Michaelmas Term
[2016] UKSC 59
On appeals from: [2014] NICA 86

JUDGMENT

Makhlouf (Appellant) *v* Secretary of State for the Home Department (Respondent) (Northern Ireland)

before

Lord Neuberger, President
Lady Hale, Deputy President
Lord Kerr
Lord Wilson
Lord Reed
Lord Hughes
Lord Thomas

JUDGMENT GIVEN ON

16 November 2016

Heard on 12, 13 and 14 January 2016

Appellant
Mary Higgins QC
Aidan McGowan

(Instructed by McHugh
Lynam Solicitors)

Respondent
Lisa Giovannetti QC
Aidan Sands

(Instructed by Crown
Solicitor's Office)

LORD KERR: (with whom Lord Neuberger, Lady Hale, Lord Wilson, Lord Reed, Lord Hughes and Lord Thomas agree)

Introduction

1. Ben Belacum Makhlouf was born in Tunisia on 18 July 1971. On 4 June 1996 he married Ruth Henderson. She came from Northern Ireland and was a citizen of the United Kingdom. The marriage took place in Tunisia. On 13 November 1997, Mrs Makhlouf gave birth to their only child, a daughter called Sarah-Jayne. She was born in Northern Ireland, to where Mrs Makhlouf had returned. Her husband joined her there on 19 November 1997, six days after the birth of their daughter. He has lived in Northern Ireland since then. He had come to the United Kingdom and to Northern Ireland in particular with leave to enter as the spouse of a person settled in the UK. The leave to enter was initially valid for one year but on 19 August 1999 he was given indefinite leave to remain.

2. On 14 September 1999, Mrs Makhlouf informed the United Kingdom Border Agency (UKBA) that she and her husband had separated. She claimed that he had been violent to her. He disputes that claim. It has never been alleged that he was violent to his daughter. Indeed, Mr Makhlouf has said that, following the separation from his wife, he enjoyed regular weekly contact with Sarah-Jayne. Differences arose between him and his wife concerning their daughter's upbringing, he claims and as a result, Mrs Makhlouf refused to allow him to see Sarah-Jayne since the beginning of 2003. Notwithstanding that they have not lived together since 1999, Mr and Mrs Makhlouf have never divorced.

3. On 24 April 2003, while drunk, Mr Makhlouf attacked two men after an argument about a game of pitch and toss. He used an offensive weapon (in the form of a key ring which contained a blade). He claimed that he was provoked by the men, who, he said, were loyalist paramilitaries. He also alleged that they had "victimised" him because of his ethnic origin and skin colour. These claims are not accepted by the respondent and there is nothing in the trial judge's sentencing remarks which specifically supports them. The judge did, however, describe the victims' behaviour as "shameful" and the appellant as "having taken the law into his own hands" but it is not at all clear from the sentencing remarks that it was accepted that the appellant had been provoked because of his ethnic background.

4. The appellant had been remanded in custody from the date of the offences until December 2004 when he was released on bail. He pleaded guilty to two offences of assault occasioning grievous bodily harm contrary to section 20 of the

Offences against the Person Act 1861, having pleaded not guilty to the more serious offences under section 18 of the same statute, with which he had originally been charged. The pleas of guilty to the section 20 charges were made, it is claimed, at the earliest opportunity and the trial judge appears to have taken this into account when, on 18 April 2005, he imposed concurrent sentences of 39 and nine months' imprisonment. That disposal meant that the appellant was not required to return to prison.

5. In his evidence to the First-tier Tribunal, during an appeal against a decision that he should be deported, the appellant said that he had formed a relationship with Charlene McManus after his release from prison and that she had given birth to their son on 12 May 2006. Mr Makhlouf has not been named on the child's birth certificate as his father but Ms McManus has not disputed that he is indeed the boy's father. Unfortunately, his relationship with Ms McManus broke down shortly after the birth but Mr Makhlouf claimed that he had regular contact with his son until 2010. These arrangements ended, he claimed, when Ms McManus began to demand that he visit the boy at her flat and, at that time, he was unable to leave his own home because he was suffering from depression. In his evidence to the First-tier Tribunal he said that he had been unable to work since 2006 or 2007 because of his depressive illness and had been in receipt of state benefit for this condition.

