also have to pay for her education. His sister had four children and the house was already full and he could not be a burden to other people as they had their own burdens. She was not in a position to be able to support him financially.
29. We asked the appellant whether the Probation Service were helping him to get a job and he said he was on immigration bail with a tag and there was a restriction on working. He had said he wanted to work but the immigration bail condition restricted him from working. He would try to work if he could in the United Kingdom and they would help him to find a suitable job.
30. The next witness was the appellant's wife, Realyn Quiboloy, who provided witness statements dated 26 June 2020 and 13 April 2022.
31. In her first witness statement she referred to the fact that she had come to the United Kingdom in 2011 and had brought their daughter over in 2012. She was aged 4 at the time. Their daughter had been diagnosed with cerebral palsy when she was a baby and since then she had been provided with intense therapy for

her condition including physiotherapy, occupational therapy and speech therapy. Her body was very weak and she could not use the right side of her body much including her hand and leg much as it was very stiff. She could walk around but she needed always to be careful as her balance was not good. She could dress herself partially but needed assistance and could not comb her own hair or do her shoes. If she needed to use her right hand she needed help. She needed help to eat as she could not cut her food properly and needed a lot of constant care and assistance. Her husband had always been a very good father to their daughter and a provider for the family.

32. When they were in the Philippines it was hard because they had to pay for everything from therapy sessions, laboratories and doctor's fees which had cost them a fortune. It was a big help that medical care and therapy were provided free as, like her, their daughter was a British citizen. Their daughter was very happy and settled in the United Kingdom.
33. When her husband was living with them he and their daughter were extremely close, he was the one who was always there for their daughter. She could say that their daughter loved her father more than she loved her. She had worried about her daughter's mental condition. She had had a chat with the wellness team and had mild anxiety and had been worried since her father had gone. She and the appellant complemented each other and he was her husband, her best friend, her comforter and her strength.
34. She found life very difficult since his conviction and supporting their daughter and now their son and providing for them. She had had a difficult pregnancy with their son but had had to work to provide and pay the bills.
35. She herself suffered from anxiety and stress and perhaps she had depression but she had previously refused to go to her GP to discuss it. She had had a few sessions of counselling. She had booked a counselling session for next month. She had visited her husband always every two weeks since June and they were happy and he had been approved to have communication with their daughter and before the lockdown he had rung their daughter a minimum of twice a day. She did not know how she could pay all the debts, bills and mortgage now that they had a new baby. Her daughter was really settled in the United Kingdom and did not want to live in the Philippines and it would be another devastating blow in her life if they all went there. She had done all her schooling in the United Kingdom. She did not know anything about the Philippines. If they went back there they could not provide a good school for their daughter because good schools are very costly, the same as hospitals. They would have to pay for all therapies, laboratories and doctor check-ups. Their parents had very small houses and they were the ones who had been supporting them and they did not have a house to live in and did not have jobs in the Philippines.
36. In her second witness statement the appellant's wife referred to the fact that she and the children saw the appellant every fortnight via video calls and by now there was no limit on the contact he could have with the children and her.
37. Since her father was not around her daughter's physical and mental state had worsened. In January 2021 her daughter was upset watching a television programme about suicidal teenagers and said she wanted to die and did not want to feel pain anymore or be separated from her father. She had asked her if she wanted to harm herself and she said only sometimes but more so she just wanted to die so she did not feel the pain of missing her father anymore. This made her

anxious as if she woke up at 1 a.m. and her daughter was still awake she wondered what she was thinking, whether she would act on her thoughts. They always talked about her daughter's concerns as she had told her always to tell her what she was thinking and she had opened up more. Her daughter did not want her father to be deported and did not want them to be separated. She was bothered a lot by her daughter's depression and suicidal thoughts. Her husband had broken down and cried when she told him about what had happened with their daughter and they felt so powerless. The day after she told him he had called their daughter around five times just to reassure her that everything would be all right.

38. Their daughter had already built a life in the United Kingdom and was going into year 9 and wanted to be a solicitor. She did not know anything about life in the Philippines and studying there would make her depression worsen and she did not have any friends or any connection with cousins in the Philippines.
39. She had contacted their daughter's GP after she found out what was going on and they had referred her to Kooth.com, an online counselling and emotional wellbeing platform for 11 to 18 year olds, and she was awaiting a place with them. She had had a previous intervention with the young people's IAPT psychological wellbeing service for six or eight weeks, as it was short term. She continued to support their daughter and she got support from physiotherapy and occupational therapists and had reviews with the physiotherapy and occupational therapy teams every four to six months and continued to meet with them monthly. They went on walks and she did massages for her daughter to help her feel better. Now their daughter was a teenager she could definitely say that she had become more aware of her disability and how she was different from other children, and this had affected her.
40. She herself was presently undergoing counselling at her church with the pastor and was also taking Mirtazapine for depression and anxiety. She had lost her job since the pandemic.
41. Her son had been referred to the community paediatrician when he was 18 months old and had not started to talk. She was very worried because during the pregnancy she was very stressed and so she was scared that this had affected him. He was now 27 months old and still had no words at all. He was in the process of beginning speech therapy tests and had a first meeting in April 2022 and tests for autism. She begged and pleaded for her husband to be given a second chance to prove himself to the community and give them a second chance to be a whole family again.
42. In her oral evidence, the appellant's wife relied on the evidence contained in the witness statements.
43. She was asked how it would impact on her and the children if her husband was sent back to the Philippines. She said that he had been in prison for three years and in that time it was like he was not in their life and it had not been easy and that was still so. She experienced anxiety with the appeals and the responsibility all being on her. Her daughter had a disability and she herself needed help and support financially and emotionally. The baby had been born after her husband had left them. It would be the same if he went to the Philippines. She needed a pair of hands and support.

44. Her daughter had cerebral palsy and the right side of her body was very weak and she was now aged 14. She had all the treatment here: physiotherapy, occupational therapy and neurology. There had been a recent deterioration and she had experienced suicidal thoughts in 2021. She had asked her daughter if she thought about suicide and she had said yes. These things were happening in their lives. She did not want her daughter to think she was a burden. She always wanted her father to be with her and they were happy when he was there, her daughter had said.
45. Going back to the Philippines was not an option for her daughter. She suffered from anxiety and sometimes did not want to go school. She did not know the culture in the Philippines. They only had her mother in the Philippines as regards communications there, but not with other family. She did not want her daughter to suffer, as she already had suffered a lot. Her daughter knew what was going on. She could not hide these things from her daughter, including the struggles to pay. She herself could only work part-time when the children were in school as she had to look after her daughter and it was for the future of her daughter.
46. Her relationship with her father was very good before he went to prison and she had been an only child at that time and he had flexible hours and had gone to everything at school and she went to him first for things and she thought that her daughter loved her father more than she loved her. Neurology were now involved. There had been recent surgery on her leg which required lengthening because her balance/mobility were not good. She could not do PE at school.
47. She was asked whether her daughter could do day-to-day things such as showering and dressing and said she needed help with dressing as her right hand hardly moved, only with help and it looked like a person with a stroke. She could not leave her daughter at home without supervision at all.
48. If the appellant was sent back to Philippines there would be an emotional impact on their daughter, especially mentally. She did not really know what was going on in her daughter's mind. She slept in the witness's bedroom with the little one. She did not give her a key as she would sometimes come home by taxi and she did not allow that so she collected her and dropped her off. She always made sure her daughter was safe and not harming herself. She did not want to harm herself but she said last year she wanted to die. The school provided support via the student support team and they knew what she was going through.
49. Her daughter was part-time at school at the moment after the surgery, going in for mornings only. They had their home with a mortgage here. Her daughter had lived in the United Kingdom since 2014 and her life was here. She had good treatment here and a good school and return to the Philippines was not an option for her and it would be difficult without her father. The stress had affected her daughter and she did not have good functions at the moment. They could not relocate to the Philippines as they did not have property there. Her parents lived with her sisters. They had a good life here and they had helped the family in the Philippines financially. Her daughter would suffer a lot and she did want that anymore.
50. She was asked whether she would have access to medical care for her daughter in the Philippines and said yes, but they had to pay as they had done before and it was a lot. They would have to send her to a special school and she did not think it would help mentally. She was asked whether if they all went back to the

Philippines with her and her husband working could they cover her daughter's medical expenses and said no. It was a third world country. Average wages would be around about £220 a month and they did not have a house there and would have to rent. There was also the cost of education and she did not think it was enough. They wanted to stay here for their daughter's future. They had suffered a lot to get a good life for her.

