



IAC-FH-CK-V1

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

Appeal Number: IA/08776/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 2<sup>nd</sup> September 2015**

**Decision & Reasons Promulgated  
On 8<sup>th</sup> September 2015**

**Before**

**UPPER TRIBUNAL JUDGE FRANCES**

**Between**

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

Appellant

**and**

**C S S S S**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Ms A Brocklesby-Weller, Home Office Presenting Officer  
For the Respondent: No Representative

**DECISION AND REASONS**

1. I shall refer to the parties as in the First-tier Tribunal. The Appellant is a citizen of India born on 12<sup>th</sup> May 1987. His appeal against the refusal of leave to remain on the basis of family and private life was allowed by First-tier Tribunal Judge McAteer on 12<sup>th</sup> May 2015 insofar as the decision of 13<sup>th</sup> February 2015 was not in accordance with the law.
2. The Respondent appealed on the ground that the judge erred in law in concluding that the Respondent failed to conduct the required analysis of how the decision would impact on Rahim's best interests, further that the

burden was on the Appellant to show that it was not in the child's best interests and the Appellant had failed to provide sufficient evidence to the Respondent or to the Tribunal to establish this was in fact the case.

3. Permission to appeal was granted by First-tier Tribunal Judge Molloy on 10<sup>th</sup> July 2015 on the grounds that it was arguable that the judge had misinterpreted who was responsible for proving a case where Section 55 of the Borders, Citizenship and Immigration Act 2009 was in issue.
4. At the hearing before me the Appellant appeared unrepresented. Ms Brocklesby-Weller relied on the grounds of appeal.

### **Discussion and Conclusions**

5. The judge made the following findings:

“59. In this case I find there to be no indication that the Respondent has conducted the required analysis of how the Appellant's removal from the UK would impact upon Rahim's best interests, when a decision has been made in this case. I find such analysis as there is in the letter to lack reasoning and to be written in very general terms, with no evidence that the applicable policy has been considered and compounded by the Respondent providing the Tribunal with none of the evidence available to her when the decision was made.

60. I therefore find that the Respondent has failed to demonstrate that she has properly discharged the duty under Section 55, to have regard to the need to safeguard and promote the welfare of the child concerned and to have regard to the statutory guidance, on the facts in this case.”

6. The judge went on to apply MK (section 55 – Tribunal options) Sierra Leone [2015] UKUT 00223 (IAC) at paragraph 39(b) of the decision:

“However, there may be cases where the Tribunal forms the view that the assembled evidence is insufficient for this purpose. In such cases, two options arise. The first is to consider such further relevant evidence as the Appellant can muster and/or to exercise case management powers in an attempt to augment the available evidence. The second is to determine the appeal in a manner which requires the Secretary of State to make a fresh decision.”

7. At paragraph 66 the judge concluded:

“I have considered the desirability of finality and the undesirability of undue delay. Given that a direction has been made in this case, and has not been complied with by the Respondent, and that there may have been a significant change of circumstances due to the birth of Ms Smedley's child, I find on the specific facts of this case that it is appropriate to determine this appeal in a manner which requires the Respondent to make a fresh decision. Undue delay is undesirable but in the absence of any evidence, including that which was before the Respondent, I find I am unable to undertake a sufficiently rigorous Section 55 analysis.”

8. The appeal was decided on the papers and the Respondent failed to comply with directions and supply a bundle. The judge was unable to assess what information was before the Respondent when she came to her decision in February 2015. There was insufficient evidence before the judge to enable him to properly assess Section 55. The judge properly directed himself in law and his approach to the future conduct of the case was one which was open to him in the circumstances.
9. I find that there is no error of law in the judge's decision of 12<sup>th</sup> May 2015 and the Respondent's appeal is dismissed. The decision of the First-tier Tribunal shall stand.

**Notice of Decision**

Appeal dismissed.

**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 7<sup>th</sup> September 2015

Upper Tribunal Judge Frances