



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

Appeal Number: HU/16812/2016

THE IMMIGRATION ACTS

Heard at Birmingham Employment Tribunal
On 3 July 2019

Decision & Reasons Promulgated
On 10 July 2019

Before

UPPER TRIBUNAL JUDGE HANSON

Between

**EDMIR [A]
(anonymity direction not made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Yusef of Kingswood Solicitors.

For the Respondent: Mr C Howells Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant, a citizen of Albania born on 17 June 1981, applied to the respondent for the revocation of a deportation order on 12 August 2015. That order, dated 22 March 2010, was imposed following the appellant's conviction at Luton Crown Court for possessing/improperly obtaining another's identity for which he was sentenced to 18 months imprisonment. The appellant was removed from the United Kingdom on 8 April 2010 in accordance with the terms of the order.

2. In 2012 the appellant re-entered the United Kingdom illegally in breach of the deportation order. On 27 July 2015 the appellant was convicted at Birmingham Magistrates Court of driving a motor vehicle with excess alcohol and other road traffic offences for which he was sentenced to 35 days imprisonment. On 21 September 2015 the appellant pleaded guilty and was sentenced at Lincoln Magistrates Court to 4 months imprisonment for entering the United Kingdom in breach of the deportation order.
3. The current appeal is against the respondent's decision to refuse the appellants human rights claim relied upon as the basis for claiming the deportation order should be revoked.

Background

PROCEDURAL HISTORY:

4. The appellant's appeal against the decision came before First-Tier Tribunal Judge Clarke at Taylor House on 20 October 2017. Judge Clarke allowed the appeal to a limited extent concluding, by reference to the decision of the Supreme Court in R (Kiarie and Byndloss) v Secretary of State for the Home Department [2017] UKSC 42, that as a result of his removal from the United Kingdom the appellant was not properly availed of the opportunity to participate in the appeal. The Judge noted, however, that the appellant has family none of whom attended the hearing and that he has no representatives. At [7] of that the original decision the Judge finds:
 - "7. The Appellant's representatives came off the record and directions were sent to the Appellants address inviting him to apply to have the hearing by Skype and to serve any additional evidence he wished. No application for the hearing to be by way of Skype was received and no additional evidence was served. No witnesses arrived in support of the appeal. I heard submissions by the representative and a note of what was said is contained on the court record."
5. The Secretary of State challenged the Judge's decision on the basis that allowing the appeal "to a limited extent" was not an outcome available to the Judge in light of it not being a ground available to the Judge post the 2014 amendments to the available grounds of appeal.
6. It was found the Judge had erred in law in a manner material to the decision in the error of law finding promulgated on 1 March 2019 in which it is recorded that the appellant's current representative, Mr Yusef, accepted that the First-Tier Tribunal's decision is infected by legal error for the reasons set out in the Secretary of States grounds.
7. It is also recorded in the Error of Law finding that Mr Yusef had been told by the appellant's family members who were with him in court that the appellant had re-entered the United Kingdom, again, in breach of the terms of the deportation order. As Mr Yusef had been previously unaware of this development and was not in a position to proceed to enable the decision to be remade, especially as he still

awaited the file from the appellant's previous representatives, the appeal was adjourned to enable Mr Yusef to ascertain the current situation and to enable further constructive discussions in relation to this matter to take place.

8. The case was next before the Upper Tribunal for a Case Management Review hearing on 2 April 2019 at Bradford. At that Mr Yusef confirmed Mr [A] had returned to Albania but that he was still awaiting the file from the previous representatives for which further time was required. It had been established it was possible for video link evidence to be given from Tirana to the Upper Tribunal sitting at Birmingham as a result of which a number of case management directions were made, one of which was for the appellant no later than 4 PM 28 May 2019 to file and serve a consolidated, indexed and paginated bundle containing all the documentary evidence he intended to rely upon. It was also specifically directed that as the appellant is in Albania his representative shall make the necessary arrangements in accordance with any published guidance for video evidence to be given. Directions were given for the substantive hearing to be listed on the first available date after 1 June 2019.
9. No bundles or further documentary evidence, including witness statements, have been received in relation to this appeal.
10. On 24 June 2019 the appellant's representative submitted an adjournment request to the Upper Tribunal in the following terms:

"Dear Sirs

RE: URGENT ADJOURNMENT REQUEST MR EDMIR [A]
HEARING SCHEDULED FOR WEDNESDAY 03 JULY 2019

Following a recent telephone conversation with our client it became apparent that he is not able to draft a witness statement nor is he in any position to give oral evidence via video link.