6. In 2007 the appellant issued proceedings seeking contact with his daughter, Sarah-Jayne. He was permitted indirect contact but his application for direct contact was refused. He appealed that decision but this appeal was dismissed by the Fermanagh Family Care Centre on 21 October 2008. He claimed that he had not attended the hearing of the appeal because he had gone to the wrong court. The First-tier Tribunal was sceptical of this claim. It observed, "If this was truly the reason why the order was made, we find it surprising that he has been unable to secure redress for the consequences of what he claims was a simple mistake. We are not persuaded that the order does not reflect other issues on the suitability of him having contact with Sarah-Jayne at that time".

7. On Mrs Makhlouf's application, the court made an order under article 179(14) of the Children (Northern Ireland) Order 1995 (SI 1995/755 (NI 2)) which imposed a requirement that the appellant obtain the leave of the court before making any further applications in respect of Sarah-Jayne.

8. Between November 2008 and February 2010, the appellant was convicted of and sentenced for a series of offences as follows:

- On 3 November 2008 he was sentenced to six months' imprisonment, suspended for two years, for breach of a non-molestation order;

- On 2 March 2009 he was fined £350 for disorderly behaviour;

- On 22 February 2010 he was convicted of two sets of offences - the first was for breach of a non-molestation order on 12 October 2009 for which he was sentenced to three months' imprisonment; the second set of offences related to breach of a non-molestation order on 11 January 2009 for which he was sentenced to six months' imprisonment, suspended for two years, assaulting a police officer and resisting a police officer on the same date for which he received equivalent concurrent sentences.

9. On 14 October 2010 the respondent wrote to the appellant, informing him that she was considering his liability to deportation. She asked him to provide reasons that he should not be deported. She also asked for information about his relationships and about his children. The letter contained what is known as a "one stop warning" under section 120 of the Nationality, Immigration and Asylum Act 2002 and a questionnaire in which various inquiries were made about his circumstances, those of his children and how he came to the United Kingdom. The letter had been prompted by the respondent's having obtained a certificate of the applicant's conviction of the offences for which he had been sentenced on 18 April 2005.

10. In a letter of 1 November 2010 the appellant's solicitor stated that the offences arose out of an incident in which he had been provoked by loyalist paramilitaries who had targeted him because of his origins and skin colour. The solicitor objected to the delay in seeking his deportation on foot of these convictions. It was claimed that he had a settled life in Northern Ireland and wished to play a parenting role for his children and to support them in the future. Any decision to deport him would breach his rights under article 8 of the European Convention on Human Rights and Fundamental Freedoms (ECHR), the letter suggested.

11. On 4 February 2011 the respondent wrote to the appellant again. She asked for further information about his two children and sought certain material from his solicitor, including passport details and evidence of his residence in the UK; documentary evidence relating to custody arrangements for the children; when he had stopped living with them; and how often he had contact with them. The solicitor was also asked to provide letters from the mothers of the appellant's children detailing any support that he provided for the children. Information was also sought relating to medical treatment that he was receiving.

12. No reply to these requests was forthcoming and a reminder was sent on 21 March 2011, asking for a reply by 1 April 2011. No such reply was received and on 28 June 2011 UKBA wrote, asking for evidence of the appellant's relationship with

any current partner and with his children. On 7 July 2011 the appellant's solicitor wrote to ask for more time in which to reply and this was granted in a letter from UKBA of 16 August 2011 but a response within ten days was asked for. In due course the appellant's solicitor did indeed reply on 26 August 2011, stating that the appellant was not in contact with his children and was not in a financial position to contribute to their maintenance. The letter claimed that he was being denied contact with his children by their mothers and that he had given instructions to issue legal proceedings so that he could re-establish contact with them.

