



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

Appeal Number: PA/13830/2016

**THE IMMIGRATION ACTS**

**Heard at Bennett House, Stoke-on-Trent  
On 12<sup>th</sup> December 2017**

**Decision & Reasons Promulgated  
On 14<sup>th</sup> December 2017**

**Before**

**UPPER TRIBUNAL JUDGE COKER**

**Between**

**[S A]**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Brooks, instructed by J M Wilson solicitors  
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. [SA] was granted permission to appeal the decision of First-tier Tribunal Judge E.E.M.Smith who had dismissed her appeal on protection and human rights grounds. Permission was sought and granted on the grounds that it was arguable the First-tier Tribunal judge had erred in law in her conclusions that it was reasonable and proportionate for the appellant's youngest child to leave the UK with her and the other three children.
2. The respondent in her Rule 24 response asserted that the First-tier Tribunal decision was not vitiated by error of law: the judge had considered the child,

found that the best interests of the child were to remain with her mother and that it was reasonable, the judge having directed himself to s117B(6) for the child to leave the UK and thus there was of error of law.

3. Permission to appeal the protection claim (asylum or humanitarian protection) was not sought by the appellant and Mr Brookes confirmed the challenge was restricted to human rights/Article 8 as pleaded.
4. Mr Bates relied upon the Rule 24 response and did not seek to make any further submissions.
5. The youngest child is a British Citizen. The judge failed to consider the child's citizenship, the respondent's policy on the removal of British Citizen children from the UK and *SF* [2017] UKUT 00120 (IAC). The failure to consider the citizenship of the child is a material error of law that impacts upon the findings made in relation to the mother and the other three children. I set aside the decision to be remade.
6. When I have set aside a decision of the First-tier Tribunal, s.12(2) of the TCEA 2007 requires me to remit the case to the First tier with directions or remake it for ourselves. Further evidence will be required to enable findings to be made. In these circumstances, I remit the appeal on Article 8/human rights grounds to the First-tier Tribunal to be remade. The protection appeal decision stands.
7. Given that the youngest child is a British Citizen the respondent will no doubt consider the decision prior to the hearing of the appeal before the First-tier Tribunal.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision and remit the appeal for hearing before a First-tier Tribunal judge.



Date 12<sup>th</sup> December 2017  
Upper Tribunal Judge Coker