



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

**Appeal number: HU/03014/2017**

THE IMMIGRATION ACTS

Heard at Glasgow  
On 1 August 2019

Decision and Reasons Promulgated  
On 13 August 2019

Before

UT JUDGE MACLEMAN

Between

**RADDAPORN [N]  
(anonymity direction not made)**

Appellant

and

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

Respondent

For the Appellant: Mr V Sharma, of The Chamber Practice, Aberdeen,  
Solicitors  
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. In a response to a notice served on her under section 120 of the 2002 Act, the appellant, a citizen of Thailand, sought to remain in the UK as the mother of her two UK citizen children. A letter from her representative dated 10 December 2016 founded on her meeting the three conditions of section 117B(6) of that Act:- not being liable to deportation, having a genuine and subsisting parental relationship, and it not being reasonable to expect the children to leave the UK.

2. By a decision dated 10 February 2017, the respondent refused the appellant's application. Under reference to the immigration rules, the respondent found that the appellant did not have sole parental responsibility, and there was no evidence of formal access rights or of an active role in the upbringing of the children.
3. The appellant appealed to the FtT. By the time of the hearing, the appellant's older son was an adult. In his decision promulgated on 27 February 2018, Judge Doyle held that the appellant had a genuine and subsisting relationship with her younger son, and that it would not be reasonable to expect him to leave the UK, but that the interference by the respondent was proportionate. He dismissed the appeal.
4. The FtT and UT refused permission to appeal to the UT.
5. The appellant sought judicial review of the UT's refusal of permission. The parties entered into a joint minute:

"... standing the facts found by the FtT ... and the terms of section 117B(6) ... the UT erred in law when refusing permission to appeal from the FtT to the UT by giving insufficient reasons for its decision ..."
6. On 26 June 2019, the Vice President of the UT granted permission, in light of the interlocutor of the Court.
7. Mr Govan referred to the immigration rules and to the respondent's policy on family life and exceptional circumstances. However, he was unable to present any argument by which, applying section 117B(6) to the FtT's findings, the appeal could rationally have been dismissed.
8. The only decision open to the FtT was to allow the appeal on human rights grounds.
9. The statute speaks for itself, but see also *Macdonald's Immigration Law and Practice*, 9<sup>th</sup> ed., second supplement, vol 1, at 7.106.
10. The decision of the First-tier Tribunal is set aside. The following decision is substituted: the appeal, as brought to the FtT, is allowed.
11. No anonymity direction has been requested or made.



Dated 2 August 2019  
UT Judge Macleman