



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

Appeal Number: HU/01315/2018
HU/02934/2018

THE IMMIGRATION ACTS

**Heard at North Shields
On 29 March 2019**

**Decision & Reasons Promulgated
On 09 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE APLEYARD

Between

**M S Z
(ANONYMITY DIRECTION MADE)**

First Appellant

and

**M S B V
(ANONYMITY DIRECTION MADE)**

Second Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Cleghorn, Counsel.

For the Respondent: Mr Diwnycz, Home Office Presenting Officer.

DECISION AND REASONS

1. The first and second Appellants are citizens of Iran. The first Appellant is the mother of the second. They entered the United Kingdom as visitors in November 2007. It appears they left the country but returned as student dependents on 21 August 2008. They then left and returned on 3 October

2009 with the first Appellant this time being a student herself. Her leave to remain was subsequently extended. She made an application in February 2015 for asylum (with the second Appellant as her dependent) but this was rejected. She became appeal rights exhausted in March 2017. Both Appellants made applications for leave to remain on 10 April 2017. Their applications were refused and they appealed and following a hearing, and in a decision promulgated on 21 March 2018, Judge of the First-tier Tribunal Moran dismissed their appeals on human rights grounds. The Judge concluded at paragraph 27 of his decision that there are “strong reasons for refusing the application notwithstanding the period in excess of 7 years. This arises from the actions of SZ from 2014 onward” as detailed in his decision.

2. The Appellants sought permission to appeal. This was granted by Deputy Upper Tribunal Judge Chapman in a decision dated 18 October 2018. Her reasons were: -

“1. The Appellants, who are mother and son and nationals of Iran, born on 1.4.79 and 30.7.03, seek permission to appeal, in time, against a decision of First tier Tribunal Judge Moran who, in a decision and reasons promulgated on 21 March 2018, dismissed his appeal against a decision of the Respondent dated 7 December 2017 refusing to grant them leave to remain on the basis of their human rights.

2. The grounds in support of the application assert that the Judge erred materially in law: (i) in his assessment of the best interests of the second Appellant and the reasonableness test and (ii) in referring to the Home Office guidance as being determinative of his assessment, rather than make his own assessment and (iii) in erroneously applying MA (‘Pakistan) in treating Section 117B(6) as an exclusionary clause.

3. Whilst the Judge at [16] does refer to the correct test as set out in the Home Office policy guidance and MA (Pakistan) the grounds of appeal, which overlap, raise arguable errors of law in the decision of the First tier Tribunal Judge, in particular at [24] in finding that in the first Appellant’s conduct amounts to powerful public interest considerations amounting to strong reasons that justify return of the Appellants to Iran, in light of MT & ET [2018] UKUT 88 (IAC) at [34].

4. Permission to appeal is accordingly granted.”

3. Thus, the appeal came before me today.
4. At the outset both representatives invited me to find within this decision a material error of law for the reasons set out in the grounds and identified in the grant of permission to appeal. Particularly following **JG (s 117B(6): “reasonable to leave” UK) Turkey [2019] UKUT 00072 IAC** and the guidance there that section 117B(6) of the Nationality, Immigration and Asylum Act 2002 requires a court or tribunal to hypothesise that the child

in question would leave the United Kingdom, even if this is not likely to be the case, and ask whether it would be reasonable to expect the child to do so.

5. Further evidence is now required in this appeal so that it can be reconsidered. The Appellant was not present at today's hearing. The decision cannot stand and accordingly remittal is appropriate.

Notice of Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge Moran.

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.

Signed

Date 6 April 2019

Deputy Upper Tribunal Judge Appleyard