



IAC-FH-NL-V1

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

Appeal Number: IA/37489/2014

THE IMMIGRATION ACTS

Heard at Birmingham

**Decision &
Promulgated**

Reasons

On 1 March 2016

On 16 March 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**GD
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not represented

For the Respondent: Mr. G. Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Place, promulgated on 16 January 2015, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse to grant leave to remain on human rights grounds and to remove him from the United Kingdom.

2. Given the involvement of children in this appeal, I have made an anonymity direction.
3. Permission to appeal was granted as it was arguable that the judge's failure to take into account section 117B(6) was a material error of law.
4. The Appellant attended the hearing together with his partner and his sister. He was not legally represented, although he had received legal advice prior to the hearing, and he still retained legal representatives. He stated that, since the decision of the First-tier Tribunal, his partner had been granted leave to remain, and their son had obtained British citizenship. His daughter's application for British citizenship was pending.
5. Mr. Harrison submitted that that the decision was short on findings relating to family life. There was no full and careful assessment of section 117B, and given the ages of the children, section 117B(6) was relevant. Given the inadequacies of the decision he accepted that it needed to be remade.
6. At the hearing I announced that I found that the decision involved the making of a material error of law. I set the decision aside in its entirety and remitted it to the First-tier Tribunal to be re-heard. My reasons are set out below.

Error of law

7. The judge deals with Article 8 outside the immigration rules from paragraph [24] onwards. He states in paragraph [27]:

"I find that the Appellant has not satisfied the burden upon him of showing that he has established family life in the UK with [SK]. I accept that he has family life here with his 2 children but he has not shown that his family life is strong or enjoyed on a daily, or even regular, basis."
8. Given that he has found that family life exists between the Appellant and his children, a full assessment of this family life and the impact of the decision on those children is necessary. However, there is no such assessment. In paragraph [30] the judge states that "at its highest, those children live with both their parents". However, he has earlier found that the documents do not show that the Appellant lives with his children, nor that he enjoys family life on a "daily, or even regular, basis". It is not clear what his findings are.
9. The judge refers to some of the matters which are contained in section 117B in paragraph [29], but he does not refer at all to section 117B(6). Given that he states in paragraph [9] that the eldest child has applied for British citizenship, he must be aware that this child has been in the UK for seven years and is therefore a qualifying child for the purposes of section 117B(6), yet despite this, there is no consideration of this subsection.

10. In paragraph [30] the judge states that he is required to take into account the best interests of the children, but his assessment is inadequate, consisting only of this paragraph. He considers that it is “possible” for them to relocate to Zimbabwe, and that it is not unreasonable to remove them. However there is no assessment of what is in their best interests, and without such an assessment, inadequate reasons are given for the finding that their removal is not unreasonable. The lack of an analysis of what is in the best interests of the Appellant’s children is a material error of law.
11. Paragraph 7.2 of the Practice Statement dated 10 February 2010 contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party’s case to be put to and considered by the First-tier Tribunal. Given the nature and extent of the fact-finding necessary to enable this appeal to be remade, having regard to the overriding objective, and noting that the position of the Appellant’s partner and eldest son has changed since the last hearing, I find that it is appropriate to remit this case to the First-tier Tribunal.

Notice of Decision

The decision involves the making of a material error of law. I set the decision aside.

The appeal is remitted to the First-tier Tribunal for rehearing.

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 his 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 4 March 2016

Deputy Upper Tribunal Judge Chamberlain