Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers: HU/07120/2016**
HU/07124/2016
HU/07129/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 26 April 2018	**On 11 May 2018**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

ARBEN NEZAJ
FELIZA ADAMME MIGUEL
BETHANY BLESSING NEZAJ
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr B Amunwa, Counsel instructed by Marsh & Partners Solicitors
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by three members of the same family against the decision of the First-tier Tribunal dismissing their appeal against the decision of the Secretary of State to refuse them leave to remain on human rights grounds. The first and second appellants are married to each other, the third appellant is their daughter. The child was born in October 2011.

2. I have not made an order restricting publicity. The case does touch on the rights of a child but I have no reason to find that publishing details of this decision would create a risk of serious harm to the child.

3. The first appellant is a national of Albania and the second appellant is a national of the Philippines and the Tribunal decided that the third appellant is also a national of the Philippines. That finding has not been challenged. It is likely to be correct given that she is the daughter of a citizen of the Philippines and is the basis on which I make my decision.

4. It has been plain all along that this case cannot succeed under the Rules. That does not mean it cannot succeed but that is sufficient reason to set alarm bells ringing. The Rules are intended to protect people's Article 8 rights and experience suggests that a case that cannot succeed under the Rules is not likely to succeed at all. Nevertheless, the appeal was properly brought and ought to have been dealt with properly.

5. Mr Amunwa, for the appellants, has made detailed criticisms in appropriately brisk grounds which carry a great deal of merit. It is not surprising that the First-tier Tribunal gave permission.

6. The main complaint is that there was no finding on the best interests of the child when there should have been. The subsidiary complaint is if there had been much a finding on the best interests of the child then more would have said about the circumstances of the child in the United Kingdom and in the country of possible return and the difficulties the child might have.

7. It is also of concern that the First-tier Tribunal Judge used language suggesting that he was reviewing a decision rather than deciding the appeal and he may have made an adverse credibility finding for no good reason. It is not entirely clear what he made of the evidence about the language spoken in the home.

8. These are potentially serious criticisms but I have to bear in mind that I am tasked to look for material errors of law and I have to ask myself if the complaints made could have made a difference to the outcome. If they could not, then there is no material error. If they could have done then there may, but only may, be an error that requires a remedy.

9. I am not persuaded that there is a material error here.

10. The best finding that could possibly be made from the appellants' point of view is that the best interests of the child lie in remaining in the United Kingdom with both parents and the rest of the nuclear family. I think it likely that is in the best interests of the child. It is clear that the child is doing well at school and that suggests, it does not prove, that the family home is a happy place and the child is being brought up by caring parents and assisted by caring close relatives. The child does not know life outside the United Kingdom and understandably would want to remain there.

Although it is not necessarily the case, the benefits of living in the United Kingdom in terms of access to education and health facilities and opportunities later in life are likely to be better than comparable arrangements in Albania or the Philippines. However this is not a case that has been put on the basis that life in either of those countries would be so intolerable that it would be wrong for those reasons for the child to grow up there. That said, the child is not entitled to a decision that gives effect to her best interests. It is very important that the child, where possible, is brought up by both parents living in a committed relationship and caring for the child. That seems to be the case in the United Kingdom and there is no reason at all to think that that could not be recreated in the Philippines or indeed even in Albania if that is what the parents chose to do.

11. Much has been made of the difficulties the child would have in establishing herself in the Philippines but they are, with respect to Mr Amunwa, speculative. It is likely on the judge's findings that some language used in the Philippines is spoken in the home but it is not likely that the child is fluent in that language and that is not suggested. I believe it is appropriate for the Tribunal to note that children often prove themselves to be extremely adaptable at learning other languages when they are very young and it is not something to be regarded with horror to put the child into a different culture when the child is supported by loving parents. It might be different if there was evidence of unusual learning difficulties or unusual social difficulties but that is not the case here. The child does not have the necessary seven years' residence in the United Kingdom to qualify for particular protection. There is nothing in the case to suggest that there are unusual circumstances that make it more than ordinarily important to respect the child's private and family life.

12. The absence of a finding about the best interests of the child is a point which, if developed fully and supported by appropriate findings on the evidence, in my judgment would have gone nowhere.

13. The parents have a discreditable but not disgraceful immigration history. The first appellant was removed from the United Kingdom having unsuccessfully claimed asylum and returned without permission. The second appellant entered the United Kingdom lawfully but overstayed. It is not good to be in the United Kingdom without permission. It is very often a criminal offence although one that is almost never prosecuted but that is the extent of their unsatisfactory behaviour. They are not people who are regarded as criminals for other activity. They are not people who have been involved in any more sophisticated disregard for immigration control. The problem is there and that is the extent of it. It is to their discredit. It enhances the reasons for refusing the case on human rights grounds because it is more than ordinarily important to enforce immigration control.

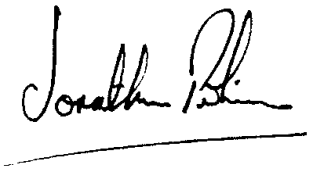
14. Of course, none of this is the fault of the child but it is not an irrelevant consideration. The child has not established a right to be in the United Kingdom even if it was not for all those difficulties.

15. It follows therefore that although I am grateful to Mr Amunwa for his realistic criticisms which I hope I have considered properly I have to conclude that Mr Jarvis is right and that there is no material error here even though there are points that really should have been dealt with rather more thoroughly than was the case in the decision of the First-tier Tribunal.

16. It follows therefore that I dismiss the appeals against the decision of the First-tier Tribunal.

Notice of Decision

17. This appeal is dismissed.

Signed 

Jonathan Perkins, Upper Tribunal Judge

Dated: 9 May 2018