13. In the meantime, Mr Makhlouf was convicted on 15 August 2011 of offences that arose from an incident on 2 April 2011 at the public inquiry office at Enniskillen Police Office. These included disorderly behaviour (for which he was sentenced to five months in prison); attempted criminal damage (for which he received a concurrent sentence of five months' imprisonment); and resisting a police officer for which he received an equivalent concurrent sentence.

14. On 12 April 2012 UKBA asked for an update in relation to the contact proceedings that had been mooted in the letter of 26 August 2011. The following day his solicitor replied saying that legal aid applications had been made in order to launch these proceedings but that these had not yet been dealt with by the Legal Aid Commission. No applications for contact had been lodged, therefore.

15. On 30 May 2012 UKBA issued a liability to deportation notice on foot of Mr Makhlouf's convictions in April 2005. In an accompanying letter they sought evidence of what were described as "applicable circumstances". These included details of marriages or civil partnerships; relationships that could be said to be akin to these; evidence in relation to children or other dependents; and evidence of any medical condition from which he or any dependents suffered. The appellant was also asked for a formal statement setting out the reasons that he should be allowed to stay in the UK, why he wished to stay here and the grounds on which he relied in support of his claim that he should be permitted to do so. No response to this request was received. The appellant gave instructions to his present solicitors to make a further application for contact with Sarah-Jayne. The Legal Services Commission refused to grant legal aid for this and it was not pursued.

16. On 5 October 2012 the respondent decided to make a deportation order. Notice of that decision was given to the appellant. It stated:

> "On 18 April 2005 at Belfast Crown Court, you were convicted of grievous bodily harm. In view of this conviction, the Secretary of State deems it to be conducive to the public good to make a deportation order against you. The Secretary of State

> has therefore decided to make an order by virtue of section 3(5)(a) of the Immigration Act 1971.
>
> You have claimed that your deportation from the United Kingdom would be a breach of your human rights under article 8 of the Human Rights Act 1998 on the grounds that you have established a family and/or private life in the United Kingdom. This claim does not meet the criteria as laid out in paragraph(s) 399/399A of the immigration rules and for the reasons given in the attached reasons for decision letter your claim is hereby refused."

17. The letter which accompanied the notice of decision reviewed the various circumstances which were relevant to the appellant's case. His several convictions, not merely those in 2005, were rehearsed. The fact that he was no longer in contact with either of his children and had not had any connection with them for some years was alluded to. The sentencing remarks of the judge in April 2005 were quoted. It was stated that specific regard had been had to para 396 of the Immigration Rules which provides that there is a presumption that the public interest requires the deportation of a person who is liable to deportation. It was acknowledged, however, that there was an obligation to consider whether that presumption would be outweighed by other factors, particularly whether "the decision to take deportation action would place the United Kingdom in breach of any of its obligations under [ECHR]."

18. The reasons for decision letter accepted that the appellant's removal to Tunisia would interfere with his rights under article 8 and that it might not be in the best interests of his children. But it was stated that this interference was in accordance with "the permissible aim of the prevention of disorder and crime and the protection of the rights and freedoms of others". The letter continued:

> "In considering whether removal to Tunisia would result in a breach of your rights under article 8, the starting point for considering such a claim is the Immigration Rules. Paragraph 396 establishes that where a person is liable to deportation, the public interest requires it. Where the Secretary of State must make a deportation order in accordance with section 32 of the UK Borders Act 2007, it is also in the public interest to deport."

19. The letter then dealt with the length of sentence imposed and the effect of this in applying the relevant immigration rules, in particular paras 398, 399 and 399A. Reference was made to the criteria in para 399A which "must be satisfied in

order for a parental relationship with a child to outweigh the public interest in deportation in line with article 8". These criteria were stated to reflect the duty in section 55 of the Borders, Citizenship and Immigration Act 2009 to have regard to the need to safeguard and promote the welfare of children who are in the United Kingdom "as interpreted in recent case law, in particular *ZH (Tanzania) v Secretary of State for the Home Department* [2011] 2 AC 166."

