



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: HU/03823/2018

HU/03826/2018

THE IMMIGRATION ACT

Heard at Field House

**Decision & Reasons
Promulgated**

On 6th December 2019

On 16th December 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

The Secretary of State for the Home Department

Appellant

And

MT & AT

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Clarke Senior Home Officer Presenting Officer

For the Respondent: Mr Shah of counsel instructed by Taj Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State (SSHD) against the decision of First-tier Tribunal Judge Eban promulgated on the 10th April 2019 whereby the judge allowed the respondents' appeals against the decisions of the SSHD to refuse the respondents' claims based on Article 8 of the ECHR. The judge allowed the appeals to the

extent that the appellants were to be given leave in line with the husband of the first appellant/the father of the 2nd appellant.

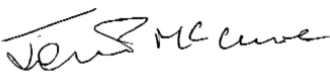
2. I have considered whether or not it is appropriate to make an anonymity direction. These proceedings concern the interests and status of a minor. To protect the minor I consider it appropriate to make an anonymity direction.
3. Leave to appeal to the Upper Tribunal was granted by Designated Tribunal Judge MacDonald on 14th May 2019. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.
4. In allowing the appeal Judge Eban was aware that the husband of MT, who is the father of AT, had an appeal in his own right. It was unclear as to what had taken place in the husband's appeal. [Appeal Number HU/17637/2018]. Clearly the husband's case should have been linked with the present cases. Although it would have been difficult for the administration of the Tribunal to notice because the case were at separate centres.
5. Whatever else can be said, it has been suggested that the husband/father did not have leave to remain in the UK, whether that was as a result of the appeal hearing is unclear.
6. Judge Eban in considering the present appeals allowed the appeals to the extent that the appellants were to be given leave in line with the husband/father as dependents. Otherwise the judge found that the appellants were not entitled to leave in their own right.
7. It now appears that the husband's appeal has been remitted from the Upper Tribunal back to the First-tier Tribunal for further hearing. It is unclear on what basis it has been remitted back.
8. I indicated to the parties that the only practical course to take is for the present appeals to be remitted back to the First-tier Tribunal with a direction that they be linked to the husband's appeal so that all the appeals could be heard together. Arguably if the husband does not have leave, as he appears not to have at the moment, then the effect of the decision by Judge Eban would be that the appellants had no leave either and their appeals should have been dismissed.
9. I indicated to the parties that these appeals and the appeal of the appellant's husband/father should have been determined together. The failure to link the cases I find gave rise to procedural unfairness amounting to an error of law such that the present appeals should be allowed and remitted back to the First-tier Tribunal to be heard with the husband's appeal.
10. Whilst Mr Shah on behalf of the respondents sought to argue that the appeal should remain in the Upper Tribunal and await the outcome of

the husband's further appeal, there would be many circumstances in which these appeals would be languishing in the Upper Tribunal indefinitely. Mr Shah accepted in the circumstances that the proper course was for these matters to be remitted back to the First-tier Tribunal to be heard with the appeal of the husband/father.

11. In the circumstances I find that there is procedural unfairness, which requires that these appeals be remitted back to the First-tier Tribunal to be heard with appeal HU/17637/2018. In order not to prejudice the position of the respondents, I consider it appropriate to direct that none of the findings of fact made in the present case are preserved.

Notice of Decision

12. I allow the appeal of the Secretary of State and remit these cases back to the First -tier Tribunal to be heard afresh.

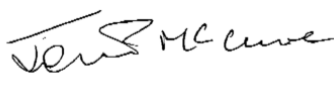
Signed 

Deputy Upper Tribunal Judge McClure

Date 6th December 2019

Direction regarding anonymity- rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the appellant or any member of the appellant's family. This direction applies both to the appellant and the respondent. Failure to comply with this direction could lead to contempt of court proceedings

Signed 

Deputy Upper Tribunal Judge McClure

Date 6th December 2018