



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/24635/2016

THE IMMIGRATION ACTS

Heard at Field House
On 23 August 2018

Decision & Reasons Promulgated
On 03 September 2018

Before

Deputy Upper Tribunal Judge MANUELL

Between

Mr LUFTI TOBLI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr G Lee, Counsel (instructed by AT Legal Solicitors)

For the Respondent: Mr C Avery, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by Upper Tribunal Judge Plimmer on 12 June 2018 against the determination of First-tier Tribunal Judge Mill dismissing the appeal of the Appellant who had sought leave to remain in the United Kingdom on Article 8 ECHR grounds. The decision and reasons was promulgated on 28 February 2018.

2. The Appellant is a national of Albania, born there on 30 April 1995. The Appellant had, however, claimed asylum in the United Kingdom on 11 June 2001 using a false identity as a Kosovan. His history is set out in detail at [10], [11] and [12] of Judge Mill's determination and need not be repeated here. Eventually, on 9 December 2014, the Appellant through his solicitors disclosed his true identity. The Appellant had been granted discretionary leave up to that point. Judge Mill found that the Appellant was responsible for the deceit, taking into account that he was, to begin with, a minor. The judge noted the Appellant's various criminal convictions in the United Kingdom. He found him an unreliable witness. He found that the Appellant (who had married an Albanian woman) could return to Albania and reintegrate there without facing very significant obstacles. There were no exceptional circumstances. The proportionality balance for Article 8 ECHR purposes was against the Appellant. The appeal was accordingly dismissed.
3. Permission to appeal was refused in the First-tier Tribunal but was granted by Upper Tribunal Judge Plimmer because she considered it arguable that the judge had erred by failing to take into account the length of time which had accrued since the Appellant's deception, which was relevant to the strength of the public interest, when assessed against Home Office policy.

Submissions

4. Mr Lee for the Appellant relied on the Upper Tribunal grounds of onwards appeal and the Upper Tribunal's grant of permission. In summary counsel contended that the judge should have had regard to the Home Office policy on Revocation of Indefinite Leave (19 October 2015) which indicated at [4.1] the importance of the passage of time. This was especially relevant in the present appeal because the Secretary of State for the Home Department had taken from 20 March 2005 to 10 December 2013 to make a decision, i.e., 8 years, 9 months. This amounted to a fundamental error in the judge's approach because the Home Office policy favoured the Appellant.
5. Mr Avery for the Respondent submitted that there was plainly no material error of law. The Home Office policy was about persons who had been granted ILR, not persons who had only received discretionary leave to remain as in the case of the Appellant. Those with ILR had an expectation of settlement, which was different from those who had only limited, discretionary leave. There was no parallel which the judge should have taken into account. The judge found that the Appellant had perpetrated a deception for a lengthy period, and had abused the asylum process. He had moreover a history of offending. The case was hopeless, as had been shown in a comprehensive and well reasoned determination.
6. In reply, Mr Lee accepted that the policy was for persons with ILR but the point behind the policy concerning the public interest remained. Five years was seen

as a general marker and that had not been taken into account. The decision and reasons should be set aside, remade and the appeal allowed.

No material error of law finding

7. In the tribunal's view the grant of permission to appeal was not based on a full reading of the determination and failed to reflect the complete absence of merit in much of the claim, as seen in the Appellant's history of criminal offending on top of his deception. The tribunal agrees with Mr Avery's submissions.
8. Judge Mill's decision and reasons was full and careful, setting out the procedural history, the evidence and submissions in detail. The Appellant was found to be an unreliable witness on many contested issues. There was abundant evidence to show the Appellant's continuing close connections with Albania.
9. The submission about the Home Office's policy had little to commend it. The policy is clearly directed towards a specific category of person, those with settled status. The Appellant has never been in that category. There was in the tribunal's view no valid parallel to consider and no error by the judge.
10. That is not to suggest that delay was or is not relevant, and the judge made no such observation. It was an important matter. Indeed, the judge emphasised the time scales repeatedly. He specifically addressed delay and its impact on the Appellant at [32] of the determination. The decision making process prior to the Appellant's confession in 2014 was in any event in effect a nullity because the Secretary of State for the Home Department was under mistaken impression that the Appellant was from Kosovo, not a person with links to Albania. The key issue under paragraph 276ADE(1)(vi) of the Immigration Rules was, as the judge identified, the Appellant's continued connections with Albania, which were unusually strong: see [27] and [29] of the determination. This was not a situation where the passage of time had eroded links: on the contrary they were very much current and alive. These were all highly relevant factors for the judge's Article 8 ECHR evaluation for the proportionality assessment, correctly approached through the lens of the Immigration Rules. The judge's proportionality assessment is meticulous and unimpeachable.
11. The tribunal concludes that Mr Lee's submissions, like the onwards grounds, amounted in the end to no more than an expression of dissent from the judge's decision. The tribunal finds that there was no material error of law in the decision challenged.

DECISION

The appeal is dismissed

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged.

Signed

Dated 23 August 2018

Deputy Upper Tribunal Judge Manuell