IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002071
First-tier Tribunal No: HU/56655/2023
LH/00222/2024

THE IMMIGRATION ACTS

Decision and Reasons Issued:
On the 08 August 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE MALIK KC

Between

KASTRIOT DOBRUSHI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr Adam Pipe, Counsel, instructed by Rashid Law
For the Respondent: Mr Toney Melvin, Senior Presenting Officer

Heard at Field House on 21 June 2024

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant from the decision of First-tier Tribunal Judge Quinn promulgated on 6 April 2024. By that decision, the Judge dismissed the Appellant’s appeal from the Secretary of State’s decision to refuse his human right claims based on Article 8 of the European Convention on Human Rights.

Factual background

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2. The Appellant is a citizen of Albania and was born on 19 July 1984. He claims to have arrived in the United Kingdom clandestinely on 10 May 2022. He made an application for leave to remain in the United Kingdom relying on his private and family life on 18 April 2023. He primarily relied on his relationship with Ms Anamaria Luca and her child. He claimed to have married Ms Luca in Albania on 26 August 2020. Ms Luca is a citizen of Romania and was granted pre-settled status on 26 November 2020. The Secretary of State refused the Appellant's application on 9 May 2023 and found that his relationship with Ms Luca was not genuine and subsisting. His appeal from that decision came before the Judge for determination on paper on 25 March 2024. The Judge determined the appeal without an oral hearing and agreed with the Secretary of State's conclusion that there was no genuine and subsisting relationship between the Appellant and Ms Luca. The Judge, accordingly, dismissed the appeal by a decision promulgated on 6 April 2024. Permission to appeal from the Judge's decision was granted on 8 May 2024.

Grounds of appeal

3. The pleaded grounds of appeal contend that the Judge failed to make proper findings of fact and ignored material evidence.

Submissions

4. I am grateful to Mr Adam Pipe, who appeared for the Appellant, and Mr Tony Melvin, who appeared for the Secretary of State, for their assistance and able submissions. Mr Pipe developed the pleaded grounds of appeal in his oral submissions. He invited me to allow the appeal and set aside the Judge's decision. Mr Melvin resisted the appeal and submitted that there was no error of law in the Judge's decision. He invited me to dismiss the appeal and uphold the Judge's decision.

Discussion

5. The Upper Tribunal in *Secretary of State for the Home Department v SSGA (Iraq)* [2023] UKUT 12 (IAC) gave guidance as to the proper approach in considering whether or not an appeal should be disposed of without a hearing. The Upper Tribunal, at paragraph 4(ii) of the judicial head note, observed that any decision whether to decide an appeal without a hearing is a judicial one to be made by the judge who decides the appeal without a hearing. The mere fact that a case has been placed in a paper list does not and cannot detract from the duty placed on the judge before whom the case is listed as a paper case to consider for himself or herself whether it should be decided without a hearing. The Upper Tribunal, at paragraph 4(iv) of the judicial head note, added that a hearing should be held whenever credibility is disputed on any material issue or fact. Cases in which it would be appropriate to determine an appeal without a hearing if

credibility is materially in issue would be rare indeed. In almost all cases, the appropriate course of action would be to list the case for a hearing and decide the case on such material as is before the judge.

6. The key issue of fact in this case was whether the Appellant's account of being in a genuine and subsisting relationship with Ms Luca was credible. There is no reference in the Judge's decision to *SSGA (Iraq)* and no consideration as to whether the appeal should be listed for an oral hearing. The fact that the Appellant had asked for a paper decision and the case was placed in a paper list does absolve the Judge from considering and determining whether a hearing should be held. The Judge failed to engage with the guidance in *SSGA (Iraq)* and, thereby, erred in law.

