

The UK Supreme Court defines and rules on best interests of the children in Immigration cases

As people settle in the UK it is apparent that people do so with valid leave and in a majority of cases without the requisite leave to remain. One thing is certain though, families are bound to be formed. Status or no status children end up coming and to that extent their rights too have to be considered. A number of cases have come before the courts fairly recently but the Supreme Court decision handed down on the 1st February 2011 does clarify the law with regards to the best interests of the children not only with respect to immigration law but in other facets of the law.

The facts in the case of *ZH Tanzania* clearly highlight a situation whereby the appellant a mother of two who originally came from Tanzania had an appalling immigration history and sought to avoid deportation in various ways. Her behaviour was even made worse by the fact that she even pretended to come from Somalia and went on to claim asylum in the UK. Her claims for asylum were rejected by the UK Border Agency. Actually she made three unsuccessful claims for asylum in the UK one in her own identity and two claims in false identities. She established a relationship with a British national and the couple ended up having two children. The children are both British, having been born here to parents, one of whom is a British citizen.

The parents were separated but the father continued to see the children regularly, visiting approximately twice a month for 4 to 5 days at a time. The father of the children was diagnosed with HIV. He lives on disability allowances with his own parents and drinks a great deal. The Tribunal and the court of appeal had ordered that the children should be removed to Tanzania where they could continue to live with their mother. The court of appeal had criticised the position recommended by the Tribunal that the children could go and live with their father whilst the mother was to be removed to Tanzania.

The Supreme Court summed up the very basic interests of the children after analysing various cases and ruled that:

Substituting "father" for "mother", all of these considerations apply to the children in this case. They are British children; they are British, not just through the "accident" of being born here, but by descent from a British parent; they have an unqualified right of abode here; they have lived here all their lives; they are being educated here; they have other social links with the community here; they have a good relationship with their father here. It is not enough to say that a young child may readily adapt to life in another country. That may well be so, particularly if she moves with both her parents to a country which they know well and where they can easily re-integrate in their own community. But it is very different in the case of children who have lived here all their lives and are being expected to move to a country which they do not know and will be separated from a parent whom they also know well.

*Nor should the intrinsic importance of citizenship be played down. As citizens these children have rights which they will not be able to exercise if they move to another country. They will lose the advantages of growing up and being educated in their own country, their own culture and their own language. They will have lost all this when they come back as adults. As Jacqueline Bhaba (in 'The "Mere Fortuity of Birth"? Children, Mothers, Borders and the Meaning of Citizenship', in *Migrations and Mobilities: Citizenship, Borders and Gender* (2009), edited by Seyla Benhabib and Judith Resnik, at p 193) has put it:*

'In short, the fact of belonging to a country fundamentally affects the manner of exercise of a child's family and private life, during childhood and well beyond. Yet children, particularly young children, are often considered parcels that are easily movable across borders with their parents and without particular cost to the children.'

We now have a much greater understanding of the importance of these issues in assessing the overall well-being of the child. In making the proportionality assessment under article 8, the best interests of the child must be a primary consideration. This means that they must be considered first. They can, of course, be outweighed by the cumulative effect of other considerations. In this case, the countervailing considerations were the need to maintain firm and fair immigration control, coupled with the mother's appalling immigration history and the precariousness of her position when family life was created.....

In all the premises the best interest of the children had to take priority against all other factors. The Supreme Court allowed the appeal by the mother whose immigration history was appalling having regard to the best interest of the minor children. She could not be returned to Tanzania.

It is also important to note that a number of people have lived in the UK for a number of years some without status but all the same having children. In terms of the British nationality act a child born in the UK and have lived in the UK for a period of ten years irrespective of the status of the parents that child can be registered as a British citizen and the above principles may also be applied accordingly. The law with regards to best interests of the children has also been summed up in section of 55 of the Borders Act. With these developments even those parents who could have narrowly missed out on the seven year concession should seek advice and benefit. It is hoped that all these laws protecting the children shall be put to good use and not lead to a baby boom in the communities!

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