51. On cross-examination the witness was asked whether she was currently on medication and said she was taking Mirtazapine for anxiety and depression. She said that she had sleep difficulties. She agreed that the only evidence was the prescription from May 2021. She was still taking that medication.
52. With regards her work, she said that she worked only 12 hours a week and it was when the children were in school. Her work involved supporting children with learning disabilities and she had been doing this for a couple of months.
53. She was having counselling from Pastor Yumul. Their life was open to her and if she felt very down and very low she would call the pastor and it helped her a lot.
54. As to whether she had any professional help with counselling, she said yes before in 2020, for about 3 months with the counsellor. She had been discharged after three months but was told she could come again if she felt depressed. She had not gone back and was trying to cope on her own with the help of her pastor and her friends who knew what she was going through. She was assisted by prayer also.
55. As to whether her daughter was currently taking medication, she said she had been diagnosed for a spasm a week ago and this was from the neurologist and she had medication for that to relax the muscles. She had had a blood test and was vitamin D deficient. That was her medication.
56. As regards her daughter's suicidal thoughts and whether she was seeing anyone about this, she said that she herself had gone to the GP and rang her daughter to see how she was doing. The school helped her a lot and kept her mind off bad things. She had bad attendance at school because of her anxiety.
57. She was asked whether her daughter was currently receiving treatment or medication for her suicidal thoughts, and she said that medication did not help for that. Her daughter had had six months counselling in 2020 and also from the GP who wanted her to do live counselling, but her daughter had refused to do it. She was talking to the pastor as well. She had not been referred to a psychologist or a psychiatrist. As to whether it was fair to say there were no concerns, she said they had not said that but had said to keep an eye on her and keep talking to her. She asked her daughter's friends to do that also. It was hard for her daughter to revisit the feeling of the time when her father had gone to prison.
58. Her daughter was currently attending school. It was mornings only at the moment because of her leg condition and she was in isolation, and not in with other students. There was no evidence from the school about her daughter's current grades or activities as the representatives had not asked about that.
59. Her daughter had gone to the school in 2020. She could not push her daughter. It was not easy for her daughter, or for her to see her in that situation. She knew it was an obligation. The school offered online counselling, but her daughter did

not want to do it. It was the case that she was receiving no treatment or counselling at the moment, nor had she been for a long time. She went to school and talked to her friends and friends of her age in the church. If the witness saw something, she would talk to someone. Her daughter did not want to add her burden to her parents.

60. She was referred to the letter at page 91 of the bundle and to the reference to her daughter walking 4 miles and she said that her daughter could not walk that and it was not right and she experienced pain in her calf. Her daughter was sleeping at night as she was with the witness, in her bedroom.
61. With regard to the reference to two hours of PE, her daughter did not do that now. It was the case that she enjoyed spending time with her friends. She had no friends in the Philippines. Sometimes she did not want to go out, she saw her friends at church every Sunday and the witness would push to go out with them. They came to the family house, as her daughter could not go out at the moment, to cheer her up. Her daughter wanted to stay at home instead of going out with friends, but the witness wanted her to do that. As to why there was no later statement from her daughter since 2020, she said the representatives had not asked her to write one.
62. On re-examination the witness was referred to her daughter's recent operation in October 2022 and was asked whether thereafter she was able to do day-to-day activities unaided. She said she could not do so fully and was still limping. The next appointment was in January to assess her progress after the surgery. Her daughter was in splints now, having been in plaster for eight weeks and had a recent MRI. With regard to her arm, it was very stiff, and hence neurology being involved. She had had a spasm and it was not moving. She could not use even the fingers and was best on her left hand. She was left-handed.
63. The witness said that her family was in the court's hands and the future of her daughter was in the court's hands and she asked for them to be given a second chance to be a family and begged for a little compassion.
64. The next witness was Mr Fakh Subedar who had provided two statements. He confirmed his name and address and that the signatures on the statement were his and he relied on both of them.
65. He had known the appellant and his family for about six years, and it had been a difficult time in his life when they had met as he had been experiencing business difficulties. The appellant had helped him, and they were very close family friends. He knew their daughter.
66. As regards the effect on the appellant's daughter if he was sent back to the Philippines, he said that they took their healthy children's health for granted and the appellant's daughter was not like his children as she was disabled. It limited her ability. She was under a lot of care here and had been since he had known the family. It was vital for her growth and well-being.
67. As regards seeing her and her father interact, he said it was very close. The appellant was very hard-working. He had been a store manager and was promoted to regional manager. They had a very close bond. The appellant's daughter needed assistance in her life, and he had seen him play a pivotal role.

