



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: HU/02596/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 24th October 2019**

**Decision & Reasons
Promulgated
On 27th November 2019**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

**KURTISH [M]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Akinbolu, Counsel, instructed by M & K Solicitors

For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals a decision of First-tier Tribunal Judge Dhaliwal which dismissed his appeal against the Secretary of State's refusal of his human rights claim on 13th January 2019. Dependent on his claim were his wife and three children born on 24th September 2002, 30th April 2004 and 22nd May 2005.
2. The renewed grounds for permission to appeal stated the appellant Kurtish [M] and his wife Humbe [M] and their three children [FM],

date of birth 24th September 2002, 16 years, [EM], date of birth 30th April 2004, 15 years and [LM], date of birth 22nd May 2005, now 14 years, were all Kosovan nationals and all three children were born in the United Kingdom. It was accepted that the appellant and his wife arrived first in the UK on 3rd January 2002 and following a failed claim for asylum the family were removed to Kosovo on 13th April 2006. They claimed they re-entered the UK together in June/July 2011, having remained in the UK since that time. On 20th November 2018 the appellant made further submissions with his family as his dependants on the basis of their family and private life but the application was refused on 13th January 2019, appealed and that appeal dismissed.

3. It was contended that the judge materially erred in law in that she failed to consider material evidence going to matters in issue and failed to give adequate reasons and/or made contradictory irrational findings.

Ground (i): failure to consider material evidence on material matters and give adequate reasons.

4. The judge failed to engage with and weigh into any assessment, the written evidence of all three children and the oral evidence of the middle child, who adopted his written evidence confirming that he entered the UK in 2011 and he attended the Nene Tereza, an Albanian school, and had remained in the UK since. This evidence went to the sustainability of the judge's negative findings of fact that the children were not "qualifying children" for the purposes of paragraph 276ADE(1)(iv) and Section 117B(6) by reason of the length of their residence, which in turn informed their best interests, reasonableness and proportionality assessments. The failure to assess evidence going to a matter in issue was a material error of law.
5. The evidence from the children also informed the weight to be given to the other evidence before the judge such as the letters from Nene Tereza School referred to at paragraph 21(3), which were rejected for lack of proof of actual attendance at the school. The evidence from the children also informed the weight to be given to the social worker's report. The judge erred in law by failing to address prima facie relevant evidence, which contradicted the findings of fact and undermined the appraisal of the evidence.
6. The judge rejected the evidence of [E] and his siblings, which she refers to as "having read", but it was incumbent upon her to give reasons justifying her findings and a bare assertion that the letters were read was insufficient *MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC)*. Had she rejected [E]'s oral evidence it was incumbent on her to say why.

Ground (ii): contradictory irrational findings

7. At paragraph 21(vi) on the evidence of a letter from an MP the judge finds that the appellant was in the United Kingdom from 16th August 2011 but this did not mean that the children were with him in the United Kingdom and that on the evidence she had considered she was prepared to accept that the earliest date that the appellant's wife and children were in the UK was 18th August 2014 "and that in all likelihood, the whole of the appellant's family were present in the UK at that point". These findings were inconsistent and irrational, given the plain reading of what is stated at paragraph 47, unequivocally finding that "he then made a conscious decision to return to the United Kingdom with his family illegally in the back of a lorry and contrary to their previous removal", namely that they returned to the UK together. It followed that from what is said at [47] that if the appellant was in the UK in August 2011, then so were his children.
8. Permission to appeal was granted on the basis it was arguable that the judge's analysis did not engage with the written evidence of each of the three children concerning the length of their residence in the United Kingdom and arguably it was an error to fail to engage with the detail of the letters. Arguably there was other evidence, in addition to the documents outlined by the judge, namely the children's letters, when rejecting the first appellant's assertion as to the timing of his arrival in the UK. It was also stated in the grant of permission to appeal that arguably the judge should have considered the accounts the children provided to the independent social working [sic] before reaching her credibility findings.
9. The errors could be significant because if the children arrived in 2001 as claimed they would be qualifying children for the purposes of Section 117B(6) of the Nationality, Immigration and Asylum Act 2002.
10. It was stated in the grant of permission that there was less merit in the contention at [8] of the grounds that the judge contradicted herself but the possibility that the overall credibility assessment was flawed and thus permission was granted on all grounds.
11. In relation to the contradictory and irrational finding, Ms Akinbolu at the hearing before me submitted that the judge seemed to accept that the family arrived together. Mr Walker argued that that finding was not made. The appellant was removed in 2006 and returned in 2011 but it was not clear on the evidence that the children accompanied him.