20. There then followed a review of the para 399A criteria as they applied to the appellant's children. It was noted that he was not in a genuine and subsisting relationship with his son, indeed that the appellant had provided no evidence of contact with the boy and that he was cared for by his mother. Likewise, the letter claimed, the appellant was not in a subsisting relationship with Sarah-Jayne, had no current contact with her and that she was capable of being cared for by her mother.

21. The appellant's personal circumstances were then considered. It was noted that he was not in a relationship with a partner at the time; that discounting the time that he had spent in prison, he had been resident in the United Kingdom for a period of 15 years; and that he had ties to Tunisia to which he was to be deported. His parents lived there and that he had lived all his life in Tunisia until he came to the UK in 1997. It was concluded therefore that there were no exceptional circumstances which outweighed the public interest in having the appellant deported.

The proceedings

22. The appellant appealed the decision to deport him to the First-tier Tribunal. On 5 December 2012 he made a statement setting out the circumstances on which he relied to advance his appeal. He explained that he had wished to make another application for contact with Sarah-Jayne but had been unable to pursue this because legal aid for his application had been refused. He claimed that he had obtained legal aid to pursue an application for contact with his son and exhibited an application to the Family Proceedings Court.

23. The appellant's appeal was heard on 6 December and the decision was given on 8 January 2013. The tribunal concluded that the Secretary of State had properly applied the Immigration Rules. Indeed, no issue was taken on the application of the rules. The tribunal expressed some doubt as to the existence of the appellant's son but concluded, in any event, that the appellant had not produced credible evidence of contact proceedings for either child or that he had any input into their lives. The appeal was dismissed.

24. The appellant appealed to the Upper Tribunal on 1 July 2013. In the course of this appeal it was conceded on the appellant's behalf that there were no ongoing contact proceedings in relation to either child. It was submitted that it was irrational for the Secretary of State to have taken into account the sentencing remarks of the trial judge because of the length of time that had elapsed between the trial and the decision to deport. By way of fairly radical alternative to that argument, it was also argued that the Secretary of State had referred to only some of the remarks and had not alluded to the observation of the sentencing judge that nothing would be achieved by sending the appellant back to prison. It was also argued that the Secretary of State had "only considered the Immigration Rules and not article 8 proper (*sic*)".

25. It was accepted by the respondent before the Upper Tribunal that the First-tier Tribunal had wrongly considered the appellant's case as one of automatic deportation under section 32(5) of the UK Borders Act 2007 and that therefore the burden of proving that his deportation was not conducive to the public good fell on the appellant. But it was submitted that this should not affect the outcome of the appeal. The Upper Tribunal agreed. It also agreed with a submission that the panel had overstated the effect of the sentencing of the appellant for breach of a non-molestation order. But it concluded that the outcome of the appeal would not have been different even if these errors had not been made.

26. The decision of the Upper Tribunal was appealed to the Court of Appeal in Northern Ireland. On 26 November 2014 that court (Sir Declan Morgan LCJ, Coghlin LJ and Gillen LJ) dismissed the appeal.

27. Morgan LCJ, delivering the judgment of the court, set out the issues raised in the appeal in para 1 of his judgment as follows:

> "(1) Did the Secretary of State err in deciding to deport the appellant under the mandatory power conferred by section 32 of the UK Borders Act 2007 ('the 2007 Act')?
>
> (2) Did the Upper Tribunal err in law in failing to find that the Secretary of State and First-tier Tribunal had erred in law and in refusing to set aside the decision of the First-tier Tribunal?
>
> (3) Did the Upper Tribunal err contrary to section 6 of the Human Rights Act in failing to set aside the decision to deport in the absence of any tangible evidence for any article 8(2)

> justification of the encroachment of the article 8 rights of the appellant's children in circumstances where the Tribunal had not been specifically asked to address this point by the parties?"