68. In his submissions Mr Melvin relied on and developed the points in his skeleton argument. He referred to and relied on the case law set out there and also in the skeleton of Mr Uddin. He questioned the relevance of the cases cited by Mr Uddin to section 117C(5).
69. The thrust of the case was the impact on the appellant's daughter and difficulties in living with the family in the Philippines. Reliance was placed on the medical evidence and the evidence of the social worker and the psychologist. This was not up-to-date, being some 2½ years old so little weight should be attached to it.
70. As regards medical evidence there was very little engagement with the mental health services with respect to the suicidal thoughts and likewise with regard to medication. She received counselling only from the church, but there was no evidence from them. There was also very little evidence about current education issues and to what extent there were problems and her grades were affected. In the absence of evidence outside the evidence of the appellant and his wife there was little as to the adverse impact on the daughter. There had been exaggeration of her symptoms on the part of her parents.
71. It was accepted on behalf of the respondent that she suffered from cerebral palsy, but there was no other evidence of concerns with regard to suicidal thoughts and no evidence of epilepsy as referred to by the appellant as he had admitted was not the case, but it could be an issue for a cerebral palsy sufferer. There was the evidence of the appellant's wife of her daughter staying at home and having no friends, in contrast to the evidence in the bundle at pages 91 and 92. It was not a case where the school had been asked to report on the daughter's progress and whether or not the family had been fined for her lack of attendance. There was no information. It was said that she attended school between the hours of 9am and 12pm. This was because of orthopaedic problems. It was unclear why there was no witness statement from the daughter since 2020 or perhaps 2021 for the earlier hearing before the First-tier Judge. It was unclear whether she supported the appeal.
72. As regards the claim in the skeleton about the situation, there was no evidence in the new bundle outside the referral and an appointment. There was no evidence of any prognosis. The submission should be taken with scepticism.
73. With regard to return to the Philippines, Mr Melvin did not accept the appellant's evidence that his parents and sister had suddenly located to Dubai. There was no written explanation in the documents, and it should be taken as exaggeration and treated with caution and not accepted. It should be concluded that they were in the Philippines and could offer support. His sister there had a house. He said she could not assist. His wife admitted her family were in the Philippines but that they lived with other relatives/siblings and could not help. This should be treated with scepticism, given the exaggeration of the health difficulties. While there were issues claimed as to education and medical and housing costs there was very little objective evidence about this. The appellant was well educated and had work experience in Dubai and the United Kingdom. He wished to remain in the United Kingdom but there was no uncontentious evidence that the family could not simply relocate to the Philippines without undue harshness to the wife or the children. On that, the family were regular church attendees and received support. There were no factors revealing undue harshness in the return of the family to the Philippines or for the appellant to return and the family to stay in the United Kingdom. The very compelling circumstances test was not met. The appeal should be dismissed.

