Upper Tribunal
(Immigration and Asylum Chamber) **Appeal number:** HU/10000/2017

THE IMMIGRATION ACTS

Heard at Glasgow	**Decision and Reasons Promulgated**
On 16 November 2018	**On 27 November 2018**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

M A A
(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr H Ndubuisi, of Drummond Miller, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant appeals against a decision by FtT Judge Kempton, promulgated on 3 April 2018. His grounds are set out in his application dated 12 April 2018, paragraphs 1 – 18.

2. The points made in the grounds, following their paragraph numbering, are these:

(7) and (10). The appellant's circumstances should have been considered "in isolation to that of his parents", and "what his parents did or did not do should not have influenced the FtT's decision".

(8). As the judge acknowledged at [13] the appellant's private and family life and deep roots in the UK, it was an error at [26] to conclude he "did not engage any article of ECHR".

(9). The judge said that the appellant's friends did not attend to give evidence, but they are minor children, under age 10, and the hearing was on a school day.

(11) discourses on the cost of education in Bangladesh, but makes no discernible point about error by the FtT.

(12) – (18) discourse on the appellant's ties in the UK, his lack of ties with Bangladesh, the strong reasons needed for refusing leave, and excerpts from case law, insisting that his interests demanded that the appeal be allowed.

3. Under cover of a letter dated 12 November 2018 the appellant's representatives (who took over acting only recently) submit an inventory of productions which they say are relevant in light of *KO & others v SSHD* [2018] UKSC 53. The inventory includes a copy of the application dated 20 September 2018 by the appellants' parents (who were his co-appellants in recent failed appeal proceedings) for leave to remain based on 10 years' lawful residence in the UK.

4. Mr Ndubuisi submitted that the judge made 3 errors: (1) incorrectly assuming that the appellants' parents would be leaving the UK; (2) giving no weight to the fact that by the date of the hearing the appellant had reached the 7-year point to become a qualifying child; and (3) becoming preoccupied with the shortcomings of the immigration history of the appellant's parents, and overlooking that the child was not to be blamed for those.

5. Based on submission (1), if the appellant's parents were (legitimately) not to be leaving the UK, it would of course be unreasonable to expect the appellant to do so. Mr Ndubuisi said that the procedural history, up to and including the application dated 20 September 2018, showed that the appellant's parents would be granted leave to remain, and it should not have been taken that they would be departing.

6. The position before the FtT was that the appellants' parents had failed through various proceedings, including a recent appeal, to establish a right to remain in the UK.

7. I rejected submission (1) at the hearing, without calling on the respondent to reply, because:

   (i) no such case was put to the FtT;

(ii) no such line of argument is among the grounds on which permission to appeal to the UT was granted;

(iii) the line is not one which should have been considered, without prompting, by the FtT;

(iv) the assumption that the appellants' parents are entitled to leave is not one the judge should have made, when the submissions of both sides were to the contrary.

8. On submissions (2) and (3), having heard also the submissions of Mr Govan, I reserved my decision.

9. Two incidental errors are disclosed by the original grounds, although Mr Ndubuisi, sensibly, did not press them at the hearing.

10. Firstly, the case did "engage" the ECHR, but the conclusion shows only an error of expression. The FtT meant that the outcome is not a disproportionate breach of rights under the ECHR.

11. Secondly, nothing adverse could be drawn from the non-attendance of children, friendly with the appellant, on a school day, whose evidence was apparently uncontentious and unlikely to be tested in cross-examination. (Mr Ndubuisi was unable to confirm whether the appellant's friends are all under the age of 10, which would be surprising, but that is even more incidental.)

12. The judge did not fail to notice or to give weight to the appellant having become a qualifying child. She said at [20] that the "only issue" was whether, as such, it would be unreasonable to expect him to leave the UK and return to Bangladesh. She then set out paragraph 276ADE of the immigration rules, the "section 55 duty", and section 117B of the 2002 Act; [20] – [22].

13. The closest the appellant has come to identifying error is at (7) and (10) of the grounds and in submission (3). The decision at points does read as weighing in the balance the shortcomings of the parents. No doubt that reflects the case put by representatives on how those matters should bear on the outcome, and reflects the law as it was understood prior to *KO and others v SSHD* [2018] UKSC 53.

14. *KO* bears in both directions. Misconduct of parents does not come into the balance - [16] – but it is equally clear that their record is "indirectly material", because they are assumed to be leaving; it is normally reasonable for children to be with their parents; and the assessment is to be made "in the real world in which the children find themselves" – [18] and [19].

15. The decision of the FtT grapples closely with the evidence, expressing sympathy where that was justified – [15] – but giving good reasons for scepticism of the extent of alleged difficulties faced by the appellant in Bangladesh – [14], [17] - [20], [25]. The decision might, with hindsight

and in light of *KO*, have been expressed somewhat differently, but its essence is a realistic assessment of what it is reasonable to expect in the world of the appellant. In the context of his parents leaving the UK, there was nothing unreasonable in expecting the appellant to go with them.

16. The decision of the FtT shall stand.

17. The anonymity direction made by the FtT is maintained herein.

19 November 2018
Upper Tribunal Judge Macleman