



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

Appeal Number: IA/00215/2016

**THE IMMIGRATION ACTS**

**Heard at Stoke on Trent**

**Decision and Reasons  
Promulgated**

**On 2 October 2017**

**On 3 October 2017**

**Before**

**Deputy Upper Tribunal Judge Pickup**

**Between**

**Maosin Muhmammad  
[No anonymity direction made]**

Claimant

**and**

**Secretary of State for the Home Department**

Appellant

**Representation:**

For the claimant: Mt T Mahmood, instructed by Malik Law Chambers  
(Birmingham)

For the appellant: Mr A McVeety, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the Secretary of State's against the decision of First-tier Tribunal Judge Pooler promulgated 24.1.17, allowing on human rights grounds the claimant's appeal against the decision of the Secretary of State, dated 17.12.15, to refuse his human rights claim.
2. First-tier Tribunal Judge Woodcraft granted permission to appeal on 10.8.17.

3. Thus the matter came before me on 2.10.17 as an appeal in the Upper Tribunal.

### **Error of Law**

4. For the reasons summarised below, I found that there was an error of law in the making of the decision of the First-tier Tribunal such that the decision of the First-tier Tribunal should be set aside.
5. The grounds are somewhat garbled and Mr McVeety agreed they made little grammatical sense. However, in granting permission to appeal, Judge Woodcraft found it arguable that the First-tier Tribunal treated the best interests of the child as determinative of the proportionality balancing exercise, contrary to the ratio of MA (Pakistan) [2016] EWCA Civ 705,
6. In MA the Court of Appeal held that an assessment of the reasonableness of expecting a child to leave the UK has to take into account the wider public interest considerations, including in this case the poor immigration history and behaviour of the appellant. The way that [19] of the decision is worded, strongly suggests that the judge did not take the adverse public interest factors into account in the proportionality assessment.
7. In this case, it was not contended that the child should leave the UK, but the issue was whether the effect of the appellant's removal on the child was proportionate in light of the adverse factors to be taken into account. At [19] the judge concluded (was persuaded) that the public interest does not require the appellant's removal, "because the requirements of sub-section (6) are met."
8. It may be that the outcome of the appeal would have been the same, but it is arguable that properly directed the appeal would have been dismissed on a fair and full proportionality assessment of the significant public interest factors, balanced against the rights of the appellant and the child. The judge failed to apply the current case law and clearly regarded 117B(6) as determinative of the appeal.

### **Remittal**

9. When a decision of the First-tier Tribunal has been set aside, section 12(2) of the Tribunals, Courts and Enforcement Act 2007 requires either that the case is remitted to the First-tier Tribunal with directions, or it must be remade by the Upper Tribunal. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal. Where the facts or conclusions are unclear on a crucial issue at the heart of an appeal, the error(s) of the First-tier Tribunal vitiates all other findings of fact and the conclusions from those facts so that there has not been a valid determination of the issues in the appeal.
10. In all the circumstances, at the invitation and request of both parties to relist this appeal for a fresh hearing in the First-tier Tribunal, I do so on the basis that this is a case which falls squarely within the Senior President's Practice Statement at paragraph 7.2. The effect of the error has been to

deprive the parties of a fair hearing and that the nature or extent of any judicial fact finding which is necessary for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2 to deal with cases fairly and justly, including with the avoidance of delay, I find that it is appropriate to remit this appeal to the First-tier Tribunal to determine the appeal afresh.

### **Conclusion & Decision**

11. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that the decision should be set aside.

I set aside the decision.

I remit the appeal to be decided afresh in the First-tier Tribunal in accordance with the attached directions.



**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**

### **Consequential Directions**

12. The appeal is remitted to the First-tier Tribunal sitting at Stoke or Nottingham;
13. The appeal is to be decided afresh with no findings of fact preserved;
14. The ELH is 2 hours;
15. An interpreter in Urdu will be required
16. The appeal may be listed before any First-tier Tribunal Judge, with the exception of Judge Pooler and Judge Woodcraft;

### **Anonymity**

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 13(1) of the Tribunal Procedure Rules 2014.

Given the circumstances, I make no anonymity order.

**Fee Award**

**Note: this is not part of the determination.**

In the light of my decision, I have considered whether to make a fee award pursuant to section 12(4)(a) of the Tribunals, Courts and Enforcement Act 2007.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: The outcome of the appeal remains to be decided.

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

**Signed**

**Deputy Upper Tribunal Judge Pickup**

**Dated**