74. In his submissions, Mr Uddin asked that the account should be taken of the earlier bundle and the supplementary bundle and today's bundle and the OASys report. He could provide all if requested. There were very compelling circumstances outweighing the public interest in deportation. There was the crime committed by the appellant, but he had served his time and had been a model prisoner and was otherwise of very good character. He was remorseful, and reference was made to the OASys report. There was a low risk of reoffending. Before committing the offence, he had been a positive and hardworking individual, being a manager at Dominos Pizza. He had a good record whilst in prison having undergone training and rehabilitation and there were references in support from his supervising officer in prison, Mr Stothard . The appellant had sought to address his offending behaviour while in prison. He had been given positions of responsibility. He was a member of the prison council and worked to help people express how they felt and was involved in mediation.
75. He had been the main breadwinner for the family before his conviction. There was evidence from him and his wife about the current difficulties she was having. She could not work for more than 12 hours with the two children to look after. Her daughter was physically disabled. She was a British citizen and a qualifying child. She attended a good school. The wife had provided evidence about her daughter and her day-to-day care needs. She could not leave her at home alone due to her condition and risk of harm. She was suffering from anxiety and suicidal thoughts. She had been referred to an online counselling forum.
76. Most recently she had had surgery, in October 2022, with the lengthening of her right leg and following on from that due to the surgery she had not been able to go to school full time and had reduced hours, in isolation. There was evidence at pages 101 and 103 of the bundle concerning her ongoing appointments and assessments including a neurology assessment. It was clear that the Tribunal should find that she was disabled and required extensive day-to-day care.
77. According to her mother, her daughter could shower but with assistance. Her right arm was fixed in a 90° position as the mother had demonstrated and she had a less able right leg also. The appellant's wife had explained that she needed her husband to be present and that her daughter needed a father figure for support, love and guidance, and her mental health problems had stemmed from her father's absence from her life.
78. The evidence of Mr Darko and Ms Costa confirmed that the appellant would have a positive influence on his daughter. Since he had been in prison there had been a decrease in the daughter's college attendance as of February 2022, as could be seen from the letter at page 80 of the bundle. On the balance of probabilities weight could be attached to the letter, and that her non-attendance was due to illness.
79. The appellant's wife had also said that at the moment all the responsibility was on her. The younger child was suffering from a speech impediment. Life was not easy, and she needed help, both emotionally and financially, and if the appellant were deported it would be very hard for her to live in the United Kingdom. She had also referred to having a lot of hospital appointments to attend. She had learned of her daughter's suicidal thoughts in 2021. Her daughter wanted her father in her life and that was all she wanted. Going back to the Philippines was not an option. She had come to the United Kingdom when she was aged four and did not know anyone in the Philippines. The relationship between the daughter and the father was strong. He always used to take her to school and picked her

up and attended everything with her. The wife's evidence was that her daughter loved her father more than her. There would be a great impact on the daughter if they were separated.

80. She had said that in the Philippines there was medical assistance available, but it was unaffordable even if both were working. Also her daughter would have to attend a special school, and disability was not accepted in society. The equivalent average monthly salary was £220 and that would not be enough for rent, bills and hospital appointments. She said that her parents and sisters were in the Philippines, but they could not assist her. She used to help her family financially. Her daughter had stated that she wanted to die. All the appellant's wife wanted was for her daughter to have a good life in the United Kingdom and not the Philippines. Both children and the wife were British, and it was in their best interests to remain as a family unit in the United Kingdom and to have both parents in their lives.
81. With regard to Mr Melvin's argument that the appellant could return to the Philippines and support the family, the appellant had said that at most he would be earning about £500 a month equivalent and after expenses he would have very little to send to the United Kingdom. It was also relevant to note the daughter's statement at page 33 in the bundle. This contained some detail about her relationship with her father and her suicidal thoughts and she asked for the letter to be considered. It would be very difficult for her without her father in her life. There was quite clearly a strong bond between them and there would be a significant emotional and psychological impact on her. If they all went to the Philippines, it would not be in the children's best interests as it was not the same quality of education or opportunities and no access for the daughter to the healthcare she needed. She was British, and was entitled to be in the United Kingdom. Deportation in this case was disproportionate. It would put considerable pressure on the wife and children. As a single parent she might have to claim State benefits. She was struggling to cope and had no assets to go back to in the Philippines. The appellant had been away from the Philippines since 2005 which was a significant period of time as regards reintegration and also for the family if they accompanied him. There were very compelling circumstances. The nature of the daughter's medical condition made it even more compelling. The appeal should be allowed.
82. We reserved our decision.

