



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

Appeal Number: IA/46212/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 May 2016**

**Decision & Reasons Promulgated  
On 7 June 2016**

**Before**

**UPPER TRIBUNAL JUDGE JORDAN**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR AFRIM GASHI**

Respondent

**Representation:**

For the Secretary of State: Mr T. Melvin, Home Office Presenting Officer  
For the Respondent: Mr J. Dhanji, Counsel, instructed by Malik & Malik,  
Solicitors

**DECISION AND REASONS**

1. The Secretary of State appeals against the decision of First-tier Tribunal Judge Wylie promulgated on 30 September 2015. I shall refer to Mr Gashi and his wife as the appellant and his wife as they were before the First-tier Tribunal.

2. The appellant was born on 6 November 1965 and he appeals against a decision that was made by the Secretary of State on 4 November 2014. The application made by the appellant was for him to remain as a refugee on the basis that he had a well-founded fear of persecution in Kosovo. That is no longer pursued before me and we therefore turn to the consideration of the Article 8 claim.
3. The decision-maker recited the fact that the appellants would be returning to Kosovo and the claim that this would violate their human rights. It was recited that the appellant had entered the United Kingdom on 26 March 1998 after claiming asylum in Germany and was returned to Germany on 5 December 2000, his wife being returned on 31 January 2001. The German authorities then returned them both to Kosovo. However both he and his wife left Kosovo on 23 January 2001 and re-entered the United Kingdom on 25 March 2001 avoiding immigration controls and not contacting the Home Office until some eleven years had elapsed until 2012.
4. The decision letter records that the appellant had no fear of return to Kosovo and expressed the view that he wanted to live and work in the United Kingdom. As a result of the appellant's own statement that he had no fear of return to Kosovo the Secretary of State inevitably found that there was no asylum claim.
5. It was accepted that the appellant and his wife were married and that both were nationals of Kosovo. The decision-maker looked at the various eligibility requirements in the Rules and noted that where a situation as this has arisen and there was a partner route available it was a requirement of that route that the applicant's partner be either a British citizen or present and settled in the UK or a refugee.
6. Since none of those requirements were met with either of the two parties it was inevitable that the application under the Rules was going to be refused so the decision-maker then went on to consider whether or not the appellant met the requirements of sub-paragraph 276ADE(1)(iii). They had not done so because neither the appellant nor his wife had resided in the United Kingdom for twenty years. The decision-maker then went on to consider sub-paragraph 276ADE(1)(vi) and the relevant test at the time namely whether there were any significant obstacles in the appellant and his wife returning to Kosovo and concluded that there were none.
7. The decision-maker then went on to consider whether there were any exceptional circumstances and came to the view that there were no exceptional circumstances. There was no reason therefore to depart from the normal application of the public interest criteria contained within Appendix FM and paragraph 276ADE and concluded that there would be no violation of the couple's human rights were they to be returned to Kosovo.
8. The judge recited in broad measure the immigration history that I have set out. He recorded the fact that the appellant and his wife had no children

and she considered that the appellant and his witnesses gave evidence in a straightforward and genuine manner. She accepted that he and his wife had no relatives or a home in Kosovo and that they have a private life in the United Kingdom with friends.

9. For my part I am entirely able to accept that they have no home in Kosovo indeed it would be surprising if they did so having been absent since 2001 and there is nothing implausible about the fact that they have no relatives there but then of course the existence of a home or relatives is not a pre-requirement of removal in the case of adults. It may be that, had they remained in Kosovo, there would have been no relatives either because there were none to be had or because those relatives had left the country. Either way the fact that they had no home in Kosovo and no relatives there was certainly not determinative but it was a factor that the judge was entitled to take into account.
10. The judge then went on in paragraph 17 of the determination to consider, applying the test then applicable, namely whether there would be any significant obstacles to his reintegration. The judge concluded that there would be such significant obstacles because Kosovo had changed considerably from the country in which he and his wife grew up in. In my judgment it was an error of law on the part of the judge merely to use the fact that there have been changes between 2001 and 2015 as a reason for finding that this would, in itself, amount to very significant obstacles. There have been changes in Kosovo. Those changes may well have been for the better. There will doubtless be a great deal of modern technology which was not available in Kosovo as it was not available anywhere else in 2001. There are therefore bound to have been changes in the country but it is not clear from the decision nor is it clear from any background material to which I have been referred what the changes have been in Kosovo which would amount to an obstacle in the couple's reintegration. They have clearly spent a considerable part of their lives in Kosovo.
11. There is no suggestion that the couple are not able to converse in Kosovan or Albanian. They are a couple who will be returning who have a record of self-supporting themselves for nearly seventeen years. That may have been working unlawfully because they had no leave to remain but they are obviously able to work. No one is suggesting that there is any physical impediment to tier working and, just as they arrived in the United Kingdom in 2001 without a home and with no relatives in the United Kingdom and with no job, so too they would be returning to Kosovo without a home and without relatives and without any established job at the moment.
12. Those factors alone do not amount to significant obstacles. Indeed, anybody returning after a period away would be placed in exactly the same position. Therefore the reasons advanced by the judge for finding that it would be a violation of their human rights were simply inadequate by reference to the requirements of paragraph 276ADE(1)(vi).

13. The judge took into account the fact that the couple had been financially self-supporting and concluded that it is not disproportionate to the legitimate public aim to allow the appellant to remain in the United Kingdom rather than removing him to a country where he has no family and no home.
14. I am quite satisfied that this is wrong in law. Neither a home nor a family are a pre-requisite of a removal. Indeed in most cases this would be the situation which faces those who are returning. There could be no viable process of return if it was predicated on there being family to support the appellant and if there had to be a home. The simple result of this case is that there had to be evidence of what those very significant obstacles to re-integration would be and the fact that the country has changed considerably was not enough.
15. No other evidence has been identified to me or drawn to my attention which suggests that there would be significant obstacles. These are able-bodied people able to generate income, able therefore to purchase those things which it is necessary for them to survive in a country which is becoming more and more sophisticated. They will not suffer a violation of their human rights by reason of being separated from the country of their nationality for a period of fifteen years.
16. In these circumstances there can only be one legitimate outcome absent any exceptional circumstances which have not been presented. There can only be one outcome and that is that this couple will be able to return to Kosovo without a violation of their human rights. They have never had leave to remain; they entered the country clandestinely; they have got no children who might act as a clog on their ability to return and they have merely made use of their time in the United Kingdom to support themselves and there is no reason why they should not do so on return to Kosovo.

## DECISION

- (1) I am satisfied that the First-tier Tribunal Judge made a material error of law and I set aside her decision.
- (2) I re-make the decision allowing the appeal of the Secretary of State.
- (3) I dismiss the appeal of Mr Gashi against the decision of the Secretary of State on all the grounds advanced.
- (4) No anonymity direction is made.

ANDREW JORDAN  
JUDGE OF THE UPPER TRIBUNAL  
5 May 2016