IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005637
(HU/56659/2021)
IA/15623/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 19 May 2023

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Alfred Kurti
(no anonymity order made)

Appellant

and

Entry Clearance Officer

Respondent

Representation:

For the Appellant: Mr Gillard, Metro Immigration Specialists
For the Respondent: Ms Young, Senior Home Office Presenting Officer

Heard at Phoenix House (Bradford) on 26 April 2023

DECISION AND REASONS

1. The Appellant is a national of Albania born in 1996. He appeals with permission against the decision of the First-tier Tribunal (Judge Hillis) to dismiss his appeal against a refusal of entry clearance.

2. It is not in dispute that the Appellant is married to a British national, Ms Yasmin Boyle. Nor is it in dispute that he seeks entry to the United Kingdom in order to settle here with her. The reason that his application for entry clearance has been refused, however, is because of his poor immigration history. In particular the Respondent relies on a series of events that took place between 2015 and 2021. The Appellant first attempted to enter the United Kingdom illegally on the 30th December 2015 by trying to board a coach in Calais relying on documents showing that he had claimed asylum in Germany. When that attempt failed he took advantage of the chaos caused by a security alert to board the coach and gain entry to the UK knowing that he did not have permission to do so; once here he pretended to be Syrian. Having been removed back to Albania at public expense he again attempted to enter the UK illegally on the 2nd February 2017.

He was detained and removed. Undeterred, he came back again, this time remaining illegally until May 2021 when he returned to Albania of his own volition in order to make the application for entry clearance with which this appeal is concerned.

3. The Respondent, having had regard to that history, decided to refuse the application with reference to part 9.8.2 of the Immigration Rules:

> 9.8.2. An application for entry clearance or permission to enter may be refused where:
>
> (a) the applicant has previously breached immigration laws; *and*
>
> (b) the application was made outside the relevant time period in paragraph 9.8.7; *and*
>
> (c) the applicant has previously contrived in a significant way to frustrate the intention of the rules, or there are other aggravating circumstances (in addition to the immigration breach), such as a failure to cooperate with the redocumentation process, such as using a false identity, or a failure to comply with enforcement processes, such as failing to report, or absconding.

4. On appeal the Appellant admitted much of the history relied upon by the Respondent, but pleaded that he was young at the time (only 19 at the time of the first offence) and he regretted his behaviour. Now he was older, more mature and married. There were various reasons why his wife did not wish to relocate to Albania, and she should not be made to suffer for his bad behaviour in the past.

5. There was therefore no dispute that sub-paragraphs (a) and (b) of the rule were engaged. The Appellant admitted that he had previously breached immigration laws within the relevant time frame. The question was whether the test at (c) was met: had he contrived in a significant way to frustrate the intentions of the rules. Having rejected a number of factual assertions made by the Respondent on the grounds that they were neither admitted nor supported by any evidence, Judge Hillis concluded as follows:

> 46. In my judgment, the facts accepted by the Appellant in his account, namely, that on 30th December, 2015 he, having produced German IILR documents, having taken advantage of the confusion at Calais and boarded the bus again enabling him to enter the UK illegally is an occasion where the Appellant "contrived in a significant way to frustrate the intention of the rules" notwithstanding that it has not been shown he was not a party to any plan to disrupt the procedures at Calais.
>
> 47. The accepted fact that "On your arrival in the UK you were intercepted by UK Border Force officers arriving on a Eurolines coach from Calais. During an interview you gave a false name of Yusuf Mohammed and stated you were from Syria, subsequently you were detained as an Illegal Entrant entering the UK without leave" is a further example to the Appellant's immigration history engaging the terms of Part 9.8.2. (c) of the Rules.

> 48. The fact that he accepts that prior to leaving the UK voluntarily in May 2021 he was removed from the UK on the previous occasions at public expense also engages the terms of part 9.8.2.(c) of the Rules.

6. The grounds assert that in so finding Judge Hillis erred in three material respects, and I deal with each of these below. Judge Hillis also went on to conduct a proportionality balancing exercise, which is the subject of the Appellant's ground 4.

Ground 1: Conflating 9.8.2(a) and (c)

7. The Appellant asserts that what Judge Hillis has done at his paragraph 46, set out above, is conflate the simple act of entering the UK illegally, an action falling under sub-paragraph (a), with the more serious charge of deliberately contriving to frustrate the intention of the rules, a necessary precondition for refusal on this ground under sub-paragraph (c). It is submitted that the findings about the events on the 30th December 2015 are limited to recording the Appellant's illegal entry on that date.

