



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

**Appeal Number: PA/05160/2018**

**THE IMMIGRATION ACTS**

Heard at Glasgow

On 15 February and 25 April 2019

Decision & Reasons  
Promulgated  
On 30 April 2019

Before

**UPPER TRIBUNAL JUDGE MACLEMAN**

Between

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

Appellant

and

**FANG FANG LIN**

Respondent

For the Appellant: Mr A Govan, Senior Home Office Presenting Officer  
For the Respondent: Mr S Winter, Advocate, instructed by Rutherford Sheridan,  
Solicitors

**DETRMINATION AND REASONS**

1. Parties are as above, but the rest of this decision refers to them as they were in the FtT.
2. The SSHD was granted permission to appeal against a decision by FtT Judge Kempton, dated 25 June 2018, allowing the appellant's appeal "on human rights grounds only for a period of twelve months to allow the [SSHD] to make further enquiries", as prescribed at 44 (1) - (2) of her decision.

3. The FtT Judge misconceived the role and jurisdiction of the FtT.
4. The judge directed herself at 2 that the appellant had a right of appeal “against the decision to issue removal directions”. That direction dates back to repealed statutory provisions. There are no removal directions in this case.
5. The appellant’s right of appeal was under section 82(1)(a) of the 2002 Act against refusal of her protection claim, and under section 82(1)(b) against refusal of her human rights claim.
6. The judge has not stated any conclusion on the protection claim.
7. In terms of section 84(1)(c), the ground of appeal on the human rights claim was that “removal of the appellant from the UK would be unlawful under section 6 of the Human Rights Act 1998 (public authority not to act contrary to Human Rights Convention)”.
8. The FtT’s duty under section 86(2) was to determine any matter raised as a ground of appeal, i.e., to determine whether removal would be unlawful.
9. It was for the appellant to make out her grounds of appeal. That included establishing the primary facts on which her human rights claim was based; see, by way of illustration, paragraph 339L of the immigration rules. An appellant who does not establish the primary facts will not succeed in her appeal.
10. The respondent was under a duty to assist the FtT on the general country background; see, for example, paragraph 339J of the rules. That duty was shared by the appellant, particularly as she had legal representation.
11. There was also a shared duty to refer to relevant country guidance.
12. Both parties did refer to background material.
13. The judge had to decide whether the evidence showed that removal of the appellant would breach her human rights, or those of anyone else. The judge had to decide whether, and to what extent, the interests of the appellant’s children might be affected; and if there was any breach of human rights, whether that would be disproportionate to the public interest in maintaining effective immigration controls, applying part 5A of the 2002 Act.
14. At that final stage, the facts have been identified, and the outcome is a judicial assessment, not dependent on the burden or standard of proof.
15. Neither party in the FtT suggested that more evidence was needed to establish the facts.
16. If the judge, on reflection, thought the parties should be asked to improve their evidence, she might, exceptionally, have listed the case for further

hearing; but there was no scope for her to allow the appeal in the terms she purported to do. There is no human right to remain in the UK during a period of obligation, imposed by the tribunal on the SSHD, to make further enquiries on an appellant's behalf.

17. The FtT erred in law by failing to make findings on the facts and by failing to determine the grounds of appeal.
18. The decision having been set aside at the hearing on 15 February, parties agreed that the decision should be remade at a further hearing in the UT, which was fixed for 25 April.
19. In a letter dated 24 April 2019, the respondent raises no objection to admission of new evidence for the appellant, and takes account also of expert reports, and of a skeleton argument for the appellant. The oldest of the appellant's 3 children is now aged 8, and has become a qualifying child in terms of section 117B(vi) of the 2002 Act. Under all the circumstances, the respondent invites the UT to allow the appeal on article 8 private life grounds only, and to dismiss it on protection and on article 3 grounds.
20. Mr Winter stated that the appellant was content with that outcome, and did not press the other grounds.
21. The decision of the FtT is set aside, and the following decision is substituted: the appeal is dismissed on protection grounds, and **allowed on human rights grounds** (article 8, private life).
22. The FtT made an anonymity direction, although the case was not obviously one which required departure from the principle of open justice. There is no reason to preserve anonymity, so that direction is discharged.



25 April 2019  
UT Judge Macleman