Discussion

83. We have set out above the evidence of the appellant and his wife. There is also a witness statement from the appellant's daughter, dated 26 June 2020. She referred to how much she missed her father and the amount of help that he gave her. She felt sad because he was not there right now and referred to all the activities they went through and the support he gave her through her two surgeries and how he was always there for her and her mother. He was very supportive and caring. She was scared and worried because since he went to prison, they had been worried for him because they loved him and missed him a lot.
84. They had gone to church together and had family time together and basically went everywhere together. If he were deported, she would be really sad and devastated because she would not be able to see him, and he would not be able to come back to the United Kingdom. She loved him so much and they had a lot

of memories together and when he came out they would have memories with her younger brother as well. She could not remember anything from the time when she was living in the Philippines and preferred the United Kingdom to the Philippines as she had not really experienced anything there. She really missed her father and would like him to return home so he could be with them and she hoped he would not be deported to the Philippines because she would be really angry and sad as she would not get to see him anymore.

85. There is a letter from Ruth Werner, probation officer, concerning the appellant, attached to the OASys report. He is assessed as at low risk of offending but high risk of serious harm. He was engaging with the caretaking office in Peterborough which was positive as well as keeping in touch with her via telephone. To her knowledge he had been complying with his conditions.
86. The OASys assessment provides detail backing up the evaluations of low risk of reoffending but high risk of serious harm if he did reoffend. There is a letter from D Trust, the appellant's key worker when he was in Dartmoor, dated 9 September 2019 describing him as a polite individual who was trying his best to better himself whilst he was in custody. His prison history and case notes showed he complied fully with prison rules and regimes and caused no concerns to wing staff. While at Dartmoor he had completed numerous educational courses and was currently applying to the Open University and he had more recently been allocated a place on the DRM unit which it was felt would benefit him greatly. He was obviously very passionate about his family. The writer of the letter said it was very rare to come across a prisoner who was so focused on putting things right and making himself a better person upon release.
87. There were also a number of letters and documents concerning the appellant's daughter's health issues. There is a letter dated 20 September 2022 from the local consultant orthopaedic surgeon, Mr Noureddine concerning the leg length difference and the plans to address that. There is an earlier letter of 9 August 2022 and also of 2 August 2022 concerning the same issue. There is a letter of 31 May 2022 from the Children and Young People's Mental Health Triage and Navigational Service referring to the appellant's daughter's anxiety for two years since her father went to prison including anxiousness and refusing to go to school in the mornings, worrying about school and the fact of her cerebral palsy. There was a reference to support from the Kooth Digital Counselling Support Service. There were a number of other possible forms of assistance including a counselling service, a centre and Childline and other organisations are mentioned.
88. There is a detailed letter from Dr Singh of the Sturdee Road Health and Well-being Centre of 7 October 2021, concerning the appellant's daughter and her diagnosis of cerebral palsy and the fact that she is under the care of occupational therapy and physiotherapy for management of this. She suffered some muscle pain and discomfort following exercise at school due to the condition and her mobility and range of motion of upper and lower limbs is affected, meaning she struggles with some aspects of self-care such as dressing herself, washing and handling items such as cutlery when eating.
89. She had been assessed with depression in April 2021 and was referred to the Children and Young Person's Mental Health Triage and Navigation Service as referred to above with a history of experiencing symptoms of low mood, with disturbed sleep, tearfulness and thoughts of not wanting to be here. The risk of harm to herself was identified, due to thoughts of not wanting to be here but no

plan or intent of self-harm or suicide was reported. She had been put on the waiting list for an appointment.