I have been advised by Mr Alushi's family that he is suffering from alcohol withdrawal symptoms as he was extremely incoherent during our telephone interview which resulted in us abandoning the interview and advise the family that he seek professional medical help.

We apologise for the late correspondence but have felt we needed to give the appellant all the opportunity to improve his mental health however following today's meeting with his family it was mutually agreed that Mr [A]'s mental health was still too fragile for him to offer any personal supporting information in his case.

We have asked the family to encourage Mr Alushi to seek professional medical support in Albania which mean that we are not in a position to provide any such evidence at this stage.

We also wish to bring to your attention that we were unable to obtain Mr Alushi's file from his previous solicitors even though we have tried on several occasions but with no avail. However the Presenting Officer for the Home Office have been kind enough to provide our office with a copy of the respondent's bundle on the 24 June 2019, which unfortunately does not provide our office with the sufficient time to prepare an adequate defence.

Secondly we it is also noted from the facts of this case that the appellant's appeal is based on the fact that his deportation had impacted on the lives of his two children currently residing in the UK. We therefore feel it is imperative that the court are given the opportunity to establish the precise impact the separation is having on his children.

However given the ages of these children it would not be possible for them to give such evidence in person. It is for this reason we have suggested to the family to obtain the services of an independent social worker specialising in such matters and who will be able to interview the children to establish their views.

Therefore given the above we feel it is imperative that the appellant are given the opportunity to provide oral evidence via video link or a detailed witness statement especially;

1. As the refusal is based on the fact that the SSHD did not take into effect the impact his removal is having on the life of his children currently residing in the UK.
2. It is clear that the appellant's case raises issues relating to Article 8(2) of the ECHR, Section 55 of the Borders, Citizenship and Immigration Act 2009 and Article 3(1) UNCRC which reiterates the fact that the rights and best interests of any child should be of utmost importance in all immigration matters.
3. To ensure the appellant can receive a fair hearing in the interest of justice and procedural fairness.

It is for this reason we would humbly request that you accept this request and allow Mr [A] an adjournment, to ensure all relevant parties in this case will be represented correctly on the day which also coincide with his fundamental right under Article 47 which states that everyone has the right to an effective remedy and a fair trial.

Lastly we again request that you accept our severer apologies on such short notice which is unfortunately out of our control given the appellant's untimely situation.

We hope the above information is be suffice however if we can be of any further assistance please do not hesitate to contact us

Yours faithfully"

11. The application was refused by a lawyer of the Upper Tribunal pursuant to delegated judicial powers on 25 June 2019 in the following terms:

"The Appellant's application to adjourn a resumed hearing currently listed on 3 July 2019 is refused.

Reasons:

1. By letter dated 24 June 2019 the Appellants legal representatives have applied to adjourn the resumed hearing currently listed on 3 July 2019. They have explained that the Appellant is suffering from alcohol withdrawal symptoms and was incoherent during their telephone interview from him. Following discussions with the Appellant's family, they have explained that the Appellant's mental health is too fragile for him to offer any personal supporting information in his case. The Appellant's legal representatives have also explained that they do not have sufficient time

to prepare an adequate defence given that they were unable to obtain the Appellant's file from his previous legal representatives and have only been provided with the Respondent's bundle on 24 June 2019. Finally, the Appellant's legal representatives have submitted that they would like to instruct a social worker to interview the Appellant's children in order to establish the precise impact the Appellant separation is having on his children. For all these reasons, they submit that it is in the interest of justice for the appeal hearing to be adjourned.