7. Further, the Judge failed to engage with material evidence that was adduced by the Appellant. The evidence included witness statements from the Appellant and Ms Luca as to the circumstances in which they met, the events leading to their marriage and their relationship. There was evidence from the University Hospital Dorset indicating that Ms Luca was pregnant and had a miscarriage on 17 January 2023. There was evidence from the child's school indicating that he lives with the Appellant and Ms Luca and it is the Appellant who brings and collects him from school every day. There was other medical evidence indicating that the Appellant, Ms Luca and the child live at the same address. There was evidence from Bournemouth, Christchurch and Poole Council and tenancy agreement indicating cohabitation. The Judge, at [6], noted that "the Appellant produced some other documents but they did not cover the full period for which the Appellant claimed to have been living with his partner" and "there was a gap in his evidence". The nature and extent of the perceived gap has not been identified. The Judge, at [16], stated that "the evidence did not support that the parties were in a genuine and subsisting relationship". The Judge added that he would accept "that they resided together but that did not mean that the relationship was genuine and subsisting". This, with respect, is inadequate. The Judge was obliged to engage with the evidence and explain, with adequate reasons, as to why the relationship was not genuine and subsisting.

8. It is well-settled, as the Supreme Court endorsed in *Zoumbas v Secretary of State for the Home Department* [2013] UKSC 74 [2013] WLR 3690, at [10], that the best interests of a child are an integral part of the proportionality assessment under Article 8. In making that assessment, the best interests of a child must be a primary consideration. Although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant. It is important to have a clear idea of a child's circumstances and of what is in a child's best interest before one asks oneself whether that interest is outweighed by the force of other considerations. In my judgment, the Judge's error relating to the evidence vitiated the

assessment as to the welfare of the child and the issue of proportionality.

9. I entirely accept that I should not rush to find an error of law in the Judge's decision merely because I might have reached a different conclusion on the facts or expressed it differently. Where a relevant point is not expressly mentioned, it does not necessarily mean that it has been disregarded altogether. It should not be assumed too readily that a judge erred in law just because not every step in the reasoning is fully set out. Experienced judges in this specialised field are to be taken to be aware of the relevant authorities and to be seeking to apply them without needing to refer to them specifically. The reasons given by the fact-finding tribunal for its findings on the principal controversial issues must be adequate. The reasons must explain to the parties why they have won and lost on those issues. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the main issues in dispute. A challenge based on the adequacy of reasons should only succeed when the appellate body cannot understand the fact-finder's thought process in making material findings. In this instance, for the reasons set out above, I am satisfied that the Judge's decision is wrong in law.

10. The Appellant has an appalling immigration history. The welfare of the child, or indeed any relationship with Ms Luca, is not a trump card in this context. I must, however, bear in mind that I am not sitting as a first instance tribunal making findings of fact. My task is to decide whether the Judge erred on a point of law such that the decision should be set aside. I find that the error made by the Judge was material to the outcome and constituted an error of law. I cannot rule out the possibility at this stage that a properly directed judge may find that Article 8 is engaged and that the Secretary of State's decision is incompatible with it.

Conclusion

11. For all these reasons, I find that the Judge erred on a point of law in dismissing the Appellant's appeal and the error was material to the outcome. I set aside the Judge's decision and, applying the guidance in *AB (preserved FtT findings; Wisniewski principles) Iraq* [2020] UKUT 268 (IAC), preserve no findings of fact. Having regard to paragraph 7.2 of the Senior President's Practice Statement for the Immigration and Asylum Chambers, and the extent of the fact-finding which is required, I remit the appeal to the First-tier Tribunal to be heard afresh by a judge other than First-tier Tribunal Judge Quinn.

Decision

12. The First-tier Tribunal's decision is set aside and the appeal is remitted to the First-tier Tribunal for a fresh hearing.

Anonymity

13. I consider that an anonymity order is not justified in the circumstances of this case having regard to the Presidential Guidance Note No 2 of 2022, *Anonymity Orders and Hearing in Private*, and the overriding objective. I make no order under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Zane Malik KC
Deputy Judge of Upper Tribunal
Immigration and Asylum Chamber
Date: 31 July 2024