28. Leave to appeal on the first of these two issues had been granted by a different panel of the Court of Appeal at an earlier hearing on 31 March 2014. That court had decided to make no order in relation to the third issue, pending the decision on the first two. The appellant therefore renewed his application for leave to appeal on that point when the matter came on for hearing on the first two issues.

29. On the first issue the Court of Appeal concluded that section 32 played no part in the Secretary of State's decision. Had it done so, it would have been unnecessary to consider para 396 of the Immigration Rules and the decision letter had made it abundantly clear that this had been taken into account - para 35 of the court's judgment. The first ground of appeal was therefore dismissed.

30. On the second issue the appellant presented two arguments to the Court of Appeal. Firstly, it was submitted that the Secretary of State was wrong to conclude that it was conducive to the public good that the appellant should be deported because of his conviction in 2005. Secondly, it was argued that no proper investigation of the article 8 issues had been undertaken - in particular, there had been no proper investigation of the interests of the children. Both arguments were rejected by the Court of Appeal. It considered that the factors outlined in the reasons for decision letter amply supported the conclusion of the Secretary of State that the appellant's deportation was conducive to the public good. On the question of the delay in making the decision, the court accepted that this could be an important consideration but that two features of this case made this factor inconsequential. The first was that following the 2005 convictions, the appellant was engaged in a series of further criminal offences and the second was that, during the same period, contact with his son was lost and the complete lack of contact with his daughter which had predated his convictions in 2005 continued.

31. On the issue of whether sufficient attention had been paid by the respondent to the interests of the appellant's children, the Court of Appeal adverted to the Secretary of State's reference to section 55 of the Border, Citizenship and Immigration Act 2009 and *ZH (Tanzania)*. Although the reasons for decision letter had concentrated on the question whether the conditions contained in para 399A of the Immigration Rules had been fulfilled, there had been a sufficient inquiry into the welfare of the children by the Family Court. The court rejected the suggestion that there should have been further investigation of the impact that the deportation of the appellant might have on the lives of his children, observing that "these children did not require the disruption of further investigation in circumstances where a court

with appropriate jurisdiction had made important decisions in relation to their welfare".

32. The Court of Appeal therefore rejected the appellant's case on the second issue and refused leave to appeal on the third issue.

The appeal before this court

33. For the appellant, Ms Higgins QC submitted that the Secretary of State had not contended that the appellant posed any risk to the public. All the evidence suggested that he did not, she claimed. Relying on *Keegan v Ireland* (1994) 18 EHRR 342, para 48 and *Pawandeep Singh v Entry Clearance Office, New Delhi* [2005] QB 608, para 72, she submitted that, where the circumstances warrant it, article 8 protects a relationship that could potentially develop between parent and child. Exclusive concentration on the rights of the appellant was inappropriate. His children's article 8 rights required to be recognised and independently investigated. Too often, Ms Higgins suggested, children were invisible as rights-holders.

34. Dealing with the circumstance that there had not been recent contact between the appellant and his children, Ms Higgins drew attention to Strasbourg jurisprudence to the effect that divorce and separation do not bring family life between the child and the absent parent to an end, even if the divorce leads to a significant period of loss of contact: *Berrehab v Netherlands* (1988) 11 EHRR 322. Where a parent's contact has been denied or severely curtailed by the actions of the other, that other parent cannot rely upon reasons related to the effluxion of time to deny the parent's ongoing article 8 rights: *Ferrari v Romania* [2015] 2 FLR 303, para 53. Effective respect for family life required that future family relations between parent and child are not determined by the passage of time alone: *Sylvester v Austria* (2003) 37 EHRR 17, para 69.

35. In the domestic judicial sphere, courts, Ms Higgins argued, have been taking an increasingly firm line with parties responsible for parental alienation. There were two reasons for this. First, the growing awareness of the fundamental importance of a child having contact with both his or her parents. The second reason was that firmer case management was required lest the family care system itself should contribute to the failure to develop a relationship with both parents, thereby violating the child's article 8 rights: *In re A (A Child) (intractable contact dispute)* [2013] 3 FCR 257 and *In re H-B (Children) (Contact: Prohibition on Further Applications)* [2015] 2 FCR 581.

