



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: IA/00836/2016

THE IMMIGRATION ACTS

**Heard at Manchester Piccadilly
On 26 January 2018**

**Decision & Reasons Promulgated
On 30 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

LUAN BRACAJ YMERI

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr O Ryan counsel instructed by Heath and Power Solicitors

For the Respondent: Mr A McVitie Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this

Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Appellant was born on 1 January 1964 and is a national of the Republic of Serbia.
3. In order to avoid confusion, the parties are referred to as they were in the First-tier Tribunal.
4. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Thorne promulgated on 13 April 2017 which allowed the Appellant's appeal against the decision of the Respondent dated 25 January 2016 to refuse an application for leave to remain based on his family and private life.
5. Grounds of appeal were lodged arguing: that the Judge was in error in that he provided insufficient reasons for his finding that family life existed between the Appellant and his two adult British citizen children; that his reason for finding that the removal of the Appellant would be disproportionate were inadequate; the reasons given for why the Appellants and his wife would be unable to live together in Serbia.
6. On 31 October 2017 Designated Judge of the First-tier Tribunal Judge Woodcraft gave permission to appeal.
7. At the hearing I heard submissions from Mr McVitie on behalf of the Respondent that :
 - (a) He had the benefit of the attendance notes of the Home Office Presenting Officer Mr Dillon who appeared before the First-tier Tribunal and conceded that these showed that Mr Dillon had conceded that family life existed between the Appellant and his adult children.
 - (b) He noted that the Judge in making his decision had taken into account the length of the Appellants residence, the lack of ties to Serbia in coming to his conclusion.
8. On behalf of the Appellant Mr O Ryan submitted that :
 - (a) He relied on his Rule 24 reply and skeleton argument.

- (b) At paragraph 6-13 he addressed the issue of family life and relied on Ghising (family life – adults – Gurkha policy) [2012] UKUT 160 (IAC). The Judge accepted that the Appellant and his wife lived as a family unit in that an adult son aged 29 lived at home and their 18 year old daughter was at University but otherwise at home.
- (c) In relation to the argument that the reasons were inadequate the Judge gave a number of reasons for finding the refusal disproportionate in addition to the Appellants fear of returning to Serbia; he had no family, could not speak the language and had no connections. His wife and children were British citizens and she had a brother with mental health problems for whom she was the carer.

Finding on Material Error

9. Having heard those submissions I reached the conclusion that the Tribunal made no material errors of law.
10. Mr McVitie quite properly conceded that the Respondent had accepted before the First-tier Tribunal that family life existed between the Appellant his wife and two adult children and indeed this is noted by the Judge at paragraph 35 and 37 of the decision. In Ghising it was found that a young adult living with his parents or siblings would normally have a family life to be respected under Article 8. That was clearly the factual basis of the finding of family life in this case in that the 29 year old son lived at the family home with his girlfriend and son and the 18 year old daughter lived at the family home when she was not at University. That challenge is therefore misconceived.
11. The grounds also argue that the Judge focused too much on the Appellant and his wife's 'animosity and fear' at being returned to Serbia as it suggested there was a protection claim when no such claim had been made. In a well structured decision the Judge sets out the 'proportionality balancing exercise' at paragraph 61-63 taking into account those factors that he was obliged to assess under s 117B of the Nationality Immigration and Asylum Act 2002. While noting that the Appellants private and family life were established when his status was precarious and that he had previously lied to the UK authorities he was entitled to

take into account and give weight to the fact that he accepted that the Appellant had no family in Serbia, and had no connections or ties to the country and could not speak the language and had been in the UK since 2000. He also accepted that the Appellants wife and children were British citizens and that she had cared for her British citizen bother since 2004 as he had mental health problems. He accepted that his wife also had no ties or family in Serbia. He also accepted that the Appellant had fled to the UK in fear but any fair reading of the decision makes clear that this was not the focus of his finding on proportionality it was simply one factor among many which entitled the Judge to conclude at paragraph 62 9f) and (g) that there would be very significant obstacles to the Appellant and his family continuing their family life in Serbia.

12. I was therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable: he properly directed himself as to the law, took all relevant matters into account including the weight of the public interest in maintaining immigration control and reached conclusions that were sufficiently detailed and based on cogent reasoning.

CONCLUSION

13. I therefore found that no errors of law have been established and that the Judge's determination should stand.

DECISION

14. The appeal is dismissed.

Signed

Date 28.1.2018

Deputy Upper Tribunal Judge Birrell