



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

Appeal Nos.: HU/22487/2016
HU/23274/2016
HU/23276/2016
HU/23277/2016
HU/23278/2016

THE IMMIGRATION ACTS

**Heard at Glasgow
on 1 November 2018**

**Decisions &
Promulgated
on 6 November 2018**

Reasons

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

S A FAROOQI + 4

and

Appellants

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Pollock Ross & Co,
Solicitors

For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This decision is to be read with:

- (i) The respondent's decision dated 14 September 2016, declining to grant the appellants leave to remain on family and private life grounds.
- (ii) The appellants' grounds of appeal to the First-tier Tribunal.

- (iii) The decision of FtT Judge McGavin, promulgated on 9 February 2018.
 - (iv) The appellant's grounds of appeal to the UT, stated in the application for permission to appeal filed on 21 February 2018.
 - (v) The grant of permission by FtT Judge Froom, dated 4 June 2018.
2. Mr Matthews said that the judge's approach was consistent with the judgement given by the Supreme Court in *KO (Nigeria) & Others v SHHD* [2018] on 24 October 2018. However, he said that the decision on proportionality in relation to the "qualifying children" did not have enough regard to the significant weight to be given to their length of residence and the strength of reasons required not to grant leave. He conceded that the decision should be set aside, but not that the appeal fell to be allowed, and submitted that the case should be remitted to another judge in the FtT.
 3. Mr Winter on behalf of the appellants was content with that outcome.
 4. I enquired whether the case might not be more apt for further decision in the UT. There is a presumption that the UT will proceed to remake decisions, of which parties are reminded in directions issued with the grant of permission; and there is little dispute over the primary facts of this case. However, both parties were of the view that considerable updating and, in effect, entire rehearing of the evidence would be necessary. That is an exercise most appropriate for the FtT.
 5. Under section 12 of the 2002 Act and Practice Statement 7.2 the case is remitted to the FtT for an entirely fresh hearing. The member(s) of the FtT chosen to consider the case are not to include Judge McGavin.
 6. No anonymity direction has been requested or made.



1 November 2018
Upper Tribunal Judge Macleman