



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

Appeal Number: IA370872014
IA370882014

THE IMMIGRATION ACTS

**Heard at Field House
On 23rd March 2016**

**Decision & Reasons
Promulgated
On 8th June 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

**MS OLGA MAKARUK
[V S]**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr B Hawkins, Counsel instructed by Arlington Crown Solicitors

For the Claimant: Mr P Nath, Senior Presenting Officer

DETERMINATION AND REASONS

1. The Appellants appeal with permission against the decision of First-tier Tribunal Judge Andrews (promulgated on 20 August 2015) dismissing the appeals against the Respondent's decision to remove the Appellants on the basis that their removal will not contravene their Convention rights

and pursuant to removal directions issued under section 10 of the Immigration and Asylum Act 1999.

2. The Appellants appealed against that decision and were granted permission to appeal by Deputy Upper Tribunal Judge Mahmood on all grounds.
3. I was provided with a Rule 24 response from the Respondent.

Concession

4. In submissions before me, the Respondent accepted that the First-tier Tribunal made material errors of law in relation to the failure to lawfully consider section 117B(6) of the Nationality, Immigration and Asylum Act 2002 (as amended) particularly in light of paragraph 51(iii) of the decision which states that as the best interests of the child are to return with his mother, then no consideration is required of section 117B(6). The Appellant was in agreement with this concession.

Error of Law

5. In light of the above agreement and concession by the Respondent, I find that the decision involved the making of an error of law as stated above. I find in particular that an error exists as identified above given that the Tribunal is bound by statute to have "regard" at least to all of the sections of 117B and that there must be an assessment of the public interest under section 117B(6) which confirms that if it is not reasonable for a qualifying child to leave the UK, then the child and their parent is not required to go as that is not what the public interest requires (see *Forman (ss 117A-C considerations)* [2015] UKUT 412 (IAC) at [17(iii)] and *Treebhawon and others (section 117B(6))* [2015] UKUT 00674 (IAC) at [16(b) and 20-22]).

Decision

6. The appeal to the Upper Tribunal is allowed.
7. The determination of the First-tier Tribunal is set aside with no findings preserved.
8. The appeal is remitted to the First-tier Tribunal to be heard *de novo*.

Signed

Date 23/03/2016

Deputy Upper Tribunal Judge Saini