Upper Tribunal
(Immigration and Asylum Chamber) HU/17736/2019 (V)

THE IMMIGRATION ACTS

Heard at George House, Edinburgh
by *Skype for Business*
On 4 November 2020

Decision & Reasons Promulgated
On 10 November 2020

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

HASNIJA [O]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr Ahmed, instructed by Medlock, Solicitors
For the Respondent: Mr Whitwell, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This determination is to be read with:
   (i) The appellant's representations to the respondent, made on 10 July 2019.
   (ii) The respondent's decision, dated 21 October 2019.
   (iii) The appellant's grounds of appeal to the First-tier Tribunal.
   (iv) The decision of FtT Judge Landes, promulgated on 1 April 2020.

© CROWN COPYRIGHT 2020

(v) The appellant's grounds of appeal to the UT, stated in her application for permission to appeal (in the form of quite fully developed submissions), dated 8 April 2020.

(vi) The grant of permission by FtT Judge E M Simpson, dated 4 May 2020.

2. I conducted the hearing from George House, Edinburgh. No members of the public attended, either in person or remotely. Representatives attended remotely. Mr Ahmed connected by audio only. The technology enabled an effective hearing.

3. The appellant's grounds and submissions firstly emphasise those findings of the FtT which tended in her favour: [6], a genuine and subsisting relationship with her children; [27], unduly harsh for the children to live in Bosnia; [39], better for the children to live with the appellant; [42], emotional dependence of the children on the appellant, and her particular importance in their lives. The main theme of the appellant's case to the UT is that it was evident that the appellant's role in the children's lives was more important than their father's; the "unduly harsh" test was satisfied; there was no basis on which to conclude otherwise (grounds at [19] and [36 - 37]); and the outcome should reversed (oral submissions).

4. The second main theme for the appellant was that in observing at [42] an absence of independent evidence on deterioration in the children's behaviour and school performance while separated from their mother, the judge erred by requiring corroboration; erred in finding the evidence of the appellant and of the children's father exaggerated on this aspect; should not have rejected the father's evidence "simply" because he wished the children to live with their mother; there was no inconsistency between that wish and giving reliable evidence; and gave no adequate evidence for rejecting the father's evidence.

5. At [32 – 37] the grounds submit that the cases cited by the judge on "undue harshness" are to be distinguished because the present appellant is no longer in a relationship with the children's father, an element which leads to the test being satisfied.

6. Having also considered the submissions for the respondent, I find that the grounds are not established.

7. Mr Whitwell submitted that the main argument for the appellant at least verges on a perversity challenge, being to the effect that no tribunal could do otherwise than to find for the appellant. Mr Ahmed replied that he did not go so far as to say the outcome in the FtT was irrational, but he did say that once its errors were corrected, it was very clear that the ill effects which deportation would have on the children were such that the outcome should be in the appellant's favour.

8. I find it within the FtT's rational scope to find at [43] that for the children to live in the UK without the appellant was harsh, but not unduly harsh. That is precisely the type of fine judgement which is the tribunal's task.

9. It is inherent in many (probably most) cases of this nature that it would be better for children to live also with the departing parent, that they depend on her emotionally, and that she is important in their lives. The departing parent may be the more important one (although perhaps less often). There is no legal rule that positive findings on all the foregoing elements axiomatically lead to undue harshness. That remains a judgment of fact and degree in each case.

10. No doubt it will also always be important to note whether an appellant is living with or apart from the other parent, but that is not a legally conclusive distinction.

11. The judge did not commit the elementary blunder of requiring corroboration. She noted at [42], as she was entitled to do, the absence of evidence which might have been provided. The grounds do not fairly reflect that this is only one element in the judge's meticulous explanation, from [31 – 43], of why she does not accept that the welfare of the children either had been in the past, or would be in the future, as seriously affected as was claimed.

12. The suggestion that the judge rejected the father's evidence "simply because" he wished for the children to live with their mother also fails fairly to reflect the decision. She found his evidence unreliable because it was not supported by a detailed examination of school records, at [35 – 37]; in light of exaggeration by the appellant; and because she understood his preference in view of the children's interests and his own for them to stay with their mother - that is to say, only after a careful and nuanced and examination.

13. The crucial assessment at [43] that it was harsh, but not unduly harsh, for the children to be separated from their mother is firmly grounded in detailed assessment of all the facts of the case, and does not involve the making of an error on any point of law.

14. The decision of the First-tier Tribunal shall stand.

15. No anonymity direction has been requested or made.

4 November 2020
UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application.

The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email.