



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

Appeal Number: PA/07260/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 30 November 2017**

**Decision & Reasons Promulgated  
On 16 January 2018**

**Before**

**THE HONOURABLE LORD MATTHEWS  
SITTING AS AN UPPER TRIBUNAL JUDGE  
DEPUTY UPPER TRIBUNAL JUDGE MCCLURE**

**Between**

**JLN  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr J Collins (Counsel) instructed by Kilic & Kilic Solicitors  
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by JLN against a determination of Judge M A Khan in the First-tier Tribunal. His determination was promulgated on 10 October 2017.
2. The appellant had applied for leave to remain after various applications on the basis of family and private life under Article 8 of the Convention and was granted this leave on 19 July 2013 until 19 January 2016. Unfortunately on 5 November 2014 at Birmingham Crown Court he was

convicted of conspiracy to supply a controlled drug for which he received a sentence of three years and eight months for a drug trafficking offence and a deportation order was made against him in May 2015. He also made an asylum and protection claim which were also refused. He appealed against this decision and that appeal gave rise to the determination to which we have just referred.

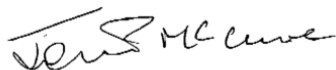
3. The appeal was refused on all grounds and permission was granted to appeal against that, principally on the basis that the Judge applied an incorrect version of the Immigration Rules, an older version, and he did not consider section 117C of the Nationality, Immigration and Asylum Act 2002. Neither did he make a full and proper assessment of the best interests of the appellant's children. Before us today Mr Collins and Mr Duffy agreed that that ground of appeal is made out and we have no difficulty in upholding that that is the case.
4. The determination is flawed in relation to the article 8 claim. There is no flaw in the determination in relation to the asylum or protection claim but as far as the article 8 claim is concerned, there having been really no proper determination of the best interests of the children or the Article 8 claim generally, in terms of the proper rules, it seems to us that the best resort is to remit the matter to the First-tier Tribunal for a proper assessment.

### **Notice of Decision**

The decision will stand in relation to the protection and asylum claim but the article 8 claim is unsustainable, and will be remitted to the First-tier Tribunal for a proper assessment applying the correct rules and statutory provisions.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Deputy Upper Tribunal Judge McClure

Dated 15<sup>th</sup> January 2018

& LORD MATTHEWS  
Sitting as an Upper Tribunal Judge  
(Immigration and Asylum Chamber)