



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

Appeal Number: HU/01892/2017

THE IMMIGRATION ACTS

Heard at North Shields

On 9 November 2018

**Decision & Reasons
Promulgated
On 16th November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES

Between

**S. Z.
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Brakaj, Iris Law Firm

For the Respondent: Mr McVeety, Home Office Presenting Officer

DECISION AND REASONS

The Appellant is a national of Pakistan who applied for Indefinite Leave to Remain in the UK based upon the length of his residency. That application was refused on 18 January 2018, and his appeal against that refusal came before the First-tier Tribunal at North Shields on 3 July 2017, when it was heard by First-tier Tribunal Judge ST Fox. The appeal was dismissed on human rights grounds, in a decision promulgated on 12 October 2017.

The Appellant's application for permission to appeal the decision was granted by Upper Tribunal Judge Perkins on 10 July 2018 on the grounds that it was

arguable; (i) the Judge had failed to properly engage with or consider the best interests of the Appellant's child, and, (ii) had made unintelligible findings [18].

There has been no application to adduce further evidence pursuant to Rule 15(2A) and there has been no response to the grant of permission by way of Rule 24 Notice by the Respondent. Thus the matter comes before me.

When the appeal was called on for hearing the Respondent conceded through Mr McVeety that the decision was materially flawed to the extent that the only proper course was that the appeal should be remitted for hearing afresh.

In circumstances such as this, where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the parties of the opportunity for their case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 13 November 2014. Moreover the extent of the judicial fact finding exercise required is such that having regard to the overriding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 13 November 2014.

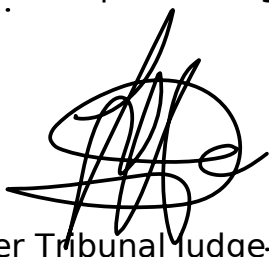
To that end I remit the appeal for a fresh hearing by a judge other than Judge ST Fox at the North Shields Hearing Centre. No interpreter is required. The Appellant has today filed and served a bundle of further evidence. The Respondent has indicated that he intends to review the decision under appeal in the light of that evidence within the next fourteen days. On that basis the pragmatic course is for the appeal to not be listed prior to 17 December 2018 to allow that review to take place, and its result communicated to the Tribunal.

Notice of decision

1. The decision did involve the making of an error of law sufficient to require the decision to be set aside on all grounds, and reheard. Accordingly the appeal is remitted to the First Tier Tribunal for rehearing de novo, with the directions set out above.

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
Deputy Upper Tribunal Judge J M Holmes

Date 9 November 2018