



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: HU/03766/2017
HU/03768/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 17th October 2018**

**Decision & Reasons
Promulgated
On 8th November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

**MRS MA (FIRST APPELLANT)
MS DA (SECOND APPELLANT)
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Slatter, Counsel instructed by Gulbenkian Andonian Solicitors

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. The First-tier Tribunal directed that there should be anonymity. This direction continues.
2. The appellants are citizens of Albania. This appeal arises from the decision of the respondent on 17 February 2017 to refuse their application for leave to remain in the UK. The appellants appealed to the First-tier

Tribunal where their appeal was heard by Judge of the First-tier Tribunal Povey. In a decision promulgated on 21 May 2018 Judge Povey dismissed their appeals. The appellants are now appealing against that decision.

3. The first appellant was born in March 1989. She is the mother of the second appellant who was born in November 2011. The appellants entered the UK illegally on 5 December 2014.
4. The second appellant has a number of health problems, most significantly a diagnosis of alacrimia in respect of which she undergoes close monitoring and has had surgical interventions. It is noted in the decision of the First-tier Tribunal that those treating the second appellant have concerns about the standard of care she would be likely to receive for her conditions in Albania.
5. The judge considered the appeals under both Article 3 ECHR and Article 8 ECHR. In respect of Article 3 ECHR the judge found that the very high threshold in such cases was not satisfied. In respect of Article 8 ECHR the judge found that Article 8 was not engaged and as a consequence the second applicant's best interests and medical condition did not fall to be considered.
6. At the error of law hearing Mr Jarvis accepted that the judge had materially erred in the approach taken to Article 8(1) ECHR by imposing too high a hurdle and that he ought to have considered Article 8(2). He emphasised that the Secretary of State's view was that the high threshold for Article 8(2) in medical cases was extremely unlikely to be met but acknowledged that he could not say that this outcome would be inevitable. He agreed that the decision should be considered afresh given the absence of any Article 8 balancing exercise by the judge.
7. Both Mr Jarvis and Mr Slatter submitted that the appeal should be remitted to the First-tier Tribunal.
8. I agree with Mr Jarvis, for the reasons he gave, that the decision contains an error of law. I also agree that the appeal should be remitted to the First-tier Tribunal given that a full assessment under Article 8, taking into account the best interests of the second appellant, is required.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and is set aside.

The appeal is remitted to the First-tier Tribunal to be heard afresh by a judge other than Judge Povey.

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

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed



Deputy Upper Tribunal Judge Sheridan Dated: 31 October 2018