



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/12579/2018

THE IMMIGRATION ACTS

Heard at Field House

On 3rd April 2019

**Decision & Reasons
Promulgated
On 15th April 2019**

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

**ILIR [R]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Wells (M & K Solicitors)

For the Respondent: Ms A Everett (Senior Home Office Presenting Officer)

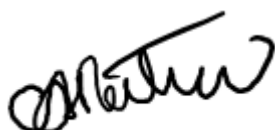
DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant, an Albanian national who had made a human rights application to remain in the United Kingdom on the basis of his relationship with his partner and their young son and also the fact that his wife at the date of the hearing was some eight weeks pregnant. The judge dismissed the appeal finding that there were no insurmountable obstacles to family life being enjoyed in Albania. That decision and reasons was promulgated on 20th December 2018. Permission to appeal was granted and the argument put to me today is that the judge had made an error at paragraph 44 of the decision and

reasons in relation to his consideration of the Appellant's partner's state of mental health.

2. The couple relied upon the fact that they had a young child, that the partner was an Israeli who had been recognised in the UK as a refugee and who suffered from depression. The judge noted at paragraph 44 that the partner had ceased taking anti-depressant medication, he said, because she was breast feeding. Although he said that he could understand that she wanted to breast feed her child, that was a little surprising given that the child was now 2. In that the judge has made an error because the reasons given by the partner for ceasing her medication were twofold. As was clear in her statement, she was breast feeding but she was also eight weeks pregnant and pregnancy is a reason to quite properly stop taking anti-depressant medication.
3. The judge went on from that to consider however the best interests of the child, noting that the child was only aged 2 whose best interests were to remain with both parents and that his best interests would be equally well served living with them in Albania. The judge also considered the position of the partner in living with the appellant in Albania. He noted the objections to that were that she was vulnerable, that she had had difficulties in Israel, which were accepted, and that Albania is a patriarchal society. However, the judge also noted that the strength of the relationship had been of great benefit to the partner and that they would of course be going to Albania together where she would have his support. Also a consideration for the judge was the fact that the Appellant had come to the UK illegally. He found the Appellant to have been less than honest as to what he had been doing prior to leaving Albania and what he had been doing in the UK since.
4. Mr Wells, on behalf of the Appellant this morning, confirmed that there was no evidence that the medication which the Appellant had been taking was not available in Albania. It is also of note that, notwithstanding her ceasing to take medication, she remains well enough to work. For those reasons had the judge not made the mistake he did, the result would inevitably have been the same; namely that there were no insurmountable obstacles to family life continuing in Albania. For those reasons, while the judge did make a mistake of fact, I find that it is not material to the outcome.

No anonymity direction is made.



Signed

Date 11th April 2019

Upper Tribunal Judge Martin

I have dismissed the appeal and therefore there can be no fee award.

A handwritten signature in black ink, appearing to read 'Martin', written in a cursive style.

Signed

Date 11th April 2019

Upper Tribunal Judge Martin