



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

Appeal Number: IA/03759/2015
IA037602015 IA037632015
IA037652017 IA037692015
IA037702015

THE IMMIGRATION ACTS

Determined at Field House without a hearing On 20 July 2017	Decision & Promulgated On 21 July 2017	Reasons
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Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

**SADIQ [A]
SYEDA [F]
ALIZEH [A]
[SYS]
[SAS]
DUAA [A]**

(NO ANONYMITY ORDER MADE)

Claimant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The appellant appeals with permission against the determination of the First-tier Tribunal Judge Farrelly, promulgated on 12 July 2016 dismissing their appeals against the decision of the respondent made on 8 January 2015 to refuse them leave to remain.

2. Permission to appeal to the Upper Tribunal was granted on 23 November 2016
3. On 2 June 2017 I gave the following directions:-
 1. Having reviewed the material on file; and, given the overriding objective and the need for proportionate decision making, I have concluded that it is appropriate to seek to dispose of these appeals without the need for a hearing.
 2. NA (Libya) v SSHD [2017] EWCA Civ 143 at [29] is binding authority for the proposition that it is the position at the date of promulgation of a decision which is relevant to the consideration of whether that decision involved the making of an error of law, not when the decision was signed by the judge.
 3. As at the date of promulgation, the two minor appellants had spent 7 years in the United Kingdom. That was, in the light of MA (Pakistan) [2016] EWCA Civ 705 at [40] to [49], a material issue that needed to be considered. There is, in my preliminary view, no sufficient consideration of that issue, the judge considering article 8 only in the alternative, and that he failed properly to consider the evidence relating to the children and the second appellant.
 4. Accordingly, it is my preliminary view that the decision of the First-tier Tribunal must be set aside and remade. It is also my preliminary view that, given the lapse of time since the decision was made, that it is appropriate to remit the decision to a differently constituted First-tier Tribunal for a hearing de novo.
 5. Accordingly, unless either party objects in writing supported by cogent argument within 5 working days of the issue of these directions, it is my provisional intention to allow the appeal without a hearing on the basis of these directions and remit it to the First-tier Tribunal
4. There has been no response to these directions by the respondent. The appellants have responded asking for clarification of the hearing date, but raising no objection
5. Accordingly, I am satisfied that neither party objects to the matter being determined without a hearing and has nothing further to say. I am satisfied that that the determination of the First-tier Tribunal did involve the making of an error of law for the reasons set out above, and must therefore be set aside. Given the nature of the error, and the failure to make proper findings in respect o children, and given that over a year has elapsed since the findings were made, I remit the appeal to the First-tier Tribunal for a fresh determination on all issues.

6. The hearing on 26 July 2017 will not now take place.

Summary of conclusions

1. The determination of the First-tier Tribunal did involve the making of an error of law and I set it aside.
2. I remit the decision to the First-tier Tribunal for a fresh decision on all issues
3. The appeal must not be before Judge Farrelly

Signed

Date: 20 July 2017

A handwritten signature in black ink, appearing to read 'Jonathan Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul