



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

Appeal Number: HU/13117/2017

THE IMMIGRATION ACTS

Determined at Field House

On 7th November 2018

**Determination and Reasons
Promulgated**

On 30th November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SAINI

Between

**ANDRE [B]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Record, Counsel

For the Respondent: Ms A Everett, Senior Presenting Officer

DECISION BY CONSENT AND DIRECTIONS

1. Pursuant to Rule 39 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and by the consent of the parties the following order is made:
 - (i) Upon the parties' agreement that the decision of the First-tier Tribunal promulgated on 8th August 2018 discloses a material error of law, it is hereby ordered by consent as follows.
 - (ii) The First-tier Tribunal Judge made errors of law in relation to the Grounds of Appeal as pleaded by the Appellant's Counsel in the following respects:

“The grounds argue in essence that the judge, in assessing the Article 8 situation of the Appellant, failed to consider the best interests of the Appellant’s wife’s three British children and the family life that the children and the Appellant share. It was stated by Counsel that the argument was briefly recorded in the First-tier Tribunal’s decision in respect of the issue of the “parental relationship” shared between the Appellant and these three qualifying children (and the impact that may have in respect of Section 117B(6) of the Nationality, Immigration and Asylum Act 2002) as well as the dramatic effect on the children that the removal of the Appellant would have, none of which was not taken into consideration by the First-tier Tribunal Judge in his decision. It was further raised that the three children provided witness statements and their evidence was accepted by the Home Office Presenting Officer at the First-tier Tribunal hearing. Ms Everett for the Secretary of State did not seek to argue otherwise in relation to these two grounds nor the acceptance of their evidence, and as a consequence, the parties were able to accept that there was a material error in the decision such that it infects the remainder of the judge’s findings as the judge did not properly approach and appraise the Article 8 family life shared by the Appellant with these children (notwithstanding his findings on whether the relationship with his wife was genuine and subsisting), in light of the witness statements from the three children which confirmed that the Appellant was “like a father” to them.”

2. As a consequence of the above agreed error the decision is set aside in its entirety and is remitted to be heard by a differently constituted bench.
3. The Appellant’s appeal to the Upper Tribunal is therefore allowed.
4. The decision of the First-tier Tribunal is set aside for legal error by consent.

Directions

5. I make the following directions for the continuation and remitted hearing that is to shortly follow before the First-tier Tribunal:
 - (1) The appeal is to be remitted to Taylor House.
 - (2) No interpreter is required.
 - (3) Five witnesses are to be called according to Counsel’s instructions.
 - (4) The time estimate given is three hours.
 - (5) No special directions are requested.
 - (6) I do not make any anonymity direction as my decision does not disclose, or require me to discuss, the identity of the children.

Signed

Date 25 November 2018

Deputy Upper Tribunal Judge Saini