



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

Appeal Numbers: HU/00988/2018  
HU/00995/2018  
HU/00993/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 27<sup>th</sup> November 2018**

**Decision & Reasons  
Promulgated  
On 8<sup>th</sup> January 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD**

**Between**

**LUCKSON [M]  
HECEL [L]  
[M M]  
(ANONYMITY ORDER NOT MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Guy Davison of Counsel

For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The first Appellant is a citizen of Malawi. His partner the second Appellant is a citizen of the Philippines and their son is a citizen of both Malawi and of the Philippines. They made an application for leave to remain here on the basis of family and private life and that application was refused

resulting in an appeal to First-tier Tribunal Judge Khan who in a decision promulgated on 3<sup>rd</sup> September 2018 dismissed the appeal. Grounds of application were lodged and it was said that the judge had erred in law in that he had not properly considered the reasonableness of removal of the child who was a qualifying child.

2. Permission to appeal was granted and thus the matter came before me on the above date.
3. It is not necessary to set out the Grounds of Appeal any further as Mr Jarvis, quite properly, indicated that he did not consider the decision to be safe and it should not stand; a remittal to the First-tier Tribunal was required. His reasoning, endorsed by Mr Davison for the Appellants, was that the judge had not considered the impact on the child of the removal of the family from the United Kingdom.
4. Given that parties agreed there was an error in law (and I agree with their views) it is plain enough that the decision is not safe and must be set aside. Mr Davison sought no more than a remittal to the First-tier Tribunal.
5. It seems to me that further fact-finding is necessary and the matter should be remitted to the First-tier Tribunal to be heard by a judge other than Judge Khan.
6. The decision of the First-tier Tribunal is therefore set aside in its entirety. No findings of the First-tier Tribunal are to stand. Under Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the nature and extent of the judicial fact-finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal.

### **Notice of Decision**

7. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
8. I set aside the decision.
9. I remit the appeal to the First-tier Tribunal.
10. No anonymity order is made.

Signed *JG Macdonald*  
2018

Date 18<sup>th</sup> December

Deputy Upper Tribunal Judge JG Macdonald