Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/00935/2016

THE IMMIGRATION ACTS

Heard at City Centre Tower Birmingham	**Decision & Reasons Promulgated**
On 26th April 2017	**On 24th May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

F G
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs R Head of Lawrence Lupin Solicitors
For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of Kosovo born on [ ] 1980. He has a considerable immigration history. Suffice it to say that he first entered the UK illegally on 28th September 1999 and applied for asylum. That application was unsuccessful but the Appellant remained in the UK without

leave. He married a British citizen in September 2002, and they had a son, also a British citizen, born in May 2003. In August 2003 the Appellant applied for leave to remain as a spouse. That application was unsuccessful, but the Appellant was granted discretionary leave to remain until 11th October 2009. The Appellant next applied for leave to remain on the basis of his length of residence in October 2009. That application was also unsuccessful, but again the Appellant was granted discretionary leave to remain until 25th February 2013. The Appellant overstayed that leave, but the Appellant made a valid application for leave to remain on human rights grounds on 4th April 2014. That application was refused for the reasons given in the Respondent's letter of 3rd February 2016. The Appellant appealed and his appeal was ultimately heard by Judge of the First-tier Tribunal Hall (the Judge) sitting at Birmingham on 1st September 2016. He decided to dismiss the appeal for the reasons given in his Decision dated 6th September 2016. The Appellant sought leave to appeal that decision, and on 15th February 2017 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.

3. On 1st September 2016 the Judge heard the appeal in the absence of the Appellant or anyone on his behalf. The Judge decided the appeal on the evidence before him then having heard a submission from the Respondent's representative. The Judge decided that the Appellant did not qualify for further leave to remain under the provisions of Appendix FM of HC 395. The Judge found that paragraphs S-LTR.1.5 and .1.6 and .1.7 applied. This was because between May 2010 and January 2014 no less than twelve convictions were recorded against the Appellant for numerous offences; and the Appellant had failed without reasonable excuse to supply medical reports relating to his health. The Judge also found the provisions of paragraph E-LTRPT.2.4 not satisfied on the basis that the Appellant had not been in contact with his son since May 2014. Finally the Judge considered the Appellant's Article 8 ECHR rights outside the Immigration Rules and found that although the Appellant did not have a family life in the UK, he did have a private life which would be interfered with by the Respondent's decision, but that such interference was proportionate.

4. At the hearing before me, Mrs Head argued that the Judge had erred in law in proceeding to hear the appeal in the absence of the Appellant. The Judge was aware that the Appellant himself had not been notified of the date of the hearing, and the Judge had relied upon the earlier interlocutory decision of Judge of the First-tier Tribunal Chohan. The fact of the matter was that the Appellant had notified the Respondent of a change of address, and had continued to sign on as required. The Judge had not considered the interests of justice as he had not caused enquiries to be made as to the Appellant's whereabouts.

5. Mrs Head went on to submit that as regards the Judge's substantive decision, he had erred in law by not following the decision in **Devaseelan**. There was before the Judge previous Tribunal Determinations favourable to the Appellant. The Judge should have taken those findings as his starting point.

6. Finally, Mrs Head submitted that the Judge had erred in law in his consideration of proportionality by failing to take into account the Respondent's delays in dealing with the various applications of the Appellant.

7. In response, Mr Mills argued that there were no such errors of law. The Judge was not informed of any change of address of the Appellant, and there was no satisfactory explanation before the Judge for the Appellant's absence. The Tribunal was informed that the Appellant's representatives had been unable to contact the Appellant since January 2016. The Judge had no alternative but to hear the appeal in the absence of the Appellant.

8. Mr Mills went on to argue that there was no merit in the **Devaseelan** point. The Tribunal Determination of 2010 contained no findings as to fact, and at the time of the 2005 Determination, the Appellant had been living with his wife and child. That situation was overtaken by subsequent events.

9. Finally, Mr Mills submitted that the factor of delay would have made no difference to the decision as to proportionality of the Judge as the delay had been entirely the fault of the Appellant.

10. I find no error of law in the decision of the Judge which I therefore do not set aside. The Judge was correct to hear the appeal in the absence of the Appellant. The only information before the Judge was that nobody had been able to make contact with the Appellant for the previous nine months. The Judge made his decision in accordance with the provisions of Rule 28 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, and the overriding objective given in Rule 2 thereof. The Judge was satisfied that reasonable steps had been taken to notify the Appellant of the hearing, and that it was in the interests of justice to proceed, bearing in mind the duty to avoid delay as given in Rule 2(2)(e) of the Rules.

11. I agree with Mr Mills that the **Devaseelan** point has no merit. It is true that the Judge did not refer to the previous Tribunal findings, but the last such relevant findings had been made in 2005, and by the time of the hearing before the Judge the Appellant's circumstances had fundamentally changed.

12. Finally, the Judge demonstrated that he had carried out the balancing exercise necessary for any assessment of proportionality and it is apparent from what he wrote in paragraphs 53 to 65 inclusive of the

Decision that any issue of delay, particularly one due to the Appellant's own behaviour, was irrelevant.

13. For these reasons, I find no error of law in the decision of the Judge.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside that decision.

The appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal made an order for anonymity which I continue for the reasons given by the First-tier Tribunal.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their 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.

Signed Date 24th May 2017

Deputy Upper Tribunal Judge Renton