



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

Appeal Number: IA/03685/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 10 December 2019**

**Decision & Reasons Promulgated
On 12 December 2019**

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

**SABAN ONAR
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not legally represented (Mr C Harding, the appellant's former legal representative, observed the proceedings)

For the Respondent: Mr D Clarke, Senior Presenting Officer

DECISION AND REASONS

1. In a decision of the 12 February 2016, the First-tier Tribunal dismissed the appellant's appeal against the SSHD's decision of 6 January 2015 to remove him pursuant to section 10 of the Immigration and Asylum Act 1999. As a consequence of the date (and nature) of the SSHD's decision this is an appeal made pursuant to the appeal provisions in place prior to amendment by Immigration Act 2014.
2. The appeal before the First-tier Tribunal took place in the absence of both the appellant and his then legal representative in circumstances in which

the SSHD accepted, both in her rule 24 response and at a hearing before DUTJ Lever on 7 October 2016, were procedurally unfair. Consequently, the SSHD accepted that the decision of the First-tier Tribunal should be set aside.

3. At the hearing of 7 October 2016 DUTJ Lever indicated, pursuant to the SSHD's concession, that he would set aside the decision of the FtT and remit the appeal to the FtT for a *de novo* hearing. Unfortunately, a written decision to this effect did not follow and the matter has remained in the Upper Tribunal awaiting such decision.
4. The matter was recently brought to my attention, at which point I issued a Transfer Order in my capacity as Principal Resident Judge - the power to make such an order having been designated to the Office of the Principle Resident Judge by the President of the Upper Tribunal (IAC). I additionally observed that the appellant's solicitor has come off record and that the Tribunal has never been provided with the address of the appellant's residence. I listed the matter for hearing in order to establish whether it was still appropriate for the matter to be remitted to the FtT, given the effluxion of time and the events which are likely to have occurred subsequent to the hearing before DUTJ Lever.
5. At the hearing of 10 December, Mr Clarke notified the Tribunal that two of the appellant's children had now been granted British Citizenship (in March and October 2018 respectively). He indicated that in such circumstances the SSHD was content for the appellant's appeal to be allowed and he consented to the Upper Tribunal not giving reasons for its decision.
6. Having considered all the circumstances of the case and having taken account of the SSHD's position, I conclude that the decision to remove the appellant would lead to a breach of Article 8 ECHR and I accordingly allow his appeal on this basis.

Decision

The decision of the First-tier Tribunal is set aside

Upon re-making, I allow the appellant's appeal for the reasons set out above.

Signed: Upper Tribunal Judge O'Connor



Date: 10 December 2019