

UK - ZH (Tanzania) (FC) v Secretary of State for the Home Department, 1 February 2011

Country of Decision:

United Kingdom

Country of Applicant:

Tanzania

Date of Decision:

01-02-2011

Citation:

[2011] UKSC 4

Court Name:

UK Supreme Court

Keywords:

Best interest of the child

Family unity (right to)

Return

Relevant Legislative Provisions:

International Law

International Law > UN Convention on the Rights of the Child

Council of Europe Instruments > [EN - Convention for the Protection of Human Rights and Fundamental Freedoms](#) [1]

Headnote:

The appellant mother (M) appealed against a Court of Appeal decision upholding a finding by an Asylum and Immigration Tribunal that her two children (aged 12 and 9), who were British citizens, could reasonably be expected to follow her when she was removed to Tanzania.

Facts:

M, a Tanzanian national, arrived in the United Kingdom illegally in 1995. She had made three unsuccessful claims for asylum, two of which were made using a false identity. The children (C)

were aged 12 and 9 and their father (F) was a British citizen. C had lived in Britain with M all their lives. M and F had separated in 2005 but C saw F on a regular basis. F was diagnosed as HIV positive in 2007 and M made further representations to the secretary of state which were refused in 2008 as a fresh claim. M's appeal was dismissed later that year. On a reconsideration the AIT initially held that the tribunal had erred in failing to take C's rights and the effect on them of M's removal into account but subsequently found that M's removal would not represent such an interference with family life, including C's, to be disproportionate with her rights under the European Convention on Human Rights 1950 art.8. The Court of Appeal rejected the argument that C's British citizenship was a "trump card" preventing M's removal.

M contended that insufficient weight was given to the welfare of all children affected by decisions to remove their parents and particularly those children who were British citizens. M argued that that was incompatible with their art.8 rights in the light of the UK's obligations under the United Nations Convention on the Rights of the Child (UNCRC).

Decision & Reasoning:

(1) The starting point and primary (though not only) consideration for this kind of decision is what is in the best interests of the child. This involves asking whether it was reasonable to expect the child to live in another country. Relevant factors included the level of the child's integration and the length of absence from the other country; where and with whom the child was to live and the arrangements for looking after the child in the other country; and the strength of the child's relationships with parents or other family members which would be severed if the child had to move away.

Although British citizenship was not a "trump card", it was of particular and intrinsic importance in assessing the best interests of any child. C were British not just through the "accident" of being born in Britain but by descent from a British parent. They had an unqualified right of abode, had lived in Britain all their lives and were being educated in Britain; they had other social links with the community and had a good relationship with F. It was not enough to say that a young child might readily adapt to life in another country, particularly children who had lived in Britain all their lives and were being expected to move to a country they did not know and where they would be separated from a parent. The children had rights which they would not be able to exercise if they moved to another country. They would lose the advantages of growing up and being educated in their own country, their own culture and language.

When making an assessment of proportionality under art.8, the best interests of the child had to be a primary consideration: a starting point for any assessment. However, they could be outweighed by the cumulative effect of other less important considerations. In the instant case, the countervailing considerations were the need to maintain firm and fair immigration control, coupled with M's 'appalling' immigration history and the precariousness of her position when family life was created. However, C could not be blamed for that and the inevitable result of removing M, their carer, would be that they would have to leave with her. In those circumstances, it would be disproportionate to remove M.

(2) An important element of considering the best interests of the child was discovering the child's own views. The immigration authorities had to be prepared to consider hearing directly from a child who wished to express a view and was old enough to do so. While their interests might be the same as their parents', that should not be taken for granted.

Outcome:

Appeal allowed.

Subsequent Proceedings :

N/A

Observations/Comments:

For additional information on the case please see: Westlaw, ZH (Tanzania) v Secretary of State for the Home Department, case analysis.

This case summary was written by Ben Wild, a trainee solicitor with an MA in International Law from UN University for Peace in Costa Rica.

Attachment(s):



[UKSC ZH Tanzania 2011 BID judgment.pdf](#)[2]

Other sources cited:

CEDAW

ICCPR

Phil Woolas, Hansard, Written Answers, 15 June 2009

Report of the Commission, 4 July 1991

UNHCR Guidelines on Determining the Best Interests of the Child (May 2008)

General Comment No 6 of the United Nations Committee on the Rights of the Child (2005) on the Treatment of Unaccompanied and Separated Children Outside their Country of Origin

?The ?Mere Fortuity of Birth?? Children, Mothers, Borders and the Meaning of Citizenship?, in Migrations and Mobilities: Citizenship, Borders and Gender (2009)

Committee on the Rights of the Child, General Comment No 12 (2009) on the Right of the Child to be Heard

National / Other Legislative Provisions:

[UK - Immigration Act 1971](#) [3]

[UK - Borders, Citizenship and Immigration Act 2009](#) [4]

[UK - Children Act 1989](#) [5]

[UK - Children Act 2004](#) [6]

Links:

[1] <http://www.asylumlawdatabase.eu/en/content/en-european-convention-protection-human-rights-and-fundamental-freedoms-echr>

[2]

<https://m.asylumlawdatabase.eu/sites/default/files/aldfiles/UKSC%20ZH%20Tanzania%202011%20BID%20judgment.pdf>

[3] <https://m.asylumlawdatabase.eu/en/taxonomy/term/7857>

[4] <https://m.asylumlawdatabase.eu/en/taxonomy/term/743>

[5] <https://m.asylumlawdatabase.eu/en/taxonomy/term/1426>

[6] <https://m.asylumlawdatabase.eu/en/national-and-other-legislation/uk-children-act-2004>