



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

Appeal Number: PA 13511 2016

THE IMMIGRATION ACTS

Heard at City Centre Tower

Decision

&

Reasons

On 24 August 2017

Promulgated

On 26 September 2017

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**MIRKHALILLAH [H]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Bradshaw, Counsel instructed by Braitch Solicitors

For the Respondent: Ms H Aboni, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Although this appeal touches on the welfare of children I see no reason to find that publicity might cause them harm and so I do not make any order restricting publication. The First-tier Tribunal may take a different view when all of the relevant evidence is included in a Decision and Reasons.
2. This is an appeal against a decision of the First-tier Tribunal dismissing an appeal brought by the appellant against a decision of the respondent refusing him international protection and/or leave to remain on human rights grounds.
3. Permission was granted on a limited basis by a different First-tier Tribunal Judge who said:

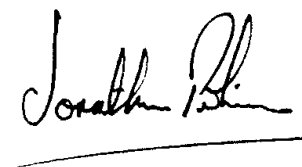
“It is, however, arguable that the Judge fell into error in considering the situation of the children; particularly failing to consider the evidence from their school and nursery. Ground 3 alone is arguable.”

4. The reference to “ground 3” is a reference to grounds prepared by Mr Bradshaw dated 11 April 2017 and the ground extends from paragraph 11 through to and including paragraph 20 of those grounds. I mean them no disrespect when I say the short point is that the judge did not deal properly with the interests of the appellant’s children. In particular he did not make any finding about the children’s best interests and neither did he give a proper explanation for any finding that may have been made that it was unduly harsh for the children to manage without their father in the United Kingdom. Although the appellant is a “foreign criminal” he was sentenced to two years’ imprisonment and so the “over and above” provisions of Section 117C of the Nationality, Immigration and Asylum Act 2002 do not apply in his case.
5. Additional evidence was served on the Tribunal on which the appellant wishes to rely.
6. Mr Bradshaw asked that in the event of an error of law being established the case be sent back to the First-tier Tribunal because he anticipated he would be instructed to call oral evidence which he was not in a position to do today.
7. The parties had spoken before the hearing and Ms Aboni was able to say that she had considered the position and agreed with Mr Bradshaw that the consideration of the case concerning the children was inadequate and the case had to be remitted to the First-tier Tribunal for re-determination solely on the points covered in ground 3. This is not a case to be re-determined on asylum and humanitarian protection grounds. The case concerns the rights of the children and whether they have been considered adequately. I find they have not in the existing decision and the decision needs to be made again.
8. It follows that I find the First-tier Tribunal erred in law and I set aside its decision and I direct that the points identified above be determined again by the First-tier Tribunal.

Decision

The appeal is allowed to extent explained above. The appeal has to be determined again in the First-tier Tribunal.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 25 September 2017