



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: PA/13884/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 22 May 2018

Decision & Reasons Promulgated  
On 24 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

LENIN [I]  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr P Thoree, Solicitor

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with the permission of the First-tier Tribunal against the decision of Judge of the First-tier Tribunal I Ross in which he dismissed the appellant's appeal against a decision of the respondent, dated 28 November 2017, refusing his protection and human rights applications.
2. In a brief decision the judge dismissed the protection appeal because there was no evidence justifying a departure from an earlier decision on the claim made by Judge Grimmett in 2001. In relation to human rights, he found the best interests of the

appellant's three children required no more than that they remained with their parents. The eldest child was a 'qualifying child' for the purposes of section 117B(6) of the 2002 Act but it was reasonable to expect the children to leave the UK. He dismissed the article 8 ground of appeal as well.

3. Permission to appeal was granted on a short point of procedural fairness. According to a letter from the appellant's solicitor, Mr Thoree, the judge stopped him completing his closing submissions because he said he was going to allow the appeal.
4. No rule 24 response has been filed but Mr Melvin showed me a note by the presenting officer at the hearing before Judge Ross which confirmed that the judge indicated he would allow the appeal on human rights grounds. It has not therefore been necessary to obtain the comments of the judge before proceeding to decide the appeal.
5. I heard brief submissions from the representatives on the issue of whether the judge's decision was vitiated by material error of law. It is not necessary to set these out. There was some discussion of whether the appellant should have made a fresh application on human rights grounds, which appears to be the course preferred by the judge, who suggested that the decision be withdrawn. However, the point is that the appellant was entitled to raise article 8 as a ground of appeal and the judge was under a duty to hear his arguments.
6. It was a clear error of law to prevent the appellant's solicitor from making submissions. If, as seems to have happened, the judge changed his mind after closing the hearing, he should have reconvened the appeal in order to hear what Mr Thoree had wanted to say. Whilst the appellant's task in showing that expecting his child to leave the UK would be unreasonable looks difficult, it cannot be said with certainty that the judge was bound to have come to this conclusion had he heard the appellant's case in full.
7. The appellant did not have a fair hearing. The representatives were in agreement that in these circumstances the appeal should be remitted to the First-tier Tribunal for a fresh hearing before another judge. Having considered the Senior President's Practice Direction of 15 September 2012, I make an order under section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007. The appeal will be reheard in the First-tier Tribunal.
8. Mr Thoree helpfully indicated that his client would not pursue the protection ground of appeal so the remitted hearing will be limited to the issue of article 8

### **Notice of Decision**

The Judge of the First-tier Tribunal made a material error of law and his decision dismissing the appeal is set aside. The appeal is remitted to the First-tier Tribunal to be reheard by another judge.

No anonymity direction is made.

Signed

Date 22 May 2018

**Deputy Upper Tribunal Judge Froom**