90. In the physiotherapy report on the appellant's daughter, dated 30th June 2021, there was reference to her predominantly experiencing pain within her right quadricep which tends to occur following more high-impact activity within PE sessions on a biweekly basis. There was reference to some issues in grasping and gripping a knife in order to cut up food, struggling with aspects of dressing and although she is able to shower, she finds it difficult to wash her hair independently. She and her mother regularly go on long walks together and are able to cover up to 4 miles at a time and she has two days a week with two hours of PE at school. She said that currently she had no restrictions with her mobility but when attending PE lessons on a regular basis this could impact on pain and discomfort in her right quadricep. She describes this as an ache rather than a sharp pain, which eased with rest. There is reference to difficulty in achieving active supination of her right arm and that she has full passive range of movement in all upper limbs other than her elbow. She was currently being seen through the joint OT/PT hemi clinic on a 4 to 6 monthly basis for assessment review and onward referrals, in the context of current physiotherapy management. It is said that she would benefit from further assessment and review from orthopaedics to determine whether Botox continued to be the best process forward for her and further assessment for upper limb function and lower limb function were recommended by the physiotherapist.
91. We have referred above to the letter of 23 April 2021 from the DHUCYP Mental Health Triage and Navigation Services referring to such matters as the applicant's daughter as though she had thoughts of not wanting to be here and had no plan or intent to self-harm or suicide reported in the referral. This contains the references to various possible resources she could access in the context of mental health care.
92. This evidence has to be seen in the context of the applicable legal tests which in a case such as this, when the appellant has been sentenced to a period of imprisonment of at least four years, the appellant has to be able to rely on very compelling circumstances over and above those described in paragraphs 399 or 399A which require relevantly here that his removal would have an unduly harsh impact on the appellant's family.
93. As regards the notion of undue harshness it was as noted in HA (Iraq) that the threshold is considerably more elevated than that of simply discomfort, inconvenience or difficulty. It denotes something severe or bleak and is the antithesis of pleasant or comfortable and the already elevated standard is elevated still further by the addition of the adverb "unduly". As regards whether it would be unduly harsh for the appellant's wife and children to live in the Philippines with him, we do not consider that that threshold is met. In this context we must of course consider the best interests of the children. Clearly the children would lose the benefits of British citizenship including the full range of state education and medical treatment available in the United Kingdom, and also cultural dislocation. It appears that there are the necessary medical facilities available in the Philippines. This was not denied by the appellant or his wife, but rather they stated the difficulty would be that of the ability to afford those facilities. However, there is no evidence as to the cost of medical facilities in the Philippines for the appellant's daughter, nor indeed for the cost of private education should she have to have that. The appellant is well educated and had

a good job in the United Kingdom and we can see no reason why he would not be able to obtain good employment in the Philippines. There is simply an absence of evidence as to the cost of what might be extra needs for the family in the Philippines and we cannot assume or take simply from what is said in the oral evidence that it is the case that that would not be affordable. As a consequence as part of the best interests assessment, we conclude that the medical and educational facilities that the appellant's daughter needs would be available for her in the Philippines. Certainly the fact that it may be that payment would need to be made for these facilities is relevant in assessing her best interests, but as we say we have no evidence that the family would not be able to afford to pay for these. There is the fact of the cultural dislocation for her given that she is now 15 and has spent most of her sentient life in the United Kingdom and regards herself as British rather than Filipino. There is some family in the Philippines in the form of the appellant's wife's mother. Also we agree with Mr Melvin that it has not been shown that the appellant's parents and other sister and the one who remains on his evidence in the Philippines have in fact left in the absence of documentary evidence to that effect. Given the element of exaggeration in his evidence about his daughter's circumstances we consider that that is a finding we can properly make. As a consequence there is family there to provide cultural support albeit in a different society from that to which she is accustomed. In that context it is also relevant to bear in mind that she has been brought up by Filipino parents and it is the case that many children do move at times in their lives where they might prefer not to without that being a matter of major difficulty. It would not be unduly harsh for her and her brother to live in the Philippines with that family should it be decided that they would go with the appellant. In that regard there is little evidence as to the circumstances of the appellant's son other than it seems he has been referred to a speech therapist but there is no concrete evidence of the situation he faces or whether the difficulties he is experiencing could be said to be unsurmountable by treatment in the Philippines. The evidence is simply lacking with regard to any difficulties he may experience. We bear in mind also the appellant's wife's difficulties, including depression, which we set out in more detail below.

