



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/09889/2017

THE IMMIGRATION ACTS

Heard at Glasgow  
On 10 April 2018

Decision & Reasons Promulgated  
On 13 April 2018

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

S K

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Katani, of Katani & Co, Solicitors

For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The respondent's reasons for refusing the appellant's claim on asylum and human rights grounds are stated in her letter dated 6 September 2017.
2. First-tier Tribunal Judge McGrade dismissed the appellant's appeal for reasons explained in his decision promulgated on 29 November 2017.
3. The appellant sought permission to appeal. Her first ground was failure to have regard to country guidance on risk to Christians in China. Her second ground was this:


"The determination of the FtT makes no mention of the appellant's child whatsoever. The reasons for refusal letter considers the child's best interests, and the appellant's appeal statement makes clear that the appellant's daughter is dependent on her mother's asylum claim. The FtT ... erred by failing to

consider the best interests of the child, which requires a primary and separate consideration: *ZH (Tanzania) v SSHD* [2011] UKSC 4.”

4. On 10 January 2018 FtT Judge Parkes granted permission, “limited to consideration of the appellant’s child as a dependant on her claim”.
5. In a rule 24 response to the grant of permission the respondent says:
  - “ ...
  2. It is not clear from the grounds on which basis the issue of *hukou* for the child was pleaded, whether under articles 2, 3 and / or 8 or as a separate asylum ground ... there was no article 8 claim pleaded (¶28), on that basis it is submitted there were no obstacles to the appellant and her family returning and reintegrating.
  3. There is nothing in the determination to suggest that any submissions were made by the appellant’s representative on the above issue beyond the very short reference in the appellant’s witness statement. In any event, on the face of the grounds there appears to be no reference to any evidence which it is said the judge failed to consider to establish the appellant’s case.”
6. Mr Katani submitted thus. Firstly, there had been an error. It should have been obvious to the judge from many sources before him that the case involved a child. The appellant’s statement gave at least a hint of the problems which might be involved, namely difficulties over *hukou* registration. Secondly, the error was material. The judge correctly recorded at ¶28, “The appellant’s solicitor indicated that he was not seeking to rely upon article 8”, but the best interests of a child always had to be separately considered, even if an appellant did not so submit, on the authority of *ZH*. The situation of the child might in principle have fallen within either article 3 or article 8, or both. The appellant suffers from hepatitis B, owes money in China, and might have problems over *hukou*. As the decision failed even to mention the existence of the child, it had to be set aside.
7. I asked Mr Katani what should follow any setting aside. He had no clear submission on that matter, but said eventually that there should be a further hearing, either in the FtT or in the UT, at which the appellant might seek the admission of further (unspecified) evidence.
8. Mr Matthews submitted thus. It appeared to be accepted that there had been no submission to the FtT based on section 55 of the 2009 Act and the best interests of the child. The section 55 duty was generally pleaded in another context, usually article 8, although sometimes also article 3. *ZH* did not require the FtT to consider matters which were never put in issue. The grounds of appeal to the FtT did not mention the best interests of the child. There had been no application to amend those grounds. Even the ground of appeal to the UT did not state any relevance the matter had to the substantive outcome. The judge was not to be criticised over an issue which he had not been asked to deal with. His decision should not be interfered with.
9. If the decision were to be set aside, Mr Matthews submitted thus. The UT’s directions indicated a presumption that re-making of the decision would follow at the same hearing, based on the evidence before the FtT and any further evidence admitted. There had been no application from the appellant to have further evidence

admitted, although directions made it clear that prompt application was required. The appellant was married, with a child, not in breach of family planning policy or liable to any penalty. Her reference to potential problems over *hukou* was vacuous. There was nothing in relation to the child by which she might succeed, which was no doubt why the matter was not put to the FtT. Finally, the respondent would seek to refer to the decision of the FtT in case PA/03809/20145, promulgated on 12 October 2016, dismissing an appeal by the appellant's husband.

10. Mr Katani submitted in reply as follows. The judge was obliged to deal with the child's best interests even in absence of a submission, if the matter arose from the evidence. The mother said in her statement she was worried about *hukou*. The case had required "much more comprehensive consideration".
11. I reserved my decision.
12. The grant of permission may have been made in an over-abundance of caution. The ground of appeal to the UT at least verges on the disingenuous. It looks for error in a way which is only formalistic, and which flies in the face of the way representatives had advanced the case to the FtT.
13. The appellant has referred to no passage of authority which required the judge to say any more than he did in resolving the case before him.
14. There is lacking from the grounds and submissions even the outline of any specific case based on the best interests of the child which might have led to the appellant's appeal being allowed by the FtT, or which might lead to any further decision in her favour.
15. Any removal will be of the appellant along with her husband and child. The appellant has referred to no evidence by which that outcome might rationally have been found to impact adversely on her child's interests, so as to give her a right to remain in the UK. If the decision had been set aside, it could only have been remade to the same effect.
16. The decision of the First-tier Tribunal shall stand.
17. The FtT made an anonymity direction. There does not appear to have been an application for one, but as the matter was not referred to in the UT, anonymity has been preserved herein.



11 April 2018  
Upper Tribunal Judge Macleman