



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

Appeal Number: HU/20553/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18<sup>th</sup> November 2019**

**Decision & Reasons Promulgated  
On 25<sup>th</sup> November 2019**

**Before**

**UPPER TRIBUNAL JUDGE KEITH**

**Between**

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

Appellant

**and**

**'MP'  
(ANONYMITY DIRECTION MADE)**

Respondent

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure  
(Upper Tribunal) Rules 2008**

*As the appellant is a minor, unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. Failure to comply with this direction could lead to contempt of court proceedings.*

**Representation:**

For the appellant:  
Officer

Mr S Whitwell, Senior Home Office Presenting

For the respondent:

The appellant was represented by his father, 'PP'

**DECISION AND REASONS**

## **Introduction**

1. These are the written record of the decision which was given orally at the end of the hearing on 18<sup>th</sup> November 2019. This is an appeal by the appellant, who was the respondent in the First-tier Tribunal and to avoid confusion, will be referred to as the Secretary of State for the remainder of these reasons. The respondent was correspondingly the appellant in the First-tier Tribunal and will be referred to as the 'claimant,' as the party claiming a breach of his rights under article 8 of the European Convention on Human Rights ('ECHR'). His parents' linked appeals have been deemed abandoned as one has been granted indefinite leave to remain and the other, discretionary leave to remain. The brevity of these reasons reflects the narrowness of the issues and concessions made.
2. This was an appeal by the Secretary of State against the decision of Judge Housego (the 'FtT'). His decision was promulgated on 30<sup>th</sup> July 2019 and it determined the Claimant's appeal for leave to remain in the United Kingdom ('UK') based on his human rights, specifically the rights to a family and private life. The FtT considered, in particular by reference to the appellant, whether it would be reasonable to expect him to leave the UK. He concluded that the appeal should be allowed. In doing so he noted, paragraph [65]:-

"I find that the third appellant's best interests are in favour of his remaining in the UK, but not strongly so. It would not be unreasonable for the third appellant to return to India as a matter of practicality. He is an Indian citizen and that has some weight too".

Therefore, it was found that it would not be unreasonable to expect the Claimant to leave the UK. However, at paragraphs [74] to [76], the FtT went on to conclude that it would not be proportionate to expect the Claimant to leave the UK.

3. In grounds that were lodged on 8 August 2019, the Secretary of State that the FtT's decision was implicitly contradictory, finding on the one hand that it was reasonable to expect the appellant to leave the UK with his parents, but on the other, it was not proportionate. Mr Whitwell also developed points on other errors in the FtT's decision which he regarded as what are termed '**Robinson**' obvious points, although for the purpose of simplicity in this appeal I do not recite those in full for the purposes of this decision. Nevertheless, I am satisfied that on the basis of the one issue identified in the grounds that the FtT's reasoning about the proportionality of the Secretary of State's decision to refuse leave to remain failed to explain why, if it would be reasonable to expect the Claimant to leave the UK, it would nevertheless be proportionate. However, in setting aside the FtT's decision, I preserve the finding at paragraph [75] that it is in the Claimant's best interests to remain in the UK.

**Remaking the Decision**

4. For the purposes of remaking the FtT's decision, I considered the Claimant's current circumstances. The Claimant's mother had, since the FtT's decision, been granted indefinite leave to remain on 6<sup>th</sup> August 2019. His father had been granted discretionary leave to remain on 16<sup>th</sup> November 2019.
5. In light of developments, Mr Whitwell expressly conceded that that it would not be reasonable, for the purposes of section 117B(6) of the Nationality, Immigration and Asylum Act 2002 to expect the Claimant to leave the UK, and Mr Whitwell also conceded therefore that the Claimant's appeal should be allowed. In light of Mr Whitwell's concessions, I remake the Claimant's appeal by deciding that his removal from the UK would breach his rights under article 8 of the ECHR.

**Decision**

6. The Claimant's appeal on human rights grounds is upheld.

Signed J. Keith

Date: 21 November 2019

Upper Tribunal Judge Keith

**TO THE RESPONDENT**  
**FEE AWARD**

On the basis that the Claimant's appeal only succeeded because of later developments, I make no order as to costs.

Signed J. Keith

Date: 21 November 2019

Upper Tribunal Judge Keith