



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

Appeal Number: PA/01179/2017

THE IMMIGRATION ACTS

**Heard at Manchester CJC
On 11 July 2019
Extempore**

**Decision & Reasons Promulgated
On 25 July 2019**

Before

**UPPER TRIBUNAL JUDGE RINTOUL
DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**M A
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Bates, Senior Home Office Presenting Officer
For the Respondent: Ms A Faryl, instructed by Broudie Jackson & Canter

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Mark Davies promulgated on 30 January 2019 in which he allowed the appellant's appeal against the decision of 17 January 2017 to refuse her asylum and humanitarian protection. The matter was previously heard by the judge to whom it was remitted by a decision of Deputy Upper Tribunal Judge Alis.

2. The first decision is one in which the judge allowed the appeal also and it is of note that Judge Alis considered in his decision at paragraphs 8 and 9 whether it was the matter should be remitted back to the First-tier Tribunal and noted that there was no objection to it being remitted back to Judge Davies.
3. It is we consider of great concern that Judge Davies in effect ignored what he was told to do by the Upper Tribunal. Judge Davies should not at any stage have remitted the appeal to the respondent for a Section 55 assessment, he had no power to do so, and the ground of appeal that a decision is not in accordance with the law is no longer one available.
4. What Judge Davies did when remaking the decision is equally a failure properly to make findings of fact which are reasoned, and which address the law properly. It is inadequate to state only what the judge said at paragraphs 9 and 10 of his decision:
 - “9. I make it clear in relation to this matter I have taken into account all the public interest considerations set out in Section 117B of the Nationality, Immigration and Asylum Act 2002. In my view the failure by the respondent to properly and fully consider Section 55 when making his initial decision was an act that indicates the respondent did not act in accordance with the law. I accept that the appellant can satisfy me that a proposed removal will amount to an interference and the interference would have consequences of such gravity as to potentially engage the operation of Article 8. It is clear from her evidence that that is the case.
 10. Having established that interference as I have found I conclude on the balance of probability it was not in accordance with the law because the respondent at the date of his original decision had not properly and fully considered his obligations under Section 55. It also appears to me from the evidence I have considered that the interference of the appellant as established is not proportionate to the public end sought to be achieved, namely the maintenance of effective immigration control, taking into account her circumstances and the circumstances of the child.”
5. There are simply no findings of fact here. It is inadequate and we regret that we have no option other than to find that this decision must be set aside owing once again to a failure by Judge Davies properly to make relevant findings. Both parties were in agreement with this and that there was now no alternative to this appeal being remitted, once again, at considerable and unnecessary cost, to the First-tier Tribunal.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and we set it aside.
2. The appeal is remitted to a differently constituted First-tier Tribunal for a fresh decision on all issues

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 18 July 2019

A handwritten signature in black ink, appearing to read 'Jeremy Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul