



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

Appeal Numbers: HU/04938/2015  
HU/04940/2015  
HU/04942/2015  
HU/04944/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 30 June 2017**

**Decision &  
Promulgated  
On 11 July 2017**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HILL QC**

**Between**

**[CHAND A]  
[SHEETAL A]  
[E A]  
[A A]**

**(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Davison  
For the Respondent: Mr P Deller

**DECISION AND REASONS**

1. This is an appeal from the decision of First-tier Tribunal Judge Oliver, promulgated on 16 November 2016. Although the appellants were represented before the judge, the respondent appears not to have been. The four appellants comprise a family unit: mother, father and two children. They arrived in November of 2006 with visit visas valid for one month and they overstayed, save for the fourth appellant who was born during the period in which the family was overstaying. They sought leave to remain alleging human rights and other grounds, all of which were rejected by the Secretary of State. The appeal came before the judge and was dismissed.
2. Permission to appeal was granted by First-tier Tribunal Judge Davis on 11 May 2017. It is not felicitously worded and appears contradictory as to whether or not permission to appeal was in fact granted. Nonetheless, I took the view that grant of permission should be presumed as regular and I proceeded to deal with this matter on the basis that the appellants may advance each of their stated grounds.
3. The substantive ground argued before me relates to the failure of the judge to direct his mind to key issues which needed to be determined and to make relevant findings of fact in relation to those key issues. Paragraphs 16, 17 and 19 of what is a somewhat cursory determination read as follows:

“16. It was held in **Azimi-Moayed and Others (decisions affecting children; onward appeals) [2013] UKUT 197** that the starting point must be that it is in the best interest of the children are to remain with their parents on return their family life would continue intact. I have also had to consider that the younger child now age 4 was born here and has never lived in India. The older child who has the stronger case under the Rules was age 2 on arrival and falls in the fourth category “seven years from age 4 is likely to be more significant to a child than the first seven years of life”.

17. The children’s case to remain therefore rests on the older child’s length of residence in the United Kingdom and the lack of ties of both to India which will make it difficult to initiate those ties and properly to learn the local language.

...

19. I equally reject the assertion that the children would have difficulty in speaking and understanding Hindi on their return since they must have picked up some fluency in hearing their parents talk and they are of an age when they will be able quickly to adapt the older child is now studying Punjabi. While there may be some advantages to the children remaining in the United Kingdom their best interests are served by going with their parents. I find there are no very significant

difficulties with their parents' return to India and it is the children's best interests and not shown not to be reasonable for them to go with their parents [sic]."

4. The deficiencies with this cursory fact-finding are self-evident, as was conceded by Mr Deller on the Secretary of State's behalf. Amongst other things the judge has wrongly categorised the status of the older child. What is more, considerations of children's best interests have been conflated into a short statement which does not take into account the remaining issues which needed to be determined and on which no factual findings made by the judge. This error of law is a substantial flaw which undermines the entire basis of the decision.
5. In those circumstances I have no hesitation in setting aside the decision of the First-tier Tribunal. The proper course, where the findings are so flawed, is for the matter to be remitted to the First-tier Tribunal for there to be a rehearing *de novo* and I so order. No findings of fact will be preserved.
6. I should add, in the presence of the principal appellant (who has the benefit of an interpreter) that it may well be that the First-tier Tribunal when looking at the matter afresh comes to exactly the same conclusion but as a matter of justice the appellants are entitled to have their case properly heard, with rigorous fact-finding and a judicial discretion properly exercised.

### **Notice of Decision**

An error of law having been found, the decision of the First-tier Tribunal is set aside and the matter is remitted to be heard afresh by a judge other than Judge Oliver. No findings of fact are preserved.

No anonymity direction is made.

Signed *Mark Hill*

Date

10 July 2017

Deputy Upper Tribunal Judge Hill QC