IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003113

First-tier Tribunal No: HU/54475/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

2nd November 2023

Before

UPPER TRIBUNAL JUDGE LINDSLEY
DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

FLORAN FERATI
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr N Ahmed, instructed by Evolent Law
For the Respondent: Ms LeCointe, Senior Home Office Presenting Officer

Heard at Field House on 24 October 2023

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Albania born on 25th October 1999. He arrived in the UK in February 2016. He made a human rights claim which was refused by the respondent on 7th July 2022. His appeal against the decision was dismissed by First-tier Tribunal Judge Blackwell in a determination promulgated on the 8th March 2023 (the decision erroneously states that the decision was promulgated on 8th March 2022).

2. Permission to appeal was granted by Upper Tribunal Judge Reeds on 17th September 2023 on the basis that it was arguable that the First-tier judge had erred in law in finding that the best interests of the child were outweighed by the weight to be given to the public interest in maintaining immigration control without reasoning this decision.

3. The matter came before us to determine whether the First-tier Tribunal had erred in law, and, if so, whether it was necessary to set aside the decision and remake the appeal.

Submissions – Error of Law

4. In the grounds of appeal and in oral submissions from Mr Ahmed it is argued that the First-tier Tribunal erred in law because it was found at paragraph 50 of the decision that it was in the best interests of the appellant's daughter to live with both parents, and at paragraph 51 of the decision that the appellant's partner and daughter would not join him in Albania if he were forced to leave. It is argued that the First-tier Tribunal did not sufficiently reason why it was that the interests of immigration control outweighed the best interests of the child.

5. Mr Ahmed submitted that the closest the judge came to stating that the child's best interests are outweighed by the public interest is at paragraph 54 where he stated: "Standing back and weighing the appellant's and his family's article 8 rights against that strong public interest in immigration control, I find that the public interest outweighs those rights".

6. In Mr Ahmed's submissions this wording does not go far enough to show that the judge considered the weight to be attached to the child's best interests.

7. In the rule 24 response and at the hearing it is contended on behalf of the Secretary of State that the judge properly undertook the general proportionality exercise under Article 8 in circumstances where the consideration was outside the Rules.

8. The Secretary of State cross-challenged the factual finding at paragraph 51, citing **SSHD v Devani [2020] EWCA Civ 612**, contending that the judge inadequately reasoned his conclusion that the appellant's partner would not join him in Albania to maintain family life. The Secretary of State highlighted that the judge found that the witnesses were very unreliable [44], and that the appellant had both family in Albania to aid integration and work experience to secure employment there. The reasoning put forward for separation was education (the child was born November 2021 therefore aged under 2 years old at the date of hearing) which it is contended was immaterial for several years and amounted to no more than mere preference, and lack of suitable accommodation (arguably a short-term issue if the appellant secures employment, especially where the partner may also obtain employment). The partner herself had employment experience [26] and a clear desire to secure further employment [31]. In the context of the adverse credibility findings and willingness to conceal matters it is contended that it is unclear why the judge attached weight to the assertions, from very unreliable sources, that family accommodation was credibly unavailable in Albania. The respondent contends that, when considered in context with the other factual findings and the robust adverse credibility finding applicable equally to the partner, her

assertions as to an inability to relocate to Albania required further consideration or reasoning by the judge to be considered adequate.

9. Whilst the respondent cross-challenges the factual finding at paragraph 51, as set out above, it is contended that, even accepting such a finding, the judge's conclusion was rationally open to him in balancing the competing facts. The respondent contends that, when read as a whole, the judge clearly provided reasons why the best interests were outweighed and that weight is a judicial matter.

Conclusions – Error of Law

10. The appellant and his partner have a child born on 8th November 2021, who was therefore sixteen months old at the date of decision in March 2023.

11. As recorded at paragraph 4-5 of the First-tier Tribunal decision, it was agreed at the outset of the hearing in the First-tier Tribunal that the appellant does not meet the requirements of the Immigration Rules, therefore the sole issue for the First-tier Tribunal Judge was whether the appeal should be allowed on the basis of Article 8 outside the Rules.

12. Although the judge found that the evidence of the appellant and his partner was unreliable, he accepted that they have a child together [48]; that the appellant and his partner have family life in the UK along with their daughter [49]; that the best interests of the appellant's daughter is to remain with both parents [50]; and that the sponsor and the child would not join the appellant in Albania, there is no suitable accommodation for them there, she wants to raise the child in the UK due to educational benefits and that the removal of the appellant would separate him from his daughter [51]. These are clearly the factors the judge weighed in the appellant's favour in the proportionality exercise.

13. In weighing the public interest the judge took account of the factors in section 117B noting that the appellant speaks some English and is most likely financially independent [53] (which are neutral factors in any event). The judge did not believe that the appellant relies on his partner's Universal Credit payments and found that he works illegally not paying taxes. The judge also took account, in considering the best interests of the child, that the child is at such an age where she is not integrated into UK society and that her best interests are to be with both of her parents (he did not specify where) [50]. The judge further weighed in the public interest side that the appellant's private and family life were formed when his immigration status was precarious and the judge took into account the strong public interest in immigration control [53].

14. The judge concluded the balancing exercise by finding that the public interest outweighs the Article 8 rights of the appellant and his family.

15. In our view it is adequately clear that the judge found that the strong public interest in immigration control, in circumstances where it was conceded that the appellant could not meet the requirements of the Immigration Rules, outweighs the appellant's right to private and family life in the UK. We find that the judge gave adequate reasons for that finding which was open to him on the evidence.

16. We find that the respondent has not made out the cross challenge set out in the rule 24 response. The judge made clear that he found that the evidence of the appellant and his partner was unreliable in relation to certain matters – when the relationship began [45], why their daughter was born in Nottingham [46], and the appellant's work [47].

17. However this did not mean that he rejected all of the evidence from the appellant and his partner. The judge accepted that, if the appellant were to be removed, his partner would not join him in Albania, that there is no suitable accommodation for her there, that she wants to raise her daughter in the UK due to educational benefits and that the removal of the appellant would separate him from his daughter [51]. No inconsistencies were highlighted in the evidence of the appellant and his partner about these matters. The record of their oral evidence shows that they were consistent or not challenged as to these matters. In our view the findings at paragraph 51 were open to the judge on the evidence and are sufficiently reasoned.

18. We find that the judge undertook a proper proportionality assessment under Article 8 reaching conclusions open to him on the evidence.

Decision:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

A G Grimes

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

24th October 2023