Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01986/2015

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination & Reasons Promulgated**
on 11 May 2017	**on 12 May 2017**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

[M T]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms N Loughran, of Loughran & Co, Solicitors
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a determination by First-tier Tribunal Judge S Gillespie, promulgated on 20 February 2017, on 2 grounds:

> (1) The judge failed to consider the test in *HJ & HT* [2010] UKSC 31 at ¶82: the tribunal must ask itself whether the appellant is gay or would be treated as gay by potential persecutors. The judge erred at ¶41 by failing to consider whether the appellant would be treated as a Christian by the authorities in Iran. *HJ and HT* was applied to religious belief in *MN and others* [2012] UKUT 00389.
>
> (2) The judge said at ¶47 that the appellant's son [T] was approaching his 17th birthday and well on the way to becoming an adult. The judge "failed to consider the best interests of the child in isolation from other factors" (*Kaur* [2017] UKUT 00014, headnote 3) and "failed to consider the best interest of the child at the date of the hearing".

2. FtT Judge Keane granted permission on 3 April 2017.

3. The grant is partly on the basis that the judge did not arrive at a finding whether the appellant is a Christian convert. That is not a point raised in ground (1). It aims rather at the possibility of the appellant being seen as a Christian, even if he is not.

4. Ms Loughran said that although the decision is not entirely explicit, it is plainly to the effect that the appellant is not a genuine convert, and that the argument based on perception is not a good one. She correctly conceded that there is nothing in ground (1), and advanced only ground (2).

Submissions for appellant.

5. Ground 2 showed a clear error of failure to consider the best interests of the child.

6. At paragraph 46 the judge found family life to exist between the appellant and his son [T]. The assessment which followed at paragraph 47 was on proportionality only. There was no separate assessment of the best interests of the child, as plainly required by the case law: *Kaur*, above, and *HS* (2010) CSIH 97 at paragraph 19:

> Whether it is in the best interests of these two children to remain in the UK must depend upon their particular circumstances, which were not explored.

7. This case was analogous.

8. No account was taken of the written statement and oral evidence from [T]. The statement (FtT inventory 3, item 2) was clear as to the serious effect on the child of the past separation from his father, the benefit gained from his presence in the UK, e.g. in his school outlook and improved grades, and the devastation he would experience if he were to be further separated from his father by his removal to Iran. That was simply not weighed in the scales.

9. The judge said that child had indefinite leave to remain, when there was plain evidence before him that the child has been granted UK citizenship. The authorities are clear on the great significance to be attached to such citizenship: *ZH* (Tanzania) (2011) UKSC 4.

10. The judge got the facts wrong, overlooked significant evidence, and did not take account of the best interests of the child.

Submissions for respondent.

11. As the judge observed, the child was approaching his 17th birthday the time of the hearing. Family ties do not end when a child becomes an adult, but considerations of the best interests of the child through maintaining a link with a parent do fade as maturity approaches.

12. The judge did not make a specific finding on where the best interests of the child lay, but he reached a proportionality outcome which was well justified.

13. The judge did not fail to make a finding on the evidence from the appellant's son. He looked at the history of family migration and the massive shift by the appellant's relatives from blaming him for their misfortunes and migration, to supporting him after they had secured their own position. Paragraph 38 explained why the evidence from the appellant's son was given little weight. The judge was entitled to find the evidence vastly overstated. There been no evidence that realistically it would have any adverse impact on the child if his father were to leave the UK. In absence of any likely serious detriment, the decision should stand.

14. It might have been a counsel of perfection to narrate a finding explicitly in terms of the best interests of the child, but in this case the omission was not an error of law.

Response for appellant.

15. There had not been an absence of evidence of the detrimental effects on the child likely to arise from the appellant's removal. It was very plainly set out in his witness statement.

16. There had been extensive evidence for the appellant set out in multiple inventories. That included documents 4 and 6 of inventory 3, medical reports showing that the appellant's son suffered from serious issues – depression; drinking alcohol; not getting up out of bed, not attending school; school report of inability to focus and lethargy; nightmares; very low mood; some deliberate self-harm, some suicidal ideation.

17. The absence of a finding on the best interests of the child was a material error of law requiring the decision to be set aside and remade.

Discussion and conclusions.

18. The judge erred in fact by saying that [T] has indefinite leave to remain, when at the time of the hearing he had become a UK citizen. Ms Loughran said this was highly significant, given the recognition in the case law of the high value to be attached to citizenship when deciding cases about the best interest of children.

19. This case is not about a UK citizen child potentially having to leave the UK. The child lives in Newcastle with his mother and the rest of the family. The appellant presently lives in Glasgow. There is no question of the child returning to Iran with the appellant, if the appellant returns, or of his losing any of the benefits of citizenship. The distinction between indefinite leave to remain and citizenship makes no difference to the outcome for the child. The slip is of no significance.

20. At paragraphs 36 and 37 the judge records that an older son of the appellant had portrayed in medical evidence the nightmarish effects of his father's behaviour, but 14 months later in other proceedings provided a statement that he missed his father dearly and would like very much to see him. The judge continued at paragraph 38:

> In the present appeal, all [the appellant's] children and his former wife have made statements saying how much they would wish the appellant to be given refuge in the UK. I am completely sceptical of

their claims given it is alleged he was responsible for them having to leave Iran in fear in the first place.

21. The grounds do not challenge that finding. On the evidence and in its reasoning, it is soundly justified. It encompasses the evidence from [T] and disposes of the challenge so far as based on overlooking that evidence and failing to make a finding upon it.

22. Ms Loughran has advanced the case for the appellant again at its highest, but the judge's findings of fact leave no scope for a conclusion that the appellant's departure from the UK would have any significant adverse effect upon [T], or that his continued presence would be significantly to [T]'s benefit. The evidence designed to show that was both vague and exaggerated, and was comprehensively rejected.

23. The judge should ideally have said something explicitly to the effect that the child's best interests were not materially affected by whether the appellant was granted leave to remain in the UK. However, it is plain from the findings he did make that there was nothing to show that the best interests of [T] favoured a grant of leave to the appellant, and the outcome would have been the same. The error is of form not substance, and not such as to require the decision to be set aside.

24. The decision of the FtT shall stand.

25. No anonymity direction has been requested or made.

11 May 2017
Upper Tribunal Judge Macleman