



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

Appeal Numbers: HU/22404/2016  
HU/22410/2016  
HU/22414/2016  
HU/22415/2016

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
On 7 November 2018**

**Decision & Reasons  
Promulgated  
On 17 December 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**MRS NOR ALIZAH BINTI ABDUL RAHIM (FIRST APPELLANT)  
MR ABDUL HADI BIN ABU BAKER (SECOND APPELLANT)  
MR MUHAMMAD ASYRAF AMINULLAH (THIRD APPELLANT)  
MS NUR AIDA HADIRAH BINTI ABDUL HADI (FOURTH APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr M D Hoare, solicitor, advocate

For the Respondent: Miss H Aboni, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellants, nationals of Malaysia, appealed against the decisions of the Secretary of State to refuse applications originally made in 2015 for leave to remain. On 12 September 2016 those claims were refused by the Respondent.
2. Their appeals against the Respondent's decisions came before First-tier Tribunal Judge I F Taylor (the Judge) who on 29 November 2017 dismissed their appeals on human rights grounds, particularly Article 8. Permission to appeal was given on 27 April 2018.
3. It was agreed between Mr Hoare and Miss Aboni that in fact the evidence showed that the fourth Appellant, Ms Nur Aida Hadirah Binti Abdul Hadi, did in fact as at the date of application meet the relevant requirements of paragraph 276ADE(v) of the Immigration Rules HC 395 as amended. Such consequence bore on the assessment of the proportionality of the decision and was material to the assessment of the public interest.
4. In addition whilst there did not appear to be any direct merits to the first and second Appellant's in their own right succeeding on Article 8 based claims nevertheless their role was at the material times to support both the third and fourth Appellants their children.
5. Fortunately Mr Hoare who presented the case before the Judge was able to inform me of the extent of some of the issues raised argued and for want of a better way to put were not disputed by the Presenting Officer. I accept what he has said about those matters because it chimes in entirely with the contents of the Judge's decision on the third Appellant.
6. In the circumstances it is clear that the Judge's assessment of proportionality was in error. It was a material error which has regrettably taken place. I find that the correct course is for this matter to be made

with up-to-date findings of fact, none of the findings to stand and the matter will be remade in the First-tier Tribunal.

## **DECISION**

The Original Tribunal's decision can not stand. The matter must be remade in the FtT.

## **DIRECTIONS**

- 1) Listed for hearing, Birmingham,
- 2) two and a half hours.
- 3) No interpreter required.
- 4) Further documents, statements and other matters relied upon by the parties to be served on each other and the IAC not later than ten working days before the further hearing or unless a different timetable is set at any CMRH in the First-tier Tribunal.
- 5) The matter is not to be relisted before Judge I F Taylor and Judge N Osborne.

No anonymity direction is made.

Signed

Date 11 December 2018

Deputy Upper Tribunal Judge Davey