



16 November 2016

## PRESS SUMMARY

**Makhlouf (Appellant) v Secretary of State for the Home Department (Respondent) (Northern Ireland) [2016] UKSC 59**

*On appeal from [2014] NICA 86*

**JUSTICES:** Lord Neuberger (President), Lady Hale (Deputy President), Lord Kerr, Lord Wilson, Lord Reed, Lord Hughes, Lord Thomas

### BACKGROUND TO THE APPEAL

This is an appeal against an order for the deportation of a foreign criminal who has children who are citizens of and resident in the United Kingdom. The appellant was born in Tunisia. In 1996 he married a UK citizen and they had a daughter, born in Northern Ireland, in 1997. Shortly after the birth, the appellant joined them in Northern Ireland on a spousal visa. A year later he was granted indefinite leave to remain. He separated from his wife in 1999, although they have never divorced. In 2006 he had a son with a new partner, but the relationship broke down shortly after the birth. In 2008 the Family Court ordered that he could only have indirect contact with his daughter and that he must obtain the leave of the court before making any further applications for contact. He has not had any contact with his son since 2010.

In 2005 the appellant was convicted of two counts of assault occasioning grievous bodily harm, for which he received concurrent sentences of 39 months and nine months' imprisonment. Between 2008 and 2010 he was convicted of and sentenced for a series of further offences, including breach of a non-molestation order, disorderly behaviour and assaulting a police officer. Following a further incident in 2011 he was convicted of disorderly behaviour, attempted criminal damage and resisting a police officer for which he received three concurrent sentences of five months' imprisonment.

In 2012 the Home Secretary sought the appellant's deportation on account of his convictions. Following inquiries regarding the appellant's family circumstances, a deportation order was issued. The appellant appealed claiming that his deportation would breach his and his children's right to respect for private and family life under article 8 of the European Convention on Human Rights and that the Secretary of State had failed to take sufficient account of the best interests of his children. His appeals to the First-tier Tribunal, Upper Tribunal and Court of Appeal were dismissed.

### JUDGMENT

The Supreme Court unanimously dismisses Mr Makhlouf's appeal. Lord Kerr gives the lead judgment with which the other Justices agree. Lady Hale gives a concurring judgment.

### REASONS FOR THE JUDGMENT

Where a decision is taken about the deportation of a foreign criminal who has children residing in the United Kingdom, separate consideration of their best interests is required, especially if they do not converge with those of the parent to be deported and particularly in the case of a child with dual ethnic background. The child's interests must rank as a primary consideration [40].

The question of whether sufficient consideration of the article 8 issues which arise in a particular case can take place through the application of the immigration rules has been thoroughly discussed in the associated case of *Ali v Secretary of State for the Home Department* [2016] UKSC 60. But the issue in this case is simply whether the Secretary of State was in fact provided with sufficient material on which to make a proper judgment on the article 8 rights of the appellant and his children [41].

All the evidence on this issue leads unmistakably to the conclusion that the appellant did not enjoy any relationship with either of his children and they led lives which were wholly untouched by the circumstance that he was their father. While the possibility of such a relationship developing was a factor to be considered, in this case the material available to the Secretary of State could admit of no conclusion other than it was unlikely in the extreme. The lately produced information that the mother of his son might re-consider contact between them partakes of a last throw of a desperate dice [42]. The Secretary of State was therefore not obliged to make yet further inquiries in relation to the appellant and his children beyond those which had already taken place [44].

Lady Hale adds that children must be recognised as rights-holders on their own account and not just as adjuncts to other people's rights [47]. But that does not mean that their rights are inevitably a passport to another person's rights. The problem in this case is that it is the appellant who is treating the children as a passport to his own rights, rather than as rights-holders in their own right. His daughter is now 19 and has had no contact with him since she was five [48]. Without a very good reason to the contrary, the Secretary of State is entitled to treat the orders of the family courts as reflecting what is indeed in the best interests of the children concerned. The idea that the Secretary of State should make her own investigation of matters which have already been investigated by the family courts is not only unrealistic, but would also create uncertainty and anxiety for the children. Of course it is good for children, especially children of mixed ethnicity, to have a relationship with both of their parents. But it also good for them to have peace and stability. The daughter is not prevented from establishing a relationship with her father by him living in Tunisia [49]. There was no credible evidence that the appellant had sought contact with his son and nothing to suggest that the appellant has been making a meaningful contribution to his life. He too requires peace and stability and can establish a relationship with his father in future should he wish to do so [50].

There is nothing at all to suggest that the best interests of these children require that their father should remain in the United Kingdom. Of course there will be cases where fuller inquiries are warranted or where the best interests of children do outweigh the public interest in deportation or removal, but this is emphatically not one of them [51].

*References in square brackets are to paragraphs in the judgment*

#### **NOTE**

**This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

<http://supremecourt.uk/decided-cases/index.html>