IAC-AH-SAR-V1

**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/18412/2019 (P)

**THE IMMIGRATION ACTS**

| **Decided under Rule 34** | **Decision & Reasons Promulgated** |
|---|---|
| **On 7 September 2020** | **On 10 September 2020** |

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**EP**
**(ANONYMITY DIRECTION MADE)**

Respondent

**DECISION AND REASONS**

1. I shall refer to the appellant as the 'respondent' and to the respondent as the 'appellant', as they respectively appeared before the First-tier Tribunal. The appellant is a male citizen of Albania who was born in 2002. He claims to have arrived in the United Kingdom in August 2015 when he was 13 years old. His asylum claim, made in 2015, was refused and certified as clearly unfounded. The appellant applied to the Secretary of State for leave to remain on human rights grounds but his application was refused by a decision dated 4 November 2019. The appellant appealed to the First-tier Tribunal which, in a decision promulgated on 28 February 2020, allowed the appeal on human rights grounds (Article 8 ECHR). The Secretary of State now appeals, with permission, to the Upper Tribunal.

2. Upper Tribunal Judge Kamara issued directions which were served on 2 July 2020 indicating that the Upper Tribunal was of the provisional view

that the matter of error of law may fairly be determined without a hearing. The Secretary of State has responded to those directions but the appellant's solicitors have not. I have considered the file very carefully. I am well aware that I should hesitate before proceeding to determine the question of error of law without a hearing and without having received any response from the appellant/the appellant solicitors. I am, however, satisfied that the appellant and his solicitors have received the directions which were issued; there is nothing on the tribunal file to indicate that the directions have not been received by all their intended recipients. Moreover, I consider that the decision of the First-tier Tribunal in this particular case is so deeply flawed by legal error that it cannot stand. For that reason, I find that the overriding objective is best served by my setting aside the decision of the First-tier Tribunal. The only fair course of action having set aside that decision is for me to return this appeal to the First-tier Tribunal for the tribunal to remake the decision.

3. The grounds for appeal complain that the judge completely failed to consider the reasons why the appellant failed to meet the requirements of HC 395 (as amended) (in particular, paragraph 276ADE) that failure being the basis of the respondent's refusal of the application. The judge records the bare particulars of the refusal at [2-5] but makes no further detailed reference to Appendix FM at all. Whilst the appeal was brought on human rights grounds, it was not possible for the judge to identify those features of the case which might justify a grant of leave under Article 8 without a undertaking a proper discussion of the reasons why the appellant could not meet the requirements of Appendix FM. The judge's omission plainly amounted to an error of law.

4. The judge made further errors as described in the grounds of appeal. She did not consider whether the appellant is financially independent and appears to have attached significant weight to family life established whilst the appellant had no legal status in the United Kingdom. I agree with the Secretary of State that the weight attached by the judge to the appellant's private life is simply not justified by the facts of the appeal. Most egregiously, the judge has applied section 117B(6) of the 2002 Act (as amended) in a manner which makes no sense whatever. At [23], the judge wrote: '… the public interest does not require the removal of the appellant given the extend *(sic)* of family and private life that he has developed over the course of the last four years in the absence of a support network on return to Albania… as reflected by Section 117B(6) of the 2002 Act.' Section 117B(6) has no application in the present appeal given that the appellant (perhaps unsurprisingly given his youth) has not claimed to enjoy a genuine and subsisting parental relationship with a qualifying child. This part of the analysis appears to have weighed heavily in the outcome of the appeal and, if no other reason, the decision must be set aside on account of the judge's misapplication of the law.

**Notice of Decision**

The decision of the First-tier Tribunal promulgated on 28 February 2020 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for that tribunal to remake the decision at or following a hearing de novo.

Signed Date 7 September 2020
Upper Tribunal Judge Lane

**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.