



IAC-FH-AR-V1

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

Appeal Numbers: IA/49290/2014  
IA/49294/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20 November 2015**

**Decision & Reasons Promulgated  
On 16 December 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**JABAD HUSSAIN  
ROWSHANARA BEGUM  
(ANONYMITY DIRECTION NOT MADE)**

Respondents

**Representation:**

For the Appellant: Miss A Fijiwala, Senior Home Office Presenting Officer

For the Respondents: Miss R Akther, Counsel, instructed by Edward Alam & Associates

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Kainth, promulgated on 22 June 2015, in which he purported to “remit” the Respondents’ linked cases back to the Secretary of State for consideration under Section 55 of the Borders, Citizenship and Immigration Act 2009.

2. The appeals to Judge Kainth were against decisions of the Secretary of State dated 18 November 2014 to remove the Respondents by way of directions under Section 10 of the Immigration and Asylum Act 1999. Permission to appeal was granted by First-tier Tribunal Judge Davies by a decision dated 7 September 2015.

### **Decision of the First-tier Tribunal**

3. The basis upon which the First-tier Tribunal made its decision is essentially as follows. At a hearing at which the Secretary of State was unfortunately not represented it was contended by the representative for Mr Hussain and Mrs Begum that the Secretary of State's refusal letter failed to have any or any adequate regard to the duty under section 55 of the 2009 Act, with reference to paragraph 24 of the letter in question. That submission is set out at paragraph 11 of Judge Kainth's decision. The judge acceded to the submission and concluded that the cases had to be "remitted" for further consideration.
4. However, somewhat unfortunately, and as clearly set out in the Secretary of State's grounds of appeal, both the representative and more importantly Judge Kainth overlooked what is said at paragraphs 43 to 47 of the refusal letter. Within those paragraphs there is clear and detailed reference to Section 55 of the 2009 Act and a consideration of a number of relevant factors relating to the relevant children in these appeals. Therefore it is clear to me that Judge Kainth made an error of law, namely a complete failure to have regard to relevant aspects of the Secretary of State's case as set out in the refusal letter.
5. In turn, the basis upon which Judge Kainth purported to remit (or perhaps more accurately to allow the appeals on a limited basis, assuming that was his intention given that he had no power to remit as such) is fundamentally flawed.
6. The error of law is clearly material, and in terms of the disposal of these appeals, because there have been no findings of fact whatsoever in respect of Mr Hussain, Mrs Begum and their children in these appeals, the only appropriate course of action is to remit these appeals to the First-tier Tribunal.
7. This is not the usual course of action. However there has been no opposition to this route from either representative before me, and given the absence of any findings of fact whatsoever Mr Hussain and Mrs Begum have effectively been denied any sort of a hearing at first instance.
8. Therefore having regard to paragraph 7 of the Practice Statements and section 12(b)(i) of the Tribunals, Courts and Enforcement Act 2007 I remit the appeals.
9. In terms of the remitted hearing before the First-tier Tribunal, the issues for consideration will focus on Article 8 both within and without the

Immigration Rules, and of course with reference to the relevant children, one of whom it now appears has been in the United Kingdom for over seven years.

### **Notice of Decision**

**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 of the First-tier Tribunal.**

**I remit the case to the First-tier Tribunal.**

**No anonymity direction is made.**

### **Procedural Directions**

- 1. These appeals shall remain linked;**
- 2. The appeals are remitted to the First-tier Tribunal, to be heard at the Hatton Cross Hearing Centre on a date to be fixed by that centre;**
- 3. The remitted appeals shall not be reheard by Judge Kainth.**

### **Substantive Directions**

- 1. The issues for the First-tier Tribunal to consider at the rehearing of the appeals are: first, whether Mr Hussain and/or Mrs Begum satisfy the Immigration Rules as they relate to Article 8; second, if not, whether Mr Hussain and/or Mrs Begum can succeed on Article 8 grounds outside of the Immigration Rules in light of their own circumstances, those of their children, current case-law and the factors contained within section 117B of the Nationality, Immigration and Asylum Act 2002.**

Signed

Date: 4 December 2015

Deputy Upper Tribunal Judge Norton-Taylor