



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU/03759/2016  
HU/03769/2016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 6 July 2018

Decision & Reasons Promulgated  
On 16 July 2018

Before

DR H H STOREY  
JUDGE OF THE UPPER TRIBUNAL

Between

GANIAT [B] (FIRST APPELLANT)  
[A A] (SECOND APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Mr M Ume-Ezeoke, Counsel instructed by Waterdenes Solicitors  
For the Respondent: Mr S Walker, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellants, citizens of Nigeria, has permission to challenge the decision of Judge Davey of the First-tier Tribunal (FtT) sent on 23 January 2018 dismissing their appeals against a decision made by the respondent on 19 January 2016 refusing leave to remain.

2. It is unnecessary to set out details of the grounds of appeal or the submissions of the parties because both agreed that the decision of the judge should be set aside. The appellant has three dependent children, all born in the UK. The eldest two were born in March 2010 and May 2011 respectively. At the date of decision neither have been residing continuously in the UK for seven years, but by the date of hearing (5 July 2017) the oldest had. Accordingly, it was necessary for the judge to consider whether it was reasonable to expect the oldest child to leave the UK and whether as a result the appellant could succeed under Section 117B(6) of the Rules. The judge was not assisted by the fact that the respondent was not represented nor that her representative did not cite **MA (Pakistan)**. Be that as it may, the judge failed to address this matter at all. This failure constitutes a material error of law necessitating that I set aside the judge's decision. I see no alternative to remittal to the FtT.
3. Whilst the above suffices to explain why I have set aside the decision, I would also observe (in case it assists the next judge hearing the appeal) that I do not find helpful the judge's statements dwelling on the "life choices" of the appellant since what was required was an assessment of the appellant's factual circumstances.
4. For the above reasons I set aside the decision of the FtT Judge for material error of law.
5. The case is remitted to the FtT, not before Judge Davey.

No anonymity direction is made.

Signed:

Date: 12 July 2018



Dr H H Storey  
Judge of the Upper Tribunal