



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/11859/2017

THE IMMIGRATION ACTS

Heard at Glasgow
On 19 July 2018

Decision and Reasons Promulgated
On 27 July 2018

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

H J N
(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr A Sirel, of Justright Scotland, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This decision is to be read with:
 - (i) The respondent's decision dated 2 November 2017 refusing the appellant's claim.
 - (ii) The appellant's grounds of appeal to the First-tier Tribunal.
 - (iii) The decision of FtT Judge J C Grant-Hutchison, promulgated on 18 January 2018.
 - (iv) The appellant's grounds of appeal to the UT, stated in the application for permission to appeal filed on 31 January 2018.
 - (v) The grant of permission by FtT Judge Andrew dated 22 February 2018 (which encapsulates the point of the grounds).

2. The further points which I noted from the submissions by Mr Sirel were these:
 - (i) The grounds disclosed errors regarding the appellant's ability to reintegrate in DRC; her family and private life in terms of article 8; and failure to consider all matters relevant to her "lone return", rather than returning with her mother.
 - (ii) The judge failed to apply the Joint Presidential Guidance Note No 2 of 2010. The appellant was identifiable as a vulnerable witness with mental health problems. Paragraph 15 of the Guidance required the tribunal to record whether it had concluded that the appellant was a vulnerable witness, and the effect of that in assessing the evidence.
 - (iii) Failure to follow the guidance would most likely be a material error of law - *AM v SSHD* [2018] 4 WLR 78 at paragraph 30.
 - (iv) It was accepted that the FtT had not specifically been referred to the Guidance or asked to make record, and that there was no reference to the Guidance in the grounds. However, the issue was obvious. The judge was under a duty to apply the Guidance even without a specific submission.
 - (v) It was significant that the tribunal accepted that the appellant came to the UK aged 15 with her mother, not through own choice; she is now aged 22, and has spent 7 years the UK; she has serious mental health difficulties, accepted at paragraphs 24 to 26; her traumatic history was accepted both by the respondent and by the tribunal, paragraph 25; she had a close relationship with her mother, who has an asylum appeal pending before the FtT.
 - (vi) The medical evidence considered by the tribunal was premised on the appellant remaining with her mother, not on separation.
 - (vii) The judge failed to consider the impact of the appellant's separate removal on her family life.
 - (viii) The judge failed to probe the circumstances regarding family life, and the country conditions to which the appellant would return, in relation to article 8. She did do so in relation to article 3, but that was a separate issue.
 - (ix) The two scenarios of return, with or without the appellant's mother, were radically different.
 - (x) The judge dealt with the appellant's return on her own only as if it were an answer to the case based on health issues (article 3), not in the family and private life context (article 8).
 - (xi) *KO* [2018] CSOH 71, although arising from judicial review, showed that when considering integration on return the difficulties of country conditions and of an appellant's personal problems, including medical problems, had to be taken into account, and not only in relation to article 3.
 - (xii) It was accepted that the appellant did not submit that although an adult, she still had family life with her mother for article 8 purposes. However, that was another obvious point in the circumstances of the case.
 - (xiii) The case should be remitted for a fresh hearing in the FtT.
3. The main points which I noted from the submissions by Mr Govan were these:
 - (i) The grounds of appeal made no reference to the Presidential Guidance. There had been no application to amend the grounds. This issue should not be admitted.

- (ii) In any event, the judge was clearly aware that the appellant was a vulnerable witness due to mental health issues, and treated her as such.
 - (iii) The facts of the case were all before the judge and all material points were clearly recorded in her decision. There was no reason to think that factors she recorded were ignored in resolving article 8 issues.
 - (iv) The judge made it clear that she was dealing with the case as the return of a lone woman to DRC. The appellant being an adult, and that being the nature of the decision appealed against, that was exactly what was to be expected.
 - (v) The appellant had not founded in the FtT on her relationship with her mother as constituting family life. That was included in terms of private life, and the strain of separation from her mother was part of what the FtT contemplated. The point was now being embellished.
 - (vi) The judge had considered all matters relating to family and private life including the appellant's relationship with her mother and her mental health. Looking at the decision holistically, no error of law was disclosed.
 - (vii) If there were any error, there had been no application to lead further evidence, so the decision would fall to be remade in the UT, based on the evidence the appellant had led. There were no outstanding issues of fact to resolve. The appeal would fall again to be dismissed.
4. I reserved my decision.
 5. The issue about the Guidance is not in the grounds.
 6. The judge did not record that the appellant is a vulnerable witness, but that is implicit in her decision. She was aware of the mental health issues and took them into account. If asked to record in terms of the Guidance that the appellant was a vulnerable witness, there is no reason to think she would not have done so. This is an objection on a point of mere formality.
 7. It was clarified by Mr Govan in course of submissions that the appellant's mother had an appeal pending before the FtT the same time as the appellant. She has other legal representatives. This appellant's case was heard on 22 December 2017 and her mother's case was heard on 19 February 2018. Her mother's appeal was also dismissed. The FtT has refused permission to appeal to the UT. An application to the UT awaits decision.
 8. There is no doubt that the judge treated the case as one of the appellant returning on her own, not with her mother – see for example paragraph 19, *"The appellant will be returning to the DRC in her own right as an adult"*, and 31, *"Even should the appellant's mother not return with her ... I find that the appellant is able to return ... in her own right."* That was the effect of the respondent's decision, and what the case was all about.
 9. The observation later in paragraph 19, *"There is no reason why she and her mother could not return together"*, is supplementary or alternative. It is not crux of the decision.
 10. It has not been argued that the observation was inaccurate. It was not established that the appellant's mother had any reason not to return, or any right to remain in the UK.

11. If the appellant's appeal had been thought to be contingent on her mother's position, the obvious course would have been to ask for the appeals to be heard together. They were current at the same time, as each must have known. Separate legal representation is no barrier.
12. It might have been a sustainable proposition, on the evidence, that the appellant, although an adult, remained for article 8 purposes a family member of her mother. However, she made thorough submissions, both oral and written, but did not take this point.
13. More importantly, the appellant's relationship with her mother, if not considered as family life, was at the heart of the private life case considered by the judge. A decisive line was not drawn between family and private life.
14. The appellant's case has been advanced as thoroughly as it could be, both in the FTT and in the UK. However, the grounds of appeal are only continued insistence, embellished in submissions in terms which at best disclose error of form. They do not show that the FtT failed to take account of all relevant matters at each stage of the decision. The facts did not need to be repeated again and again.
15. The FtT's resolution of the case did not involve the making of any error on a point of law, such that it should be set aside. Its decision shall stand.
16. The anonymity direction made by the FtT is maintained. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Dated 20 July 2018
Upper Tribunal Judge Macleman