



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

Appeal Number: IA/00557/2016

THE IMMIGRATION ACTS

Heard at Field House

On 30th January 2018

Decision and

Promulgated

On 09th March 2018

Reasons

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR ALBAN HOXHA
(NO ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Mr P Gillard, a Senior Home Office Presenting Officer

For the Respondent: Ms A Fijiwala, instructed by Metro Immigration

DECISION AND REASONS

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal allowing the appellant's appeal against her decision to refuse an EEA residence card on the basis that the appellant had previously obtained the right to reside by fraudulent means contrary to Regulation 21B(1)(d) and (2) of the 2006 Regulations. The only reasoning relating to Regulation 21B appears at paragraphs 49 and 50 of the determination.

"49. The appellant was deported from the UK in 2003, following his conviction. He took no action to seek to have the deportation

order set aside and returned illegally to the UK in 2006. His conduct in that regard is to be strongly deprecated. He has also in the past used aliases and claimed to be a Kosovan, an Italian and a Bulgarian national.

50. The appellant has shown himself in the past to be a person willing to attempt to deceive the immigration authorities, but since 2013, after meeting [his partner] and their relationship developing, he has taken steps to regularise his immigration status on the basis of that relationship which I have found to be genuine. I am not satisfied that he has attempted to obtain a right to reside by fraudulent means (Regulation 21B(1)(d)).”

2. The respondent in her grounds of appeal sets out the relevant provisions of Regulation 21B – Abuse of rights or fraud.

“21B (1) The abuse of a right to reside includes ...

(d) fraudulently obtaining or attempting to obtain, or assisting another to obtain or attempt to obtain a right to reside.

(2) The Secretary of State may take an EEA decision on the grounds of abuse of rights where there are reasonable grounds to suspect the abuse of a right to reside and it is proportionate to do so.”

3. Not only are there clear reasons to assert abuse in the determination and in the letter of refusal but there is no attempt to deal with proportionality in the decision. Mr Gillard has attempted to persuade me that the reference to the genuineness of the marriage is sufficient to deal with the proportionality question, but it is not and that assertion is unarguable.

4. Accordingly, there is no alternative but to set this decision aside and remit it to the First-tier Tribunal for hearing afresh on a date to be fixed.

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I set aside the decision.

The decision in this appeal will be remade in the First-tier Tribunal on a date to be fixed.

Signed: **Judith A J C Gleeson**
Upper Tribunal Judge Gleeson

Date: 8 March 2018