



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

Appeal Number PA/10153/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 3rd December 2018**

**Decision and Reasons Promulgated
On 07th January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

**M H
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Gilbert (Counsel, instructed by Duncan Lewis & Co, Solicitors)
For the Respondent: Ms A Everett (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant's asylum appeal and a human rights claim based on his relationship with his son were dismissed for the reasons given in the decision of First-tier Tribunal Judge Loughridge promulgated on the 2nd of October 2018. The Appellant sought permission to appeal in grounds of the 11th of October 2018. Permission was granted on the basis that it was arguable that the Appellant's deafness and difficulty in understanding the interpreter may have made a material difference to the outcome.
2. The grounds can be summarised. In essence they rely on the Appellant's deafness with hearing aids in both ears and issues that the Appellant maintained arose with the interpreter at the hearing and before. It is also asserted that Somalia is not safe for the Appellant and that the Appellant has a son in the UK although he is separated from his son's mother.
3. Before the hearing I established that the proceedings in Newport had not been recorded. The Judge's Record of Proceedings did not indicate that there had been any issue with the interpreter and it appears that if there had been an issue it had not been brought to the Judge's attention. The submissions at the Upper Tribunal hearing are set out in the Record of Proceedings and referred to where relevant below.

4. The issue with regard to the Appellant's deafness is not as significant as might be thought from the grounds. The Judge's findings are set out at paragraphs 33 to 47 of the decision. In paragraph 34 the Judge accepted the Appellant's case that his father and brothers had been killed and in the following paragraphs, giving reasons, accepted the Appellant's account that he is from the Ashraf clan. The Appellant's case included that he has a brother and a sister in Mogadishu which was relevant to the Judge's assessment of the danger that the Appellant would face in Somalia. From paragraph 38 onwards the Judge fully assessed the circumstances in Somalia, supporting evidence and relevant case law.
5. Given that the Appellant's evidence had been accepted and that there had been no adverse findings against him the Appellant's concerns about any difficulties he may have had with communication are not borne out. The Appellant could not have had more positive or beneficial findings on the main point of his asylum claim and in the circumstances if there had been a difficulty in communication it cannot have been material as no better findings of the basic facts could have been made.
6. On the basis of the facts that the Judge accepted and following his analysis of the circumstances that the Appellant would face in Mogadishu the Judge was entitled to find that the Appellant would not be in need of international protection on the basis of the current situation. The grounds disagree with the findings but do not disclose any error in the approach taken or the findings made. On the principal grounds relating to the assessment of the Appellant's claim and international protection there is no error.
7. The subsidiary ground is that the Appellant's son is a British citizen who lives with his mother in the UK and that the Judge erred in finding that the Appellant's removal would be a proportionate response under article 8. This aspect of the decision was dealt with briefly in the decision at paragraphs 48 and 49.
8. There is now more guidance in this area from the recent decision of KO (Nigeria) [2018] UKSC 53. From paragraph 19 of the judgment of Lord Carnwarth it is clear that decisions are to be made in the real world and circumstances that exist rather than hypothetically. From paragraph 44 it is clear that it can be reasonable to expect a British citizen child to leave the UK but that is a separate and different consideration from whether a child would be required to leave the UK.
9. Albeit the decision is brief it is consistent with the approach that follows from KO and the circumstances of this appeal. The Appellant's son will remain living with his mother in the UK and he will not be required to leave the UK consequent on the Appellant's removal. Independent of the position of his son the Appellant would have no other basis on which to remain in the UK. There does not appear to have been any evidence beyond the usual assumptions of what would be in a child's best interests to show that the Appellant's son had any particular needs or requirements that would have demanded that the Appellant be permitted to remain.
10. Under Appendix V of the Immigration Rules the Appellant can apply to visit the UK for the purpose of visiting family. The prospects of success of such an application would not be a matter for the Judge to consider but the fact that that is an option that is open to the Appellant would be a relevant factor. In the circumstances the Judge was entitled to find that the circumstances did not show that the best interests of the Appellant's child outweighed the public interest in the enforcement of immigration control. In the absence of a need for the Appellant to receive international protection the fact that he has a parental relationship with a child does not by itself lead to position whereby the Appellant has to be allowed to stay. Evidence is required

to show that the best interests of his son are such that the public interest is outweighed and in this case that evidence was not provided.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.)

Fee Award

In dismissing this appeal I make no fee award.

Signed: 

Deputy Judge of the Upper Tribunal (IAC)

Dated: 17th December 2018