



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal No: HU/18174/2016
HU/18177/2016
HU/18178/2016
HU/18179/2016

THE IMMIGRATION ACTS

Heard at Glasgow
on 31 August 2018

Decision & Reasons Promulgated
on 6 September 2018

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

PRITI CHOUHAN and others

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss L Irvine, Advocate, instructed by Drummond Miller, Solicitors

For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. FtT Judge David C Clapham SSC dismissed the appellants' appeals for reasons given in his decision promulgated on 13 February 2018.
2. The appellants have permission to appeal to the UT on the grounds set out at section C of their application dated 26 February 2018.

3. Miss Irvine provided a note of argument, which is on the file, and made further submissions. As matters have developed, it is unnecessary to set these out in full detail.
4. On the first ground, error regarding the best interests of the children, it was argued that not only were no express findings made, the matter was not considered. At best, there was reference to education, but that was just one aspect; *cf.* the UN Committee on the Rights of Children, General comment no 14 (2013), “best interests as a primary consideration”, elements to be taken into account, beginning with (a) the child’s views, ending with (g) the right to education, and not intended as a comprehensive list.
5. On the second ground is error regarding proportionality. It was argued that could only be considered once a “best interests” analysis had been made, and that the judge, as suggested in the grant of permission, did not make any proportionality assessment. Rather, he treated the rules as inherently more significant than the interests of the children.
6. Mrs O’Brien in reply said that although her view had been initially that the decision, although compressed, was defensible, after considering the note and the submissions it had to be conceded that there were problems, in particular in terms of the proportionality assessment, or absence of one.
7. I agree that the decision is defective for absence of clear findings on the best interests of the children, and even if those are sufficiently stated, for failing to treat their interests as one of the primary considerations in the proportionality assessment. FtT judges do not have to set out extensive self-directions on the law (indeed, they are probably best avoided) but they do need to show that leading principles have been applied.
8. The appellants propose to run an argument on the significance of the combined length of a child’s residence in the UK over two separate periods. That appears to be a novel issue, not bearing on the outcome at this stage, and submissions were not developed, so I express no view.
9. The appropriate outcome was agreed to be as follows.
10. The decision of the FtT is **set aside**. It stands only as a record of what was said at the hearing.
11. The nature of the case is such that it is appropriate under section 12 of the 2002 Act and Practice Statement 7.2 to remit to the FtT for an entirely fresh hearing.
12. The member(s) of the FtT chosen to consider the case are not to include Judge Clapham.

13. No anonymity direction has been requested or made.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

31 August 2018
Upper Tribunal Judge Macleman