



IAC-PE-AW-V1

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

Appeal Numbers: IA/34741/2014  
IA/34748/2014  
IA/34751/2014  
IA/34753/2014  
IA/34754/2014  
IA/34756/2014

**THE IMMIGRATION ACTS**

**Heard at Manchester Piccadilly  
On 6<sup>th</sup> August 2015**

**Decision & Reasons Promulgated  
On 23<sup>rd</sup> September 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BAIRD**

**Between**

**DR NOR ASIKIN TEGOH (FIRST APPELLANT)  
MR ABU AMRAN (SECOND APPELLANT)  
MISS NURUL AGILAH AMRAN (THIRD APPELLANT)  
MISS IZZATI AMRAN (FOURTH APPELLANT)  
MR MUHAMMAD AMRAN (FIFTH APPELLANT)  
MISS NAJIHAN AMRAN (SIXTH APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Ms Patel - Counsel

For the Respondent: Mr G Harrison - Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. These are appeals by Dr Nor Asikin Tegoh, her husband and four children. They are citizens of Malaysia born 4<sup>th</sup> June 1966, 16<sup>th</sup> December 1961, 30<sup>th</sup> August 1992, 9<sup>th</sup> November 1993, 17<sup>th</sup> August 1996 and 18<sup>th</sup> May 1998. Only one child, the sixth Appellant, is a minor. They appeal against the determination of First-tier Tribunal Judge Lloyd-Smith issued on 20<sup>th</sup> January 2015 allowing the appeals of the Appellants against the decision of the Respondent made on 14<sup>th</sup> August 2014 to refuse further leave to remain under the Immigration Rules. Judge Lloyd-Smith allowed the appeals of the two youngest children under paragraph 276ADE of the Immigration Rules and the others on human rights grounds.
2. The Respondent appealed against that decision and on 4<sup>th</sup> March 2015 First-tier Tribunal Judge Baker granted permission to appeal. Judge Baker said:
  - “2. The first Appellant and her husband had been stated by the Respondent not to be able to satisfy the parent or partner criteria and had not been in the country for a long enough period. Najihan, the sixth Appellant, was said to have lived in the United Kingdom for more than half her life but it was reasonable to expect her to return to Malaysia because she would be doing so with her family. The other three children were said not to satisfy paragraph 276ADE because they had not lived in the United Kingdom long enough and there were no significant obstacles to them returning and integrating in Malay society.
  3. There is merit in the grounds that there was an arguable misdirection in law in the decision. It is arguable that in not specifically considering Section 117A - B in performing the proportionality assessment under the Nationality, Immigration and Asylum Act 2002 there was a material misdirection in law. The Judge apparently allowed the appeals on Article 8 grounds outside the Immigration Rules.”
3. It is submitted in the grounds that the Judge had failed to consider and apply Sections 117A to 117B of the 2002 Act which are mandatory.
4. Judge Lloyd-Smith noted that all the Appellants had spent nine years in the UK and that this meant that the two youngest Appellants would qualify for leave under 276ADE. The Judge properly considered case law relative to the best interests of the children and took into account the statements that the children themselves had made. She took into account that they were at a crucial stage of their education.
5. It is the case that Judge Lloyd-Smith did not mention Section 117 of the 2002 Act. It is not referred to at all. She did however clearly find that it would be unreasonable to expect the two younger children to leave the UK at what is a crucial stage in their education and taking account of the fact that they have been here for nine years. She took into account that the first Appellant had always respected and abided by the Immigration Rules

and that the family can all speak English. Indeed there is nothing in the circumstances of any of the six Appellants which would have increased the public interest in their removal having considered the factors set out in s. 117 A-B of the 2002 Act. Judge Lloyd-Smith gave sound reasons for her decision which was open to her on the evidence before her for the reasons given. Although she may well have erred in law in failing to specifically refer to s. 117B she clearly did take account of the relevant factors and her omission was not in my view material.

### **Decision**

I find that there is no material error of law in the decision of First Tier Tribunal Judge Lloyd-Smith and I uphold that decision. .

No anonymity direction is made.

Signed

Date: 19<sup>th</sup> September 2015

N A Baird  
Deputy Judge of the Upper Tribunal