8. Were paragraph 46 of the Tribunal's reasoning to be read in isolation, Mr Gillard might have a point. The Judge did not bite on the Respondent's suggested line that the Appellant and his travelling companion deliberately caused chaos at Calais that day by leaving some bags unattended in the departures hall. On one reading, all the Appellant did was get on the bus and enter the UK: an action falling squarely into sub-paragraph (a) of 9.8.2. However it is not appropriate or fair that paragraph 46 be read in isolation: the decision must be read as a whole. What the Tribunal found proven was that having been prevented from boarding the bus by border force staff, the Appellant took advantage of the aforementioned chaos to get on the it anyway, knowing that he had no permission to do so. Once in the UK, as the Judge's paragraph 47 goes on to explain, he pretended that he was a Syrian in need of international protection. By any measure these were actions that went beyond simple illegal entry. In the space of some 24 hours the Appellant deliberately evaded the controls that were in place on the French border and then lied about his identity. Judge Hillis was, on those facts, perfectly entitled to find the test at sub-paragraph (c) was met.

Ground 2: Failure to have regard to material evidence

9. This ground is concerned with what happened at Dover in the hours following the Appellant's arrival there in December 2015. As I note above, the Judge recorded and relied upon the uncontested evidence that the Appellant told officers that he was Syrian. What the Judge does not record in the decision is what Mr Gillard describes as the mitigating evidence that the Appellant very quickly withdrew his assertion to that effect, and produced his own, genuine identity documents. It is submitted that this went to intentions, and to the seriousness of any breach.

10. I accept that this part of the story does not feature in the Tribunal's conclusions. I am unable however to accept that this was a material omission. That is because the only evidence about what transpired that day does not support Mr Gillard's contention that the Appellant quickly, and willingly, volunteered the fact that he was not actually Syrian. What the GCID records show is that the Appellant was in possession of at least one German document, and that a Eurodoc match had

been returned showing that he was an Albanian who had claimed asylum there. The note of his interview records: "he initially claimed to be Syrian but eventually admitted that he was Albanian". That does not read to me like it was a voluntary admission. The import of that document is that faced with mounting evidence of his true identity and recent history the Appellant was forced to admit his deception. I also note that he told the same officer that if removed to Germany "he will keep returning to the UK". The use of a false identity, and the advancing of a demonstrably false claim for protection, is in my view plainly conduct which is capable of engaging sub-paragraph (c).

Ground 3: Misdirection/Perversity

11. The Appellant submits that the Tribunal erred in directing itself that being removed from the UK at public expense could logically be a matter probative of the Appellant having contrived in a significant way to frustrate the intentions of the rules. I would agree, but for the foregoing reasons, this is of little assistance to the Appellant, since I have found that the Tribunal was entitled to reach the conclusion that it did, for the reasons that it gives.

Ground 4: Proportionality

12. There are two limbs to this ground. The first is made out. The Judge weighed in the balance against the Appellant the fact that he does not speak English. This was an error of fact, since he had produced the relevant English language certificate and that had been accepted by the Respondent in her refusal letter. Ms Young further accepted that no issue had been taken with whether the Appellant could meet the financial requirements.

13. The second was that insufficient attention or weight was given to the medical issues faced by the Sponsor. The Sponsor has a documented history of depression. She does not, contrary to the suggestion of Mr Gillard at hearing, have a diagnosis of anything else. A letter before the Tribunal dated the 19th June 2017 said that there was a "working diagnosis" of fibromyalgia, and that she was herself "worried" that she may have bipolar disorder. It is difficult to see what the Tribunal could have made of this relatively old information other than to say what it did: that whilst accepting that the Sponsor does suffer from depression, it had not been shown that the treatment she received for that would not be available in Albania.

14. I am satisfied that the proportionality balancing exercise conducted by the Judge was lawful, notwithstanding the Tribunal's error of fact in respect of the finances and English language ability. The weight to be attached to the public interest in refusing a claim where 9.8.2 was engaged was obviously substantial. In the absence of any significant obstacles to this family life continuing in Albania, there was nothing on the Appellant's side of the scales that could possibly outweigh it. This was a relationship formed when the Appellant was in the UK unlawfully, a matter that his spouse was on her own admission aware of. I add for the sake of completeness that Mr Gillard's submission that the Appellant was young and foolish and should not today be made to suffer for mistakes he made as a 19 year old in 2015 does nothing to improve what is by any standard an appalling immigration history. After that initial entry in 2015 the Appellant attempted illegal entry in 2017, successfully re-entered the country some weeks after that, again illegally, and remained here without leave for some 4 years. I am told by Ms Young that even as these proceedings are ongoing the Appellant

has come back to the UK illegally and made an in-country application for leave to remain with his wife. Against that background it is very surprising that Mr Gillard sought to characterise the events in 2015 as the folly of youth.

Notice of Decision

15. The decision of the First-tier Tribunal is upheld, and the appeal dismissed.

16. There is no order for anonymity.

Upper Tribunal Judge Bruce
26th April 2023