



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

Appeal Numbers: HU/20328/2016
HU/20331/2016
HU/20333/2016
HU/20335/2016

THE IMMIGRATION ACTS

Heard at Field House

On 31 October 2018

**Decision & Reasons
Promulgated**

On 9 November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**[J W C] (FIRST APPELLANT)
[J C] (SECOND APPELLANT)
MIN [W] (THIRD APPELLANT)
[S C] (FOURTH APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr O Norr, Counsel instructed by Visa & Immigration Ltd

For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Rowlands promulgated on 5 December 2017. The appeal concerns a family unit, the

mother being the third appellant and the three children being the first, second and fourth respectively. They are now aged 13, 8 and rising 7.

2. The four appellants are all citizens of South Korea and the mother came to this country with the benefit of a student visa which was extended on various occasions. However, the visa is now long expired and the mother is a chronic over-stayer.
3. The judge concluded that the children's best interests "lie in them being together as a family" [15] and that the family should be returned to South Korea.
4. A renewed application for permission to appeal came before Deputy Upper Tribunal Judge Taylor and was granted in the following terms:

"The grounds argue, with merit, that the judge erred in not considering the rights of the children, two of whom are 'qualifying children' as individuals as well as in the context of the family as a whole.

It is also arguable that this brief determination did not properly engage with all of the evidence before the judge.

MT and ET (child's best interests - ex tempore pilot) Nigeria [2018] UKUT 00088 was not promulgated at the time of the hearing before the judge, but will be relevant if it is decided that the decision needs to be re-made".

5. Ms Willocks-Briscoe on behalf of the Secretary of State very properly accepted that the decision could not safely be upheld because it was defective in the manner in which it dealt with the family unit as opposed to treating each child individually and assessing their best interests. This is primary consideration albeit not determinative. The children (two of whom are 'qualifying children') are at different developmental changes and the level of their social integration is not the same. The judge failed to give any consideration to the respective interest of each child. The decision of the First-tier Tribunal must be set aside.
6. The error of law goes to the very heart of the decision. It is inevitable, as Mr Norr for the appellants rightly recognises, that this matter will need to be remitted to the First-tier Tribunal to be heard afresh.
7. I make clear in the hearing of the mother that although I am setting aside this decision and remitting it to the First-tier Tribunal, it is perfectly possible that when applying the law correctly that First-tier Tribunal may come to exactly the same conclusion.

Notice of decision

- (1) The appeal is allowed and the decision of the First-tier Tribunal is set aside.
- (2) The matter is remitted to the First-tier Tribunal at Hatton Cross to be reheard by a judge other than Judge Rowlands.
- (3) No anonymity direction is made.

Signed *Mark Hill*

Date

5 November 2018

Deputy Upper Tribunal Judge Hill QC