



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

Appeal Number: HU/05443/2018

**THE IMMIGRATION ACTS**

**Heard at UT (IAC) Hearing in Field House**

**On 28<sup>th</sup> February 2019**

**Decision & Reasons  
Promulgated**

**On 20<sup>th</sup> March 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD**

**Between**

**PINALBEN [G]  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Rehman, Solicitor instructed by London Imperial  
Immigration Services Ltd

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of India whose appeal (and that of her son as a second Appellant) was dismissed by First-tier Tribunal Judge Rowlands in a decision dated 8<sup>th</sup> November 2018. By notice dated 6<sup>th</sup> February 2019 the son's appeal was withdrawn.
2. The judge noted that they had entered the United Kingdom on 15<sup>th</sup> August 2010 with entry clearance and the judge noted that there had been no change in the position since a previous decision of Judge James who had

dismissed the appeal of the first Appellant's husband. The only difference had been that the second Appellant had moved to secondary school and apart from that there was no difference in the circumstances. The judge took the view that his starting point was that he was bound by the Tribunal's previous findings subject to any later reliable evidence as set down in **Devaseelan** and the family should "move to India sooner rather than later to avoid confusion for these young children". He duly dismissed the appeal.

3. Grounds of application were lodged and initially refused but granted by Deputy Upper Tribunal Judge McGeachy. He said that while he considered the judge was entitled to rely on the decision of Judge James who had determined the appeal of the husband of the first Appellant and the father of the (former) second Appellant as a starting point in the decision, the reality was that the judge had not set out the reasoning in that decision nor given his own reasons for finding that the Appellants were not entitled to succeed. He considered that this might well be an arguable error of law.
4. Thus, the matter came before me on the above date. Mr Clarke for the Home Office conceded that it was an error in law by the judge in saying he was bound by the previous findings but maintained this was not a material error. For the Appellant Mr Rehman submitted that there was a material error in law because the child was settled here and proper findings needed to be made in respect of that. I was asked to set aside the decision and remit the case to the First-tier Tribunal for a fresh hearing.

### **Conclusions**

5. The position here is that the child is a qualifying child in terms of Section 117D of the 2002 Act having lived in the United Kingdom for a continuous period of seven years. The judge carried out no analysis of the consequences of that fact. There was no attempt to look at the best interests of the child as a primary consideration. No factual findings were made. It is clear that being a qualified child has a considerable bearing on whether or not an appeal is to be allowed or dismissed and of course there has been recent case law on this very issue in terms of **KO (Nigeria) and Others v SSHD [2018] UKSC 53** and more recently **JG (s 117B(6): "reasonable to leave" UK) Turkey [2019] UKUT 00072 (IAC)**. The judge did not enter this arena and by not considering the best interests of the child allied to the fact that the child was a qualifying child made a material error in law. Although the child is now to make a fresh application (neither party addressed me on that) the outcome of this appeal is inextricably linked to the outcome of whether the child has a right to remain in the United Kingdom.
6. This matter will therefore have to be heard again and accordingly the decision of the First-tier Tribunal is set aside in its entirety. No findings of the First-tier Tribunal are to stand. Under Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the nature and extent of the judicial

fact-finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal.

**Notice of Decision**

7. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
8. I set aside the decision.
9. I remit the appeal to the First-tier Tribunal.

No anonymity order is made.

*JG Macdonald*

Deputy Upper Tribunal Judge J G Macdonald  
2019

Dated 19<sup>th</sup> March