



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

Appeal Number: VA/06978/2013  
VA/06979/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 24<sup>th</sup> July 2014**

**Determination Promulgated  
On 05<sup>th</sup> Aug 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE  
HARRIES**

**Between**

**MR HYSEN KARDHASHI  
MRS LEONORA KARDHASHI  
(ANONYMITY DIRECTION NOT MADE)**

**Appellants**

**And**

**ENTRY CLEARANCE OFFICER - TIRANA**

**Respondent**

**Representation:**

For the Appellant: Mr S Subbarayan

For the Respondent: Miss A Everett, Home Office Presenting Officer

**DETERMINATION AND REASONS**

**The Appellants and Proceedings**

1. The first appellant was born on 27<sup>th</sup> March 1945; the second appellant is his wife, born on 14<sup>th</sup> March 1952. They are both nationals of Albania. They appealed to the First-tier Tribunal against the decision of the respondent made on 6<sup>th</sup> March 2013 to refuse their application for a family visit to the United Kingdom.
2. In a determination promulgated on 26<sup>th</sup> November 2013 First-tier Tribunal Judge T R P Hollingworth (the Judge) dismissed the appeal under paragraph 41(i) and

(ii) of the Immigration Rules. After an initial refusal of permission to appeal the appellants were granted permission in the Upper Tribunal to appeal against the decision of the Judge to the Upper Tribunal by Upper Tribunal Judge Taylor for the following reasons:

It is arguable that the judge, having found that the refusal under paragraph 320 (7B) was not sustainable, did not give clear and adequate reasons for dismissing the appeal under paragraph 41. He seems to have based his decision on a lack of information about the appellants' pensions but it is said in the grounds that all of the relevant information was in the appellants' bundle. I also note that he did not make any findings on the credibility of the sponsor's evidence.

3. The matter accordingly came before me for an initial hearing to determine whether the making of the decision in the First-tier Tribunal involved the making of an error on a point of law.

#### Consideration of Issues and Submissions

4. The entry clearance officer (ECO) applied paragraph 320(7B) to the application having found that deception had been used by the appellants by concealing the presence of a family member in the United Kingdom and by failing to disclose a previous refusal of entry clearance. He went on to consider paragraph 41 of the Immigration Rules and because of the adverse credibility findings under paragraph 320(7B) doubted the genuine intentions of the appellants and further refused the application under paragraph 41(i), (ii), (vi) and (vii) of the Rules; he was not satisfied that the visit was genuine or for the period and purpose stated; he doubted that the appellants intended to leave the United Kingdom at the end of the proposed visit.
5. The ECO noted that the appellants had a pension but found it insufficient to outweigh concerns about the application overall. He found a lack of evidence of their accommodation and where they live; he found no evidence of assets, land, property, family or other ties of the appellants in Albania. The ECO was unclear about who would fund the trip and found insufficient evidence of the appellants' full economic circumstances; he found the sponsor's bank statement showing an account in credit by £698.47 to disclose insufficient funds to cover fares and maintenance for the visit. He dismissed the application for lack of evidence of maintenance and the failure to show that the cost of the onward journey could be met. The decision was maintained by an entry clearance manager (ECM) on 14<sup>th</sup> June 2013.
6. The Judge found that paragraph 320(7B) of the Rules had not been properly applied and did not uphold that aspect of the decision. That aspect of the decision has not been challenged by the respondent and accordingly stands. The Judge heard evidence from the sponsor, the appellants' son, and accepted that he was in a satisfactory position to pay for his parents' flights and incidental expenses for the duration of the visit.

7. The aspect of the decision challenged before me is therefore the dismissal under paragraphs 41(i) and (ii), namely the Judge's finding that the visit was not for the period and purpose stated and that the appellants failed to show that they intended to leave the United Kingdom at the end of the proposed visit. He reached his conclusions notwithstanding his acceptance in paragraph 23 of his determination that they had demonstrated in 2008 that they were visitors who would return.
8. His reasoning was that there was: "frankly, not a great deal of evidence in the Appellants' bundle". He found no documents to clarify the appellants' pensions or to address the ECO's concerns about their accommodation and living expenses. The Judge found "not a great deal of evidence", if any, of the existence in Albania of another son of the appellants, or whether he contributes to their finances.
9. Having heard submissions from Mr Subbarayan for the appellants Miss Everett adopted, as always, a very realistic stance and conceded that the decision is difficult to defend in the light of the Judge's apparent failure to consider the evidence before him from the appellants, some of which was contained in the respondent's bundle. Miss Everett did not address me further other than to agree that the Judge's considerations had been brief before I announced my finding that the Judge had materially erred in law in dismissing the appeal under paragraph 41 so that the decision should be set aside in that respect and remade.
10. I find that the Judge erred in law by failing to take account of the evidence before him from the appellants, including evidence of the existence of their pension which was not in itself challenged by the ECO. The Judge apparently overlooked or failed to take account of documentary evidence before him, at pages 27 - 34 of the respondent's bundle, showing details of the appellants' length of residence and ownership of accommodation in Albania.
11. At pages 1 - 6 of the appellants' bundle there are statements from them and the sponsor asserting the presence of another son in Albania; at page 6 of the respondent's bundle there is a copy of this son's passport showing the endorsement of a previous family visit to the United Kingdom. I find that the Judge further erred in law by concluding, without giving sufficient reasons, that the visit was not genuine and that the appellants did not intend to leave the United Kingdom; the basis of this conclusion is not clear in the light of the Judge's explicit acceptance that the appellants had previously visited the United Kingdom and returned to Albania.
12. In remaking the decision I take account of all the documents and statements contained in bundles from the respondent and appellants, including those specifically referred to above. I take account of the final submissions to me from the representatives and brief oral evidence I heard from the sponsor, Mr Ardjan Kardhashi. I find no reason to reach adverse credibility about the appellants or sponsor; they give consistent information in support the application and appeal which is appropriately supported with documents. The sponsor's evidence was

tested under cross-examination and I am satisfied that it is reliable to the necessary standard.

13. I accept the submission on behalf of the respondent that there is more evidence before me that there was before the ECO on the date of decision. I am, however, satisfied that the evidence pertains to the circumstances at that date and I am satisfied on its totality that the requirements of paragraph 41 of the Immigration Rules are met.

#### Summary of Decisions

14. The decision of the First-tier Tribunal stands in relation to paragraph 320(7B) of the Immigration Rules.
15. The making of the First-tier Tribunal decision involved the making of an error on a point of law in relation to paragraph 41(i) and (ii) of the Immigration Rules.
16. The decision in relation to paragraph 41(i) and (ii) is set aside and is remade as follows.
17. The appeal is allowed paragraph 41(i) and (ii) of the Immigration Rules.
18. The appellants' appeal to the Upper Tribunal succeeds.

#### Anonymity

I find no reason to change the decision of the First-tier Tribunal not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Signed:

J Harries

Deputy Upper Tribunal Judge

Dated: 2<sup>nd</sup> August 2014

#### Fee Award

In the light of the appeal now being allowed I make a partial fee award of £140, that being half the total amount paid by the appellants, in the light of the greater amount of evidence which has been made available since the date of the respondent's decision.

Signed:

J Harries

Deputy Upper Tribunal Judge

Dated: 2<sup>nd</sup> August 2014