



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/35057/2013

THE IMMIGRATION ACTS

Heard at Glasgow
on 27 August 2014

Determination promulgated
On 28 August 2014

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

LINDA MTUNDUWATHA KANJEWE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms S Hoey, of Drummond Miller, Solicitors
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

No anonymity order requested or made

DETERMINATION AND REASONS

1. The appellant appeals against a determination by First-tier Tribunal Judge Gillespie, promulgated on 20 January 2014, dismissing her appeal on all grounds.

2. The appellant came to the UK in 2004 as a visitor and became an overstayer in that year. Her husband and her two children, then aged 3 and 7, came as visitors in June 2005 and also overstayed. Her case was argued on the basis of the best interests of her children. Having referred to *ZH (Tanzania)* [2012] UKSC 308 and to *Zoumbas* [2013] UKSC 74, the judge considered the circumstances and concluded at ¶36, "... this family cannot rely on the greater benefits of healthcare and education to which they have become accustomed and which in reality are at the heart of their concerns", and at ¶37, "Evaluating the children's best interests and the implicit assumption in article 8(2) that uncontrolled immigration is not in the interests of the economic wellbeing of the country I find, albeit marginally, that the latter consideration must prevail."
3. The grounds of appeal to the Upper Tribunal are that the judge failed to treat the best interests of the children as a primary consideration; did not assess the best interests of the younger child; seemed to weigh the dyslexia and learning needs of the older child against the conduct of the parents; erroneously placed weight on the conduct of the parents when assessing the interests of the children; and failed to apply tribunal case law about length of residence, the need for compelling or weighty reasons, and the absence of countervailing factors in a case of children resident for over 7 years and well integrated into the educational system.
4. The submissions for the appellant were along the lines of the grounds. Ms Hoey said that numerous factors had been pointed out which made it unreasonable to expect the children to return to Malawi - the age of the children length of time in the UK, educational and cultural matters, degree of integration, etc - but the judge had not balanced these appropriately. He had gone wrong in law essentially by treating the decisive question as whether it was reasonable to expect the family as a whole to return, when it should have been whether it was reasonable to expect the children to return.
5. Mrs O'Brien submitted that although the appellant said that cultural difficulties and educational disadvantages for the children were not fully addressed, the judge mentioned all the essential points and properly concluded at ¶35 that with assistance of the parents these could be transcended and were being overplayed. The judge was right to conclude at ¶36 that this was essentially a case based on health and educational advantages, like *Zoumbas*. There is no automatic entitlement to stay after 7 years. The judge cited the leading jurisprudence, looked at best interests, and then took an overall view on proportionality in which no legal error was apparent. The appellant disagreed with the outcome, but it could not properly have been otherwise.
6. In reply, Ms Hoey suggested that ¶33 of the determination, where the judge says that both immigration control and the best interests of children are primary considerations, might be an error. She also said that this case is distinguishable from *Zoumbas*, where the children were younger and the immigration history worse.

7. I indicated that the appeal did not succeed.
8. The judge set out and applied the relevant jurisprudence of the Supreme Court. Reading the determination fairly and as a whole, he did not take into account any irrelevant factors, and did not fail to take into account any relevant factors. There was no need to recite the earlier authorities mentioned in the grounds of appeal to the Upper Tribunal. The case for the appellant has been pressed as strongly as it might have been in both tribunals, but her grounds here are essentially only reassertion of her case and disagreement with the outcome.
9. Each case turns in the end on its own facts, and the judge was in my view plainly entitled to strike the balance where he did. I would also have thought the balance should be struck there, and would not have found the case marginal, as he did. Nevertheless, and while I generally have preferred the submissions for the respondent, I would be hesitant about holding that no tribunal could properly have reached another judgment. That point is not crucial to the outcome, so it need not be taken any further.
10. The determination of the First-tier Tribunal, dismissing the appeal, shall stand.



27 August 2014
Judge of the Upper Tribunal