



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

**Appeal Number: HU/05423/2018
HU/05425/2018
HU/05429/2018
HU/05430/2018
HU/05433/2018
HU/05434/2018**

THE IMMIGRATION ACTS

**Heard at Birmingham Civil Justice Centre
On 15th April 2019**

**Decision and Reasons Promulgated
On 24th April 2019**

Before

UPPER TRIBUNAL JUDGE COKER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**FJR + 5
(ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Ms H Aboni, Senior Home Office Presenting Officer
For the Respondent: Mr T Ojo, C W Law solicitors

DETERMINATION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellants in this determination identified as FJR. This direction applies to, amongst others, all parties. Any

failure to comply with this direction could give rise to contempt of court proceedings

1. By a decision promulgated on 12th December 2018, First-tier Tribunal judge Watson dismissed the appeal of all appellants against the decision, dated 8th February 2018, of the SSHD refusing their human rights claim. Permission to appeal was granted on 18th January 2019 and thus came before me.
2. The 5th claimant (HU/05433/2018) is now a British Citizen and is therefore not liable to removal. His appeal against the SSHD's decision no longer forms part of these appeals.
3. In his decision, the First-tier Tribunal judge states, in determining whether it is reasonable for the British Citizen child to leave the UK:

“30. I have taken into account the fact that the adults are overstayer and seem to be without any reasonable cause for failure to comply with Immigration Rules. All private life has been established whilst here with precarious stay. I acknowledge the considerable public interest in maintaining effective immigration controls.

....

32. Having considered the case in the round I find that is reasonable to expect the children to leave the UK....I find that the interest of the children do not outweigh the need to control public expenditure and enforce the immigration rules...”

4. As acknowledged by Ms Aboni, the First-tier Tribunal judge failed to properly consider and apply s117B(6) of the Nationality, Immigration and Asylum Act 2002 such that the decision of the First-tier Tribunal should be set aside to be remade.
5. When I set aside a decision of the First-tier Tribunal, s.12(2) of the TCEA 2007 requires me to remit the case to the First tier with directions or remake it for ourselves. The factual findings directly relevant to any finding under s117B(6) have not been made.
6. The Practice Statement dated 25th September 2012 of the Immigration and Asylum Chamber First-tier Tribunal and Upper Tribunal states:

7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

7. The extent of the evidence to be heard and the judicial fact finding required in this appeal is such that having regard to the overriding objective it is appropriate to remit this appeal to the First-tier Tribunal. Both parties concurred in this decision.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

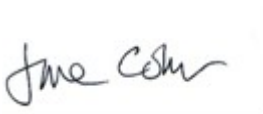
I set aside the decision and remit the appeal to be heard afresh by the First-tier Tribunal.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Date 15th April 2019



Upper Tribunal Judge Coker