Analysis

12. In relation to ground (i), Ms Akinbolu stressed that the length of time that the children had been in the United Kingdom was expressed by the independent social worker although she did confirm that the report was premised on the information given to her by the children. She did submit that the judge did not refer to the independent social worker report when considering how long the children had been in

the UK and from [17] onwards it set out the factual findings, specifically that the family had been here since 2011.

13. What is clear from the history of this family is that the appellant arrived in the United Kingdom with his wife concealed in the back of a lorry on 3rd January 2002, their asylum claim was refused and he and his wife and three children were removed from the United Kingdom to Kosovo. The appellant then returned to the United Kingdom, again clandestinely, he asserts with his wife and three children. Clearly, the family had a facility for being able to enter the United Kingdom without detection and without leave. There was no documentary record of their re-entry either together or separately. The judge was clear in setting out at paragraph 19 that the key issue was whether the children had been here in the UK for at least seven years in order to be deemed as qualifying children. Credibility was a central issue. The judge carefully considered the evidence of the letters at the start of her deliberations and noted that the appellant accepted during his evidence that he had given incorrect addresses to the Secretary of State. The letters cited at paragraph 21, as the judge records, do not state that anyone had face-to-face meetings with the appellant and members of his family in the United Kingdom.
14. The judge at paragraph 21(iii) explained in terms why she rejected the evidence from the school as, not least, it contradicted the oral evidence of the father and she found the following:

*“(iii) Also attached in the Appellant’s bundle is a letter from Nene Tereza that confirms at as at 25 March 2019, the Appellant’s oldest child, [F] was **registered** (my emphasis) on a full-time basis for the academic year 2011/2013 for an Albanian language and history course, that he was first registered on 9 October 2011 and the expected date of completion for the course was 30 June 2014. Similarly, that the Appellant’s second child, [E], was registered for the same period for the same course and [L] the third child was registered from the same period for the same course. Of significance is that on the bottom of each letter, it stipulates that the certificate is provided as evidence that the above student is **registered** for the period shown and that students registered on a full-time basis are expected to spend at least 40 hours per week studying.*

I accept that these letters from Nene Tereza confirm that the children are registered with them. I do not have any reason to take issue with that. However, the letters do not confirm that the children were attending merely that they were registered. There are no records attached of the children’s attendance levels, if any,

particularly, if they were expected to study at least 40 hours per week.

This is also in stark contrast to the Appellant's evidence, who stated that the children attended on Saturday's only and that they stayed at home from Monday's to Friday's.

I do not find that I can place reliance on these letters, they do not support that the children were physically in the United Kingdom and were attending Nene Tereza.

- (iv) *There are letters from various medical practitioners but of specific note is that there is a letter from Northampton General Hospital dated 18 August 2014 from a consultant paediatrician, who had attended on the youngest child, [L] as it contains the outcome of recent tests.*

I can place reliance upon this as nothing undermines this and indeed, it seems to be externally consistent with the other medical letters that have been submitted.

- (v) *A letter dated 31 November 2018 from St Giles Church which confirms that the Appellant's wife has been attending a parent's group for the last 3 years.*
- (vi) *A letter from Brian Binley MP dated 16 August 2011 thanking the Appellant for visiting his office on that day and confirming that a letter had been sent to the UK Border Agency on the same date asking for further information.*

As this letter specifically thanked the Appellant for visiting his office, I am able to accept that someone did attend in person and it is more likely than not, that it was the Appellant who attended at the offices of the MP. I therefore accept that the Appellant was in the United Kingdom from 16 August 2011 but this does not mean that the children were with him in the United Kingdom."

15. I carefully considered the letters from the children which were said to have been ignored by the judge and I set out the terms for each individual letter which cites the arrival date to illustrate my conclusions on the judge's approach to the evidence.
16. The letter from [FM], born on 24th September 2002, stated in the first paragraph:

"Hello my name is [FM]; I arrived in England around 2011 for a fresh and a better future and was attending to an Albanian school Nene Tereza which is located in West Green London

around two years. These two years were rough but helped me get used to England and to learn the language.

After this two years I moved and attended to Kingsthorpe College located in Kingsthorpe Northampton."

17. The letter from [EM], born on 30th April 2004, stated:

"My name is [EM]. I am writing this letter to introduce myself and tell you about my past. In 2011 I arrived in England and started going to an Albanian school named Nene Tereza, which is located West Green London. I stayed in the school for a rough two years, getting used to England and learning the language. After two years I moved to a primary school named Kings Heath."