94. We consider that it is in the best interests of the children to be together with their parents and that would be resolved by them all returning to the Philippines with the appellant. The best interests of the appellant's daughter and son are to be in the United Kingdom with their parents as they are British citizens, as is their mother. However, the best interests of the children is a primary factor, not a trump card in every case.
95. We do not consider it to be unduly harsh for the family to remain in the United Kingdom without the appellant. This would be harsh in particular for the appellant's daughter to be separated from her father since we accept that there is a close bond between them and the impact on her of separation from him would be significant. However, the choice is that of the family as to whether they remain in the United Kingdom or go to the Philippines. In this regard we must bear in mind of course the psychological health of the appellant's daughter including the suicidal thoughts she has had and the anxiety from which she has suffered. However, these matters appear to be being managed by means of counselling and family and other support, and there would of course be the opportunity to visit the father from time to time in the Philippines should the family choose to do that. As was said in KO (Nigeria), nothing out of the ordinary has been identified to demonstrate that in the case of this particular family when balanced against the powerful public interest considerations in play, and

although the children will find separation from their father to be harsh it will not be, in all of the circumstances, unduly harsh for them to remain in the United Kingdom after their father is removed.

96. Accordingly we find that the appellant does not fall within paragraphs 399 and 399A and as a consequence it has not been shown that it would be unduly harsh either for the family to go to the Philippines with the appellant or for them to remain in the United Kingdom without him. In that regard we bear in mind of course also the consequences for the appellant's wife and the difficulties she has suffered previously and the depression from which she has suffered. It will be difficult for her undoubtedly, and we bear in mind the heartfelt plea she made to us at the end of her evidence. But the Rules are clear, it is a matter of undue harshness and although the harshness would be very real, the family managed to cope previously, and the high legal threshold in this case is not in our view crossed.
97. As this is a case where the appellant was sentenced for a more than four year period of imprisonment, it has to be shown that there, are quite apart from the undue harshness test, very compelling circumstances existing to outweigh the application of the Rules. It will be clear from our views set out above that since the undue harshness threshold has not been crossed the test beyond that of very compelling circumstances has not, and if we are wrong as to undue harshness we consider that the case falls well short of very compelling circumstances. There are of course particular difficulties for this family arising from the daughter's disability and other health problems and we are acutely sensitive to those matters in assessing the evidence in this case in the context of the relevant legal tests, and can only have considerable sympathy for the wife and children for the circumstances they have faced and will continue to face.. But the threshold set out is a very high one indeed. That threshold has not been crossed.
98. As regards Article 8 outside the Rules, there is a very strong public interest in the protection of citizens from crime and the deterrent effect of that in the deportation of foreign criminals. The public interest requires the appellant's deportation subject to section 117C(3). The appellant and his wife have lived and worked in the United Kingdom for the best part of ten years in total between them and the letters of support show a wide circle of friends and supporters. The offence committed was a very serious one and we bear in mind the evidence of the prison staff and the OASys assessment of a low risk of reoffending but a high risk of serious harm if he did reoffend, and the positive aspects of his activities while in prison. The couple spent all their childhood and majority of their 20s in the Philippines, and for an interim period in the appellant's case in Dubai, before coming to the United Kingdom. They have worked hard and been respectable members of the community other than the appellant's very serious offence which appears to be the only offence he has committed. We must bear in mind the fact that the children are British citizens and that as we have found above their best interests are in remaining as a family unit in the United Kingdom with their parents. However in the circumstances of this case, albeit there are the positive factors militating in the appellant's favour as set out above, we conclude that the nature of the offence committed and the public interest that arises from that is such that those best interests are outweighed by the public interest in this case and accordingly the appeal is dismissed under Article 8.

David Allen

Appeal Number: HU/04209/2020

Judge of the Upper Tribunal
Immigration and Asylum Chamber

31st January 2023