



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

Appeal Number: PA/11576/2016

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
on 13 December 2017**

**Decision & Reasons Promulgated  
on 14 December 2017**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**Christine [M]**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the Appellant: Mr K Forrest, Advocate, instructed by Livingstone Brown,  
Solicitors  
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The respondent refused the appellant's protection claim for reasons explained in her letter dated 13 October 2016.
2. First-tier Tribunal Judge Doyle dismissed the appellant's appeal for reasons explained in his decision promulgated on 25 May 2017.

3. The failure of the protection claim is not now disputed.
4. The appellant and her son are both citizens of Malawi (and, as far as known, of no other country).
5. The appellant sought permission to appeal, on these grounds:

...

2. The FtT Judge ... has not taken into account the best interests of the child who is now 7 years old ... He acknowledges the age of the child ... but concludes that there is no "reliable evidence that it is not reasonable for the child to leave the UK". The significance of sections 117B and D of the 2002 act does not elide the need for a careful and fact sensitive analysis of the best interests of the child. The analysis conducted is inadequate. It focuses on the negative ... but fails to make any positive comment (notwithstanding the effect on the child of many aspects of the evidence in the appellant's bundle) in relation to the child's best interests.

3. The FtT Judge also erred in law in failing to note whether there was any significance to be attached to ... Sheriff Court proceedings by the child's father and appellant's ex-partner and in failing to consider ... their effect on the current proceedings.

6. FtT Judge E B Grant refused permission on 14 September 2017:

...

3. A judge can only make findings on the evidence placed before the tribunal and as the judge notes there was no reliable evidence to indicate it was unreasonable for the appellant and her son to leave the UK together and return to Malawi, there was no evidence to show they face homelessness or destitution on return. The judge was aware the child was at school and that there would be a period of upheaval, but the child is young and will adapt. It is implicit in the decision that the best interests of the child are to remain with his mother.

7. The appellant sought permission from the UT, saying:

We acknowledge paragraph 3 of the [refusal of permission]. However, the appellant adheres to the existing grounds.

8. On 17 October 2017 UT Judge Canavan granted permission:

... It is at least arguable that the judge focussed solely on whether it was practical for the appellant and her child to return to Malawi and failed to conduct an evaluative assessment of the child's best interests and ties to the UK applying ... *ZH (Tanzania)* [2011] UKSC 4, *Zoumbas* [2013] UKSC 74 and *EV (Philippines)* [2014] EWCA Civ 874. It is also arguable that the judge failed to consider the weight to be given to the child's length of residence as outlined in the respondent's policy guidance ... discussed ... in *MA (Pakistan)* [2016] EWCA Civ 705.

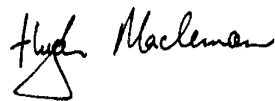
9. A rule 24 response from the SHD includes these points:

3. ... 7 years from the age of 4 years is considered to be a considerable period of time ... *Azimi-Moyad* [2013] UKUT 00197. It was open to the judge having regard to the evidence in the round to find the [child's] best interests were served by remaining with his mother having regard to the real-world facts in this appeal.

4. There is nothing in the grounds to identify the judge had been made aware of any Sheriff Court proceedings...
10. (The response no doubt had in mind that the child was born in 2010 and his period of residence in the UK included his infant years.)
11. A letter from the appellant's solicitors dated 11 December 2017 draws attention to an inventory of productions which was before the FtT, including copies of the initial writ in the Sheriff Court proceedings and the child's school records.
12. Mr Forrest submitted thus:
- (i) The judge erred in his application of the test in s. 117B(6). He focused on whether it was reasonable to expect the child to leave the UK. The test had to include consideration of the child's best interests.
  - (ii) The judge did not follow the approach explained at paragraphs 46 – 49 of *MA*, including the significance of 7 years in the UK, and the need for a careful analysis of the nature and extent of links in the UK and in the country of return.
  - (iii) There was evidence before the FtT about the Court proceedings, and in her statement the appellant referred to contact arrangements between the child and his father having been in place informally. Although there had been no specific submission, those were matters the judge was bound to consider. The case might have been one of those exceptional ones where the judge should have adjourned for fuller information, or to await the outcome of the proceedings: cf. *MA* at paragraph 113.
  - (iv) The decision should be set aside, and the case remitted to the FtT.
13. Mr Govan submitted thus:
- (i) The decision, on turning to human rights, began at paragraph 23 with the fact that the case concerned a “qualifying child” who had been here for 7 years, was born here, has known only the UK and was in primary school.
  - (ii) The Judge took all important factors into account.
  - (iii) Consideration of what was reasonable correctly involved consideration of any significant difficulties facing mother and child in Malawi. The judge was right to say there were none.
  - (iv) The approach in *MA* was in effect applied. Absence of the phrase “best interests of the child” was not an error of law.
14. It emerged in course of parties' submissions that the child's father is also a citizen of Malawi; there was before the FtT a copy of the decision in HU/09151/2016, promulgated on 26 October 2016, dismissing his appeal

on human rights grounds, argued on the basis of his marriage to a UK citizen and of his relationship with his son; the Sheriff Court made an order on 7 September 2017, slightly increasing the amount of access which had been in place by agreement; and the child's father, so far as known, remains in the UK, but without any right to be here.

15. I reserved my decision.
16. The FtT's decision might ideally have included a self-direction that the child's best interests were a primary but not over-riding consideration. However, absence of some such phrase is at best an error of form rather than of substance. If it is an error at all, it is not one which requires the decision to be set aside and remade.
17. The consideration of the child's best interests was practically incorporated into the question of reasonableness. Nothing significant was overlooked.
18. The reality of the evidence was that there was nothing to show any substantial adverse impact on the child's interests if he were to move with his mother to Malawi.
19. The one matter of potential importance which the judge did not mention was the contact proceedings. The case might have been different if the child's father was a UK citizen or had indefinite leave to remain; but it turns out that he has no entitlement to be here, and the expectation must be that he will return to Malawi in accordance with the law. This factor would make the appellant's case worse, not better.
20. The appellant's grounds and submissions do not show that the making of the decision of the FtT involved the making of any error on a point of law, such that it ought to be set aside. Its decision shall stand.
21. No anonymity direction has been requested or made.



13 December 2017  
Upper Tribunal Judge Macleman