36. All of this contributed to the requirement to focus closely on the needs of the children, Ms Higgins said. These should not be assimilated with those of the parent seeking to advance his or her article 8 rights. Children, especially those who had dual or multi-ethnic parentage, were entitled to have that ethnicity considered in any evaluation of the scope of their article 8 rights. In *General Comment no 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (article 3 para 1)* the United Nations Committee on the Rights of the Children (CRC) emphasises that "the concept of the child's best interests is aimed at ensuring both the full and effective enjoyment of the rights recognised in the Convention and the holistic development of the child" - para 4; that the full application of the child's best interests required the development of a rights-based approach - para 5; and that whenever a decision was to be made that would affect a specific child, the decision-making process must include an evaluation of the possible impact on the child concerned - para 6. Paragraph 32 imposed an obligation on the legislator, the judge and the social or educational authority to make specific inquiry as to what the particular circumstances of an individual child demanded.

37. Ms Higgins also drew attention to para 36 of CRC which explained how the best interests of the child were to be treated as a primary consideration. It provides that the words "the best interests of a child *shall be*" a primary consideration place a strong legal obligation on states. These words meant that states could not exercise discretion as to whether the best interests of the child were to be given a primary consideration. This was a positive requirement and it should be recognised, therefore, that the child's best interests could not be measured "on the same level as all other considerations" - para 37. They had to be "assessed and ascribed the proper weight as a primary consideration in any consideration in any action undertaken".

38. The effect of all this, Ms Higgins said, was that there was a duty to investigate thoroughly the impact on the appellant's children that would be occasioned by his deportation. The loss of a possible future relationship with their father with the consequence that this might have on their sense of cultural identity was not to be lightly dismissed. It required to be scrupulously assessed by obtaining social welfare reports. This was particularly necessary since the mother of the appellant's son, on learning of his impending deportation, had intimated a change of heart about facilitating contact with him.

39. Counsel contended that a sufficient article 8 inquiry had not been conducted. Article 8 issues had been viewed through the prism of the Immigration Rules which purported to be (but were plainly not) comprehensive of all the issues that arose on the question of the right to respect for family and private life. It was contended that the reality was that the best interests of the child, insofar as they were considered at all under the rules, were taken into account under the "very compelling circumstances" rubric in those rules - see references to this *passim* my judgment in the associated case of *Ali*. To provide properly for the appropriate consideration of

the best interests of the children, the rules would have required express provision that these interests be taken into account as a separate, stand-alone factor. The template letter sent to the appellant's solicitors demonstrated, Ms Higgins argued, that this had not taken place.

Discussion

40. Where a decision is taken about the deportation of a foreign criminal who has children residing in this country, separate consideration of their best interests is obviously required, especially if they do not converge with those of the parent to be deported. And I consider that Ms Higgins is right in her submission that in the case of a child with a dual ethnic background, that factor requires to be closely examined. She is also right in submitting that the child's interests must rank as a primary consideration - see, in particular, *ZH (Tanzania) v Secretary of State for the Home Department* [2011] 2 AC 166.

41. The question 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.* But that is not an issue which requires to be revisited here because what is at stake is 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.

42. 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 that they had led lives which were wholly untouched by the circumstance that he was their father. While, of course, the possibility of such a relationship developing was a factor to be considered, in this instance, the material available to the Secretary of State could admit of no conclusion other than that 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 and was not, in any event, provided to the Secretary of State before the decision was taken.

43. The question of the risk of the appellant's re-offending was, of course, one of the factors to be considered but his criminal behaviour after the offences in 2005 did not augur well in that assessment. True it is that these were associated with disputes about contact with his children but, at the least, they spoke to his propensity to indulge in offending behaviour if he failed to get his way.

44. I cannot accept, therefore, that the Secretary of State was obliged to make yet further inquiries in relation to the appellant and his children beyond those which had

already taken place. As the Court of Appeal observed, "these children did not require the disruption of further investigation in circumstances where a court with appropriate jurisdiction had made important decisions in relation to their welfare".