18. The third letter, from [LM], born on 22nd May 2005, stated:

"Hello my name is [LM] I arrived in England around 2011 for a new start and a brighter future. I was attending to an Albanian school Nene Tereza which is located in West Green London around two years. These two years were rough but helped me to get used to England and to learn the language.

After this two years I moved and attended to Kings Heath Primary School in Northampton."

19. First, although there was criticism of the judge for failing to take into account this evidence the first and third letter are written, initially, in identical terms, recalling evidence from when they were 9, 7 and 6 years old respectively. At the hearing before the First-tier Tribunal, it can be seen from the Record of Proceedings, that [EM], merely adopted his statement without more and repeated that he had come in 2011. This evidence, bearing in mind the vagueness in its written form and mere adoption, cannot be said to outweigh the very specific finding of the judge that there was simply no adequate or satisfactory evidence that these children had been in the United Kingdom since 2011. As the judge stated quite clearly in the decision, the children were registered on a full-time basis for the academic year 2011 to 2013 and that on the bottom of each letter it was stipulated that the certificate was provided as evidence that the above student is registered for the period shown. The judge specifically identified that there were no records attached to the children's attendance levels, if any, particularly if they were expected to study at least 40 hours per week. There is obviously a contradiction within the letters when they refer to the 'academic year' of '2011 to 2013', which is a contradiction in terms.
20. The judge clearly read the letters from the children because she identified those letters at paragraph 29 and there was no indication that she failed to take them into account when coming to her conclusions, albeit that she refers to them in a later of her decision. That said, the judge clearly did not accept that the letters correlated

with the objective evidence and I note that the letter from [FM] identifies that he moved to Kingsthorpe College in 2013. A letter from Kingsthorpe College specifically states that [F]'s date of admission to that school was on 1st September 2014, which completely undermines the evidence given by the appellant in his witness statement.

21. In relation to [E], the Nene Tereza letter dated 25th March 2019 referred to him being registered for the academic year 2011 to 2013 but noted his expected date of completion as 30th June 2014, which was again contradictory although I acknowledge the judge did not make that finding in her decision. The first record of [EM] at Kings Heath School was on 1st September 2014, at page 222 of the bundle, which contradicts his statement that he moved school in 2013.
22. [LM]'s statement merely echoes that of [FM]. Again, there is no record of [L] at Kings Heath Primary Academy prior to 1st September 2014.
23. As the judge pointed out, it is the absence of evidence which is critical in this regard. The letters said to have been disregarded by the judge were clearly addressed, but take the matter no further forward, not least because they are vague and run counter to the objective evidence. It would not be difficult to obtain school records to show these children attended school earlier, and as the judge pointed out, none was forthcoming.
24. It is a matter for the judge as to the weight to be placed on the evidence and it was open to the judge to disregard the social worker's report on the basis that it was reliant, as observed, on the children's evidence that they had been in the country since 2011. It was open to the judge to find that the objective evidence demonstrated that the children had been resident in the United Kingdom only since at least 18th August 2014.
25. In relation to ground (ii) I do not find that the comments made at paragraph 47 at the close of the decision materially undermined the previous finding effectively that there was no evidence that the children were in the country in 2011. The context of the appellant's immigration history was that there was an ability by the appellant and his family to enter the UK at their will and under the radar. That history the judge clearly recorded. In addition, the judge at paragraph 47 merely makes the comment that the appellant made a *conscious decision* to return to the United Kingdom with his family illegally in the back of a lorry and contrary to their previous removal. The reference is to the decision being made and that he would clearly wish to have his family with him. There was no evidence, as the judge found, that the appellants actually came in together.
26. When considering errors said to be contradictory Floyd LJ set out in *UT (Sri Lanka) [2019] EWCA Civ 1095* the following at paragraph 26

'26. ... In *R (Jones) v First Tier Tribunal and Criminal Injuries Compensation Authority* [2013] UKSC 19, Lord Hope said (at paragraph 25):

"It is well established, as an aspect of tribunal law and practice, that judicial restraint should be exercised when the reasons that a tribunal gives for its decision are being examined. The appellate court should not assume too readily that the tribunal misdirected itself just because not every step in its reasoning is fully set out in it."

27. In the light of the evidence as it was presented, the judge gave adequate reasons for her findings and there was no material error in the judge's decision because the letters, which the judge had read, could not have taken the matter further.

Notice of Decision

As such, the decision of the First-tier Tribunal will stand, and the appeal remains dismissed.

No anonymity direction is made.

Signed Helen Rimington

Date 25th November 2019

Upper Tribunal Judge Rimington