



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
PA/01968/2019

Appeal Number: PA/08294/2019;  
(UI-2022-000806, UI-2022-000807)

**THE IMMIGRATION ACTS**

**Decided under Rule 34 of the  
Tribunal Procedure (Upper  
Tribunal) Rules 2008**  
On 11 November 2022

**Decision & Reasons Promulgated**

**On 9 January 2023**

**Before**

**UPPER TRIBUNAL JUDGE REEDS**

**Between**

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

Appellant

**and**

**MM  
And  
LM**

**(ANONYMITY DIRECTION CONTINUED)**

Respondents

**DETERMINATION AND REASONS (P)**

1. This decision is made without a hearing under Rule 34 of the Tribunal Procedure(Upper Tribunal) Rules 2008. Observing the importance of the proceedings to the parties and being mindful of the overriding objective that requires a Tribunal to deal with cases fairly and justly, I am satisfied that it is just and fair to proceed to consider this matter under Rule 34 as requested by the parties.

2. For the purposes of this decision, I refer to the Secretary of State for the Home Department as the respondent and to MM and LM as the first and second appellants, reflecting their positions before the First-tier Tribunal.
3. The FtTJ made an anonymity direction in respect of MM and LM. There has been no application by either party to discharge that order. I therefore make a direction pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person) without that individual's express consent. Failure to comply with this order could amount to a contempt of court.
4. The appellants are nationals of Albania who have claimed asylum in the UK. The first appellant entered the United Kingdom on 5 October 2013 having been granted a two-year visit visa on 13 May 2013. He claimed asylum on 20 March 2014, and this was refused on 16 August 2019.
5. The second appellant is the first appellant's son who entered the UK on 22 December 2013 having been granted a six-month visit visa on 19 September 2013. He claimed asylum on 20 March 2014, and this was refused on 13 September 2019.
6. The appellants subsequently lodged appeals against the refusals of their asylum and human rights claims under section 82 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act").
7. The appeal was heard by the FtT (Judge Curtis) on the 17 September 2021 and in a decision promulgated on 2 November 2021 the FtTJ found that neither appellant qualified as a refugee on Convention grounds for the reasons set out between paragraphs 81-90. There is no challenge to that decision.
8. In respect of the first appellant's appeal, it was allowed on article 3 ECHR and humanitarian protection grounds, on the basis that there was a real risk that the journey to Albania would lead to a serious deterioration in his physical health for the reasons set out at paragraphs 91-97. The second appellant's appeal was allowed on the basis of article 8 ECHR family life for the reasons set out between paragraphs 98 - 107.
9. The respondent sought permission to appeal that decision arguing that it was not open to the First-tier Tribunal to allow the appeal of the first appellant on humanitarian protection grounds, which require Article 15(b) conditions in the country of origin and that there must be an intentional deprivation of health care ( applying the decision in NM (article 15 (b) intervention required) Iraq [2021] UKUT 000 259).
10. Upper Tribunal Judge Pickup granted permission to the Secretary of State on 28 April 2022. It is right to observe that UTJ Pickup noted that it was

unclear whether the respondent sought to challenge the decision made in respect of the second appellant and was directed to clarify the position.

11. The matter was listed for an oral hearing. Following this a Rule 24 response was submitted on behalf of the appellants. The Rule 24 response at paragraph 2 confirmed that it is agreed that the FtTJ made an error of law in the decision as set out in ground 1. It is further agreed on behalf of the respondent that in light of the unchallenged findings of fact made by the FtTJ that the first appellant MM is entitled to succeed on human rights grounds (article 3). The second appellant was entitled to succeed on human rights grounds in respect of family life (article 8).
12. It was further agreed between the parties in a written document entitled "consent order" and sent to the Tribunal on 2 November 2022 that in light of the decision in NM relied upon by the respondent, and also that it was acknowledged on behalf of the respondent that in light of the unchallenged findings of fact made by the FtTJ that the first appellant MM was entitled to succeed on human rights grounds (article 3) and the second appellant was entitled to succeed on human rights grounds in respect of family life (article 8). On that basis it was agreed that the respondent's appeal should be allowed but the notice of decisions made by the FtTJ should be amended to reflect the unchallenged factual findings made. I agree with the matters set out in the rule 24 response and the consent order as they reflect the substance of the decision the FtTJ made and the findings of fact on the evidence.
13. It is therefore conceded on behalf of the first appellant that the First-tier Tribunal's decision to allow the first appellant's appeal on humanitarian protection grounds involved the making of an error of law. That is consistent with the decision in NM (article 15 (b) intervention required) Iraq [2021] UKUT 000 259. It is also agreed by the respondent that in light of the unchallenged findings made in relation to both the 1<sup>st</sup> and 2<sup>nd</sup> appellant they were entitled to succeed on human rights grounds (article 3 in respect of the 1<sup>st</sup> appellant and article 8 in respect of the 2<sup>nd</sup> appellant).
14. Thus the parties agree that paragraphs 1 - 109 of the FtTJ decision should stand but that paragraphs 110 - 113 should reflect the decision reached by the FtTJ on the basis of his unchallenged factual findings relating to article 3 in respect of the 1<sup>st</sup> appellant (medical grounds) and related article 8 (family life) in respect of the 2<sup>nd</sup> appellant.
15. For those reasons, the following decisions are made.

### **Notice of Decision**

The decision of the First-tier Tribunal to allow the first appellant's appeal on humanitarian protection grounds involved the making of an error of law. I set it aside.

The FtTJ decision that the first appellant's appeal on asylum grounds is dismissed and that the second appellant's appeal on asylum grounds is dismissed shall stand.

I substitute the following decisions:

#### HUMANITARIAN PROTECTION

The first appellant's appeal on humanitarian protection grounds is dismissed.

The second appellant's appeal on humanitarian protection grounds is dismissed.

#### HUMAN RIGHTS

The first appellant's appeal on human rights grounds is allowed with reference to Article 3 ECHR.

The second appellant's appeal on human rights grounds is allowed with reference to Article 8 ECHR.

#### **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-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identify the appellants (and/or other person) without that individual's express consent. Failure to comply with this order could amount to a contempt of court.

Signed Upper Tribunal Judge Reeds

Dated: 11 November 2022

Upper Tribunal Judge Reeds