



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

Appeal Number: HU/05467/2020 (V)

**THE IMMIGRATION ACTS**

**Heard remotely at Field House**

**Decision & Reasons  
Promulgated**

**On 21<sup>st</sup> January 2022**

**On 1<sup>st</sup> February 2022**

**Before**

**UPPER TRIBUNAL JUDGE FRANCES**

**Between**

**DURIM DINI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Ms E Daykin, instructed by Tuckers Solicitors

For the Respondent: Ms H Gilmour, Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Microsoft Teams (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in the bundles on the court file, the contents of which I have recorded. The order made is described at the end of these reasons.

**DECISION AND REASONS**

1. The appellant is a citizen of Albania born on 3 July 1980. He appeals against the decision of First-tier Tribunal Judge S Taylor, dated 15 March 2021, dismissing his appeal against the refusal of entry clearance on human rights grounds.
2. Permission to appeal was granted by Upper Tribunal Judge Bruce on the ground the judge arguably erred in respect of GEN 3.1 and GEN 3.2 of Appendix FM. The grounds argue the judge wrongly referred GEN 3.2 and

failed to apply the lower test in GEN 3.1 in accordance with Home Office guidance.

### **Submissions**

3. Ms Daykin submitted the judge's failure to address GEN 3.1 was a material and significant error of law. The judge failed to apply the correct test when considering other credible and reliable sources of income. The argument was raised in the grounds of appeal and set out in detail in the appellant's skeleton argument. GEN 3.1 reflected the principles in MM (Lebanon) v SSHD [2017] UKSC 10.
4. Ms Daykin accepted the appellant had to show exceptional circumstances and submitted these were made out by the sponsor in her evidence. The judge referred to her care for her parents at [7] of the decision but this evidence did not form part of the judge's reasoning at [14]. The judge only referred to the fact the appellant and sponsor were independent adults with no dependent children. There was clear evidence of the sponsor's care for her parents and the appellant's contribution and support which the judge failed to take into account. Ms Daykin submitted the judge failed to take into account material evidence and/or his conclusion that there were no exceptional circumstances was irrational.
5. Ms Gilmour relied on the rule 24 response and submitted there was no material misdirection in the decision. The appellant's and sponsor's circumstances were not exceptional. The judge's decision was consistent with Home Office guidance and he could only consider other sources of income if this high threshold test was met. The judge set out the sponsor's circumstances at [7] and when the decision is read as a whole it is apparent the judge took them into account. The circumstances were not exceptional and the judge had given adequate reasons for his findings. The decision was not irrational and any lack of reasoning was not material.
6. In response, Ms Daykin submitted it was hard for the appellant and sponsor to understand why their account was rejected. The judge's reasoning failed to address the additional dependency of the sponsor's parents. The judge's failure to explain this amounted to an error of law. The threshold test of exceptional circumstances was met.

### **Conclusions and reasons.**

7. There was no dispute that the appellant could not satisfy the financial requirements of the immigration rules. The judge's reference to GEN 3.2 was an error, but it was not material because both GEN 3.1 and GEN 3.2 require the appellant to show exceptional circumstances. On the facts asserted, the care the sponsor provides for her parents and the appellant's support does not amount to exceptional circumstances.
8. The judge took into account the sponsor's evidence in her witness statement, which he summarised at [7]. The judge stated, "The sponsor

currently lives with her mother and daughter, her mother suffered from COPD and her daughter was working, the sponsor cared for her mother. The sponsor also cared for her father who lived 15 minutes away and had a number of medical problems. The sponsor had a full daily routine of work as well as looking after her parents, she did not receive help from her siblings. The sponsor found life a lot easier with the appellant living with her, as he helped with her daily routines, without him life has become very difficult.”

9. It is apparent the judge was well aware of the hardship caused by the appellant’s absence and he took this into account in concluding there were no exceptional circumstances at [14]. The judge refers to the evidence of the appellant and sponsor and the hardship resulting from separation.
10. This is a human rights appeal. The appellant has remained in the UK without leave for 15 years. He has re-entered the UK illegally during this time. He was removed to Albania in October 2019. The appellant could not satisfy the immigration rules. His Article 8 rights could not outweigh the public interest. There was no error of law in the judge’s conclusion that the refusal of entry clearance did not breach Article 8.
11. I find that the judge did not fail to take into account material evidence and his finding that there were no exceptional factors was open to him on the evidence before him. On the facts, the refusal of entry clearance was proportionate. There was no error of law in the decision of 15 March 2021 and I dismiss the appellant’s appeal.

**Notice of Decision**

**Appeal dismissed**

**J Frances**

Signed  
Upper Tribunal Judge Frances

Date: 21 January 2022

**TO THE RESPONDENT**  
**FEE AWARD**

As I have dismissed the appeal, I make no fee award.

**J Frances**

Signed  
Upper Tribunal Judge Frances

Date: 21 January 2022

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### NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **“working day”** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. **The date when the decision is “sent” is that appearing on the covering letter or covering email**