Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/07670/2017

THE IMMIGRATION ACTS

Heard at Field House
On 28th March 2019

Decision & Reasons Promulgated
On 1st April 2019

**Before**

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

**Between**

MR MARIO RISTIC
(ANONYMITY DIRECTION NOT MADE)

**Appellant**

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

**Respondent**

Representation:
For the appellant: J M Wilson, Solicitors (not present)
For the respondent: Mr Melvin, Senior Presenting Officer

## DECISION AND REASONS

Introduction

1. The appellant is a national of Serbia, born on 15 May 1994. He arrived in the United Kingdom at the age of 7. His mother and siblings were also here and his mother claimed protection. Ultimately she and the

appellant's siblings were granted leave but he was not because of pending criminal charges.

2. On 8 February 2013 the appellant applied for leave to remain on the basis of his article 8 rights. This was refused by the respondent on 3 July 2017. It was considered under the immigration rules in relation to private life, paragraph 276 ADE, as well as outside the rules. In particular, the respondent referred to paragraph 276 ADE(1)(iv) which relates to someone aged between 18 and 25 as the appellant was and had spent half their life living continuously here.

3. The respondent refused his claim on the basis of the suitability requirements because of his various criminal convictions. Regard was also had to paragraph 276 ADE 1 (iv). The respondent did not see significant obstacles to his integration into his home country. He was able to speak English and Serbian and it was felt he could adapt to life there. He would have retained some knowledge of the life language and culture.

The First tier Tribunal

4. His appeal was heard by First-tier Tribunal Judge E Young-Harry at Birmingham on 31 January 2018. In a decision promulgated on 8 March 2018 it was dismissed.

5. The appellant and the respondent were represented. The appellant gave evidence as did his mother. The judge records that the application was considered under appendix FM initially. The judge correctly notes that the appeal is now restricted to freestanding article 8 grounds. In this regard the judge considered whether family life existed between his mother and adult siblings. The appellant had claimed he was dependent upon his mother. The judge rejected this and did not find emotional ties established over and above the norm.

6. The judge did accept the appellant had an established private life. At paragraph 15 the judge correctly considered matters through the prism of the immigration rules and concluded the appellant failed on suitability grounds due to his persistent offending.

7. The judge then considered other factors in the proportionality exercise. The judge had regard to the length of time the appellant had been in the United Kingdom and accepted he had been here since the age of 7. The judge also noted he did volunteer working in the last 6 months and participated in a Thinking Skills programme. The judge referred to the probation report suggesting there was little risk of reoffending. Against this, the appellant had not disclosed all of his convictions in the application. The judge also had regard to his claim relationship with his nephews and nieces and section 55 of the Borders, Citizenship and Immigration Act 2009. The judge concluded those relationship could be

maintained by alternative means to direct contact. The judge considered the delay on the part of the respondent in deciding on his original application.

8. The judge accepted he had not lived in Serbia since childhood and that the country would be unfamiliar to him. The judge thought it likely family members could assist.

9. The judge had regard to the factors in section 117B, noting that the appellant's private life was established when he had no leave but limited the weight attached to this in the circumstance. The judge referred to the fact he speaks English and had not been a drain on the public purse. Against this, his history of criminality was not in the public interest.

The Upper Tribunal

10. Permission to appeal to the Upper Tribunal was sought of number grounds. It was suggested the judge failed to take into account the fact all but one of the convictions occurred when he was a minor. The judge's comment about not him declaring all his convictions was questioned given that the form said the records would be verified by the respondent. Other arguments were advanced, with the final being there was no evidence to justify a finding of family members in Serbia who could assist.

11. Permission was granted in relation to the finding there were family members in Serbia who can assist or that his family here could support him.

12. Before the hearing I received a letter from the appellant's representatives indicating he was now the father of a British child born last month. The child's birth certificate is provided and the appellant occupation is as a car salesman. It was suggested that the respondent might wish to withdraw the decision in light of this. The writer also indicated that they had been unable to contact the appellant. No application for an adjournment was made

13. Notification of today's hearing was sent to the appellant and his representatives on 27 February 2019. Neither have appeared.

14. Mr Melvin indicated that the respondent was opposing the appeal. He relied upon his rule 24 response. If the appellant's circumstances have changed it was open to him to make a new application. He contended that there was no material error of law in the decision. He believes the reference to family members in Serbia being able to support the appellant was taken from the refusal letter.in any event, he suggested this issue was not material to the outcome of the appeal.

15. I am satisfied that the appellant and his representatives were properly notified of today's hearing and that the matter could proceed. I am in agreement with the points made by the presenting officer.

16. In the 2013 application the appellant indicated he received £100 per month from relatives. He said he was not working nor was he receiving public funds. He indicated there were no housing costs but he lived without charge with his family.

17. 6.2 of the application form requires him to identify each criminal conviction starting with the most recent. He only indicated one offence back in 2011and at 6.13 of the form refers to 2 arrests. The application points out that if an applicant fails to answer the questions early and accurately application may be refused and false information could result in prosecution. Whilst the form indicates the respondent carries out checks this does not absolve an applicant from failing to declare.

18. The refusal letter states that the appellant has provided no evidence that his family and friends in Serbia would not be able to assist him on return. This would appear to be a general assumption that he has friends and family there. I cannot see any other reference in the papers.

19. The appellant's statement refers to his brother Didi who had been granted discretionary leave. He indicated brother is married and has children and has moved out of the family home. He claims not to know their whereabouts. He refers to his mother giving him between £10 and £20 per week. He states he has no family in Serbia.

20. I have checked the file and cannot see any reference to family in Serbia in either the correspondence or the appellant's bundle or in the record of proceedings. It would appear that the judge took this from the refusal letter which appears to have been based upon an assumption.

21. I have considered the decision in the round. The judge has evaluated the points for and against the appellant. The decision indicates the judge appreciates the appeal is limited to free standing human rights consideration although article 8 is first considered through the prism of the immigration rules. The principal difficulty the appellant faced was his suitability as reflected in his numerous convictions. The reference to family support in Serbia was only one of a number of factors referred to. It would appear to be a general comment and I do not find it fundamental to the decision outcome. Regard was had to the factors in section 117 B again with pluses and minus factors noted. I find this is a structured and well-balanced decision. It is my conclusion therefore that no material error of law has been established.

Decision.

No material error of law has been demonstrated in the decision of First-tier Tribunal Judge E Young-Harry. Consequently, that decision, dismissing the appeal shall stand.

Deputy Upper Tribunal Judge Farrelly.