



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

Appeal Number: IA/08758/2012

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
on 11 November 2014**

**Determination issued  
On 12<sup>th</sup> Nov 2014**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**ASHRAF ALI**

Appellant

**and**

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

Respondent

For the Appellant: Mr D Byrne, Advocate, instructed by Latta & Co., Solicitors  
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Pakistan, born on 1 September 1983. He appealed to the Upper Tribunal against a determination by First-tier Tribunal Judge J C Grant-Hutchison, promulgated on 18 July 2012, dismissing his appeal which had been argued under Article 8 of the ECHR, outwith the Immigration Rules, on the basis of his son's medical condition and the treatment available to the child in the UK. By determination promulgated on 6 June 2013 Deputy Upper Tribunal Judge Wood TD dismissed the appeal to the Upper Tribunal.

2. For reasons explained in her opinion dated 15 April 2014, Lady Clark of Carlton granted permission to appeal to the Court of Session. The judge thought that the First-tier Tribunal Judge had not come to a conclusion about the best interests of the child as a primary consideration in a structured way and that there were decisions to be made about the weight to be given to the various circumstances and about whether the child's best interests lie in the UK or not.
3. In terms of a joint minute, a copy of which is now on the Tribunal file, parties agreed that neither the First-tier Tribunal nor the Upper Tribunal had given reasons making plain that the best interests of the child had been recorded primacy; that the appeal to the court should be allowed; that the Upper Tribunal determination of 6 June 2013 should be set aside; and that the case should be remitted back "for consideration anew by a differently constituted Tribunal". Effect was given to this by interlocutor of the Inner House dated 16 September 2014.
4. On 11 November 2014 parties concurred that the appropriate course was for the Upper Tribunal to hold that the First-tier Tribunal erred in law; to **set aside** its determination promulgated on 18 July 2012; to order that none of its findings were to stand; and under section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2 to **remit the case to the First-tier Tribunal**. The member(s) of the First-tier Tribunal chosen to reconsider the case are not to include Judge J C Grant-Hutchison.
5. While relisting is a matter for the First-tier Tribunal, parties suggested that there should be a case management review on Monday 12 January 2015 and a full hearing on Monday 26 January 2015, or the next available dates thereafter. At the CMR hearing parties will clarify the evidence to be canvassed, the likely extent of cross-examination (if any), the extent to which the facts can be agreed, and whether an interpreter is needed. **Compliance with Practice Directions 7 and 8**, including outline submissions in writing, and proper presentation of documents, is required.
6. No anonymity order has been requested or made.



12 November 2014  
Upper Tribunal Judge Macleman