



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

Appeal Number: OA/08764/2013

THE IMMIGRATION ACTS

Heard at Birmingham Sheldon Court

**On 20 June 2014
Prepared 20 June 2014**

**Determination
Promulgated
On 27 June 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MR SANDER MARKU
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Hussain of Lei Dat & Baig Solicitors
For the Respondent: Mr D Mills, Senior Presenting Officer

DETERMINATION AND REASONS

1. The Appellant, a national of Albania, date of birth 12 February 1977, appealed against the Notice of Immigration Decision, dated 11 March 2013, whereby he had applied for entry clearance as a partner under Appendix FM of the Immigration Rules HC 395 (as amended) and was

refused because he did not meet the relevant requirements EC-P.1.1.(c) and ECP.1.1.(d). In the circumstances the refusal was with reference to paragraph E-ECP.3.1. of the Rules.

2. The Appellant appealed against that decision and the matter came before First-tier Tribunal Judge J D L Edwards (the judge) who on 6 February 2014 dismissed the appeal. Permission to appeal that decision was given by First-tier Tribunal Judge Maller on 24 February 2014.
3. Whilst there may be general criticisms of the layout of the determination the fact of the matter was that the judge assessed the best interests of the Appellant's two children, born June 2010 and December 2011 respectively who were British nationals and their mother was a British national as well.
4. The judge assessed the implications of the exclusion of the Appellant because it was accepted that he could not meet the maintenance requirements under the Immigration Rules and therefore fell outside of the Rules. The judge therefore proceeded on the basis of it being accepted that the Appellant could not meet, for these purposes, paragraph 276ADE of the Rules or succeed under Appendix FM.
5. The judge therefore addressed the circumstances outside of the Rules under old Article 8 considerations and properly set out the relevant approach to be addressed, the submissions made, and made findings upon the evidence as was provided. It is plain that the impact of the Appellant's exclusion in terms of its effects on the children was addressed but it is plain that the judge did not find the evidence sufficient or in a reliable form so as to be able to follow the argument that the best interests of the child lay with the Appellant being allowed to enter the United Kingdom.
6. The judge did not go behind the general proposition as demonstrated by the case of ZH (Tanzania) [2011] IKSC 4 that the best interests of the children was a primary consideration. The principal criticism made is that the judge did not follow the approach identified in MK (best interests of child) India [2011] UKUT 475 and had failed to consider their interests first

before other matters: Rather than working backwards to their best interests by way of other adverse findings made particularly in relation to maintenance and the financial impact of the Appellant presence, as at the date of the Respondent's decision, on their family and its best interests.

7. I agree that the judge presented his conclusions in that way but it seems to me that the substance of the decision was to address the children's best interests in the evaluation of the proportionality of the Respondent's decision. I find the case of *Zoumbas* [2013] UKSC 74 of assistance because ultimately what is not pinpointed in the grounds is any material evidence which had been omitted or which demonstrated any procedural unfairness or a lack of consideration of the relevant evidence pertinent to matters to be taken into account.
8. Accordingly the determination discloses that sufficient and adequate reasons were given and that the issue of the children's best interests was properly addressed.
9. Issue was taken with the fact that the judge failed to properly address the fact that the two children were British nationals. I do not find that a sustainable criticism because first, there was no issue of the children being removed or expected to be removed to Albania. Secondly, the judge in his reasons does not engage with that kind of argument. Thirdly, the judge was doing the best he could with the information provided bearing in mind the relevant date was the Respondent's decision, namely 11 March 2013.
10. At that stage it is fair to say that the Appellant's financial circumstances remained much in the air and there was no evidence of job offers or employment in the United Kingdom at that time. Further, it is plain that unfortunately the circumstances of the children's mother, the Sponsor, did not show any likely change in her financial circumstances in contemplation at the date of the Respondent's decision. For these reasons I find the judge made no material error of law.
11. The original Tribunal decision stands.

DECISION

12. The appeal is dismissed.

ANONYMITY ORDER

Bearing in mind the existence of children but the fact that they are not named or otherwise clearly identified no request was made apparently to the original judge to make an anonymity order and nothing was raised before me today on that issue. In the circumstances I do not find that an anonymity order is necessary.

Signed

Date 24 June 2014

Deputy Upper Tribunal Judge Davey