



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

HU/11822/2017

THE IMMIGRATION ACTS

Heard at Glasgow
On 25 January 2019

Decision & Reasons
Promulgated
On 5 February 2019

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

[H L]

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr D Katani, of Katani & Co, Solicitors
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against the decision of FtT Judge Debra H Clapham, promulgated on 4 July 2019.
2. The FtT's decision at [34] refers to section 117B of the 2002 Act, and says that it "specifically states that consideration has to be given to whether it would be unduly harsh to expect the qualifying child to leave the UK".
3. The case involves two "qualifying" children, in terms of part 5A of the 2002 Act.

4. Section 117B(6) provides that in a case such as this, the public interest does not require removal “where ... it would not be reasonable to expect the child to leave the UK.” It does not specify consideration of whether departure would be “unduly harsh”.
5. The respondent conceded that the decision of the FtT errs on a point of law, and that considering the circumstances of the two children, it fell to be reversed.
6. The decision of the First-tier Tribunal is set aside, and the following decision is substituted: the appeal, as brought to the FtT, is allowed.
7. No anonymity direction has been requested or made.

A handwritten signature in black ink that reads "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

25 January 2019
UT Judge Macleman