Conclusion

45. The appeal must be dismissed.

LADY HALE:

46. I agree entirely that this appeal must be dismissed for the reasons given by Lord Kerr. I add a few words only because the focus of the argument on behalf of the appellant was that the Secretary of State should have undertaken her own independent enquiries into the best interests of his two children before deciding to deport him. Ms Higgins is of course right to say that where children will be affected by a deportation or removal decision, their best interests must be treated as a primary consideration, and considered separately from those of the adults involved and from the public interest.

47. This duty stems from two sources in domestic law. First, section 55 of the Borders, Citizenship and Immigration Act 2009 requires the Secretary of State to make arrangements for ensuring that her own functions in relation to immigration, asylum and nationality, and those of her immigration officers, are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom. The aim was to reflect in United Kingdom law the effect of article 3.1 of the United Nations Convention on the Rights of the Child, which requires that "in all actions concerning children", including those by administrative bodies, "the best interests of the child shall be a primary consideration". But even without section 55, there is a second source of the obligation, in section 6(1) of the Human Rights Act 1998, which requires public authorities to act compatibly with the rights contained in the European Convention on Human Rights, including the right to respect for family life contained in article 8; this has been interpreted by the European Court of Human Rights to include the duty in article 3(1) of the United Nations Convention: see *Neulinger v Switzerland* (2010) 54 EHRR 1087 and *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4; [2011] 2 AC 166. So it is quite correct to say that children must be recognised as rights-holders in their own right and not just as adjuncts to other people's rights. But that does not mean that their rights are inevitably a passport to another person's rights.

48. 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 was nearly 15 when the deportation order was made (and is now nearly 19). Her parents separated before she was two years old. Her contact with him ended when she was five. Legal proceedings when she was ten ended in an order for indirect contact only and a further order (which is not often made) that her father should not be able to make further applications about her upbringing without the permission of the court. It can be assumed, therefore, that there are good reasons for not requiring the mother to allow direct contact between father and daughter.

49. 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. After all, a family court deciding the future of a child has to make the welfare of the child, not only "a primary" consideration, but its "paramount" consideration. Family courts are supposed to know about the best interests of children and they have appropriate investigative resources to make their own independent enquiries should they need to do so. 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 completely unrealistic, it is also contrary to our understanding that the uncertainty and anxiety generated by repeated investigations and disputes about their future is usually bad for children. Of course it is good for children, especially children of mixed ethnicity, to have a relationship with both their parents. But is also good for them to have peace and stability. If Sarah-Jayne wishes to establish a closer relationship with her father, she will be able to do this for herself, and it will make little difference to their indirect contact whether he is in the United Kingdom or in Tunisia. Tunisia has long been a popular holiday destination for people from this country and hopefully will become so again.

50. The appellant's son was aged six when the deportation order was made and is now ten. The relationship between his parents broke down shortly after his birth. The appellant claims to have had regular contact with his son until 2010, when the child was four, but it stopped because his mother wanted it to take place in their home. We do not know whether this had anything to do with his offending behaviour around that time. The appellant claims that he was unable to leave his own home because of depression. We do not know whether this was of a nature or degree to excuse or explain his failure to visit thereafter. He claimed that he had brought proceedings to try and obtain contact with his son, but in 2013 the First-tier Tribunal found that he had not produced credible evidence of contact proceedings relating to either child or that he had any input into their lives, and in the Upper Tribunal it was conceded that there were no current contact proceedings. Nothing has been produced to suggest that the appellant has been making a meaningful contribution to his son's life. His son also requires peace and stability. He too can establish a relationship with his father in future should he wish to do so.

51. In my view, the Secretary of State's officials deserve credit for the patience and perseverance with which they conducted their inquiries into the appellant's

family circumstances, to which the response was neither as speedy or as helpful as it might have been. There was nothing which should have prompted them to make further enquiries as to the best interests of the children. 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. This is emphatically not one of them.