2. No medical evidence has been provided by the Appellant's legal representatives in support of this application. The Appellant's legal representatives are solely relying on information received from the Appellant's family and following their telephone interview with him. Although they have asked the family to encourage the Appellant to seek medical help, there is no indication that assistance will be sought by the Appellant and for what period. If the Appellant is unwell then the resumed hearing can proceed in the absence of the Appellant.
3. I note that the Appellant's current legal representatives attended the case management review hearing on 2 April 2019. In view of this, they have had sufficient time to request the case papers from the previous legal representatives and to familiarise themselves with the issues in this appeal. I do not accept their submission that they have inadequate time to prepare for this appeal. In any event, they have now been provided with the Respondent's bundle of documents. Accordingly, they have sufficient time to read the case papers before the resumed hearing.
4. Moving on to the issue of instructing a social worker to draft a report, no reasons have been advanced to explain why this is being done at this late stage. Given that the last hearing in this appeal was on 2 April 2019, the Appellant's legal representatives have had ample time to instruct a social worker to draft a report. The Appellant's legal representatives can call the Appellant's family to give evidence. There is no reason why the mother of the Appellant's children cannot attend the hearing and a witness statement be prepared and filed in accordance with Rule 15 (2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008.
5. For the reasons I have set out above, I am also not prepared to adjourn the resumed hearing. The Upper Tribunal's resources are limited and an adjournment would cause unnecessary delays and add further costs. Accordingly, the resumed hearing will proceed as listed on 3 July 2019 in Birmingham."

THE ADJOURNMENT APPLICATION

12. Mr Yusef attended before the Upper Tribunal together with Mr Howell. It transpired in the course of the hearing that he had failed to bring his file of case papers with him but that he felt able to proceed. There was no other person in attendance.
13. Mr Yusef confirmed the telephone conversation he had had with the appellant arose as a result of a prearranged telephone appointment with the assistance of an Albanian interpreter. In answer to questions he stated he was not sure whether Mr [A] was drunk although he had been told that he had not had a drink for a week or two by members of the family. Mr Yusef confirmed he himself terminated the interview as he had the impression that Mr [A] could not understand what he

was saying to him. He stated he formed the opinion Mr [A] was disorientated and saying things that did not make sense.

14. Mr Yusef confirmed there was no medical evidence despite having advised Mr [A] during the course of the telephone conversation to get medical evidence and similar advice being given by the Independent Social worker who advised the family to obtain help.
15. Mr Yusef confirmed that the date of the telephone interview was Friday, 28 June 2019. When asked why it occurred so late Mr Yusef indicated that it was arranged when he received a bundle from the Secretary of States representative after he which he arranged the telephone call.
16. Mr Yusef also confirmed he had spoken to the family and advised them that evidence was required. It was stated that there will be no evidence forthcoming from the mother of the children in any event as a result of her hostility towards Mr [A].
17. When asked why no evidence had been called or provided in written form from the appellant's daughter, Mr Yusef stated it was because the child was only 14 years of age and was too young. Mr Yusef indicated that he had instructed an Independent Social Worker last week to speak to the children as a means of conveying their views. When asked why there had been delay in making such an instruction when the issues in the appeal would have been clearly known, the determination of Judge Clarke noting that the human rights application of 12 November 2015 had been refused and that the appellant appealed that decision asserting his deportation was unduly harsh on the children, Mr Yusef replied by stating there are cost implications of instructing the social worker.
18. Mr Yusef had spoken to the social worker as the appellant's representative, as had an uncle of the children and the elder daughter, but not the children's mother who would not speak to him.
19. When the issue of why the 14-year-old daughter was considered not able to speak directly to the court was explored with him Mr Yusef repeated that it was due to the child's age that she was not able to speak to the court or make a statement. Mr Yusef stated the absence of the appellant impacted upon the child's schooling although when asked whether there was any correspondence or evidence from the school to support such a claim he confirmed there was not. Mr Yusef also claimed there were behaviour problems at home as the 14-year-old daughter is very close to her father, closer to her father than her mother, and that she has a strong bond with her father and blames her mother for the current situation. Mr Yusef stated the child had told her father to stop drinking and that the appellant is an alcoholic a fact it is stated was also mentioned by the social worker.
20. Mr Yusef then stated that the social worker had spoken to Mr [A] on 2 July 2019 on the telephone with his daughter's help although he himself had made no further attempt telephone Mr [A] despite being aware of the other conversation. Mr Yusef advised that the social worker had doubts that Mr [A] had the capacity to understand the issues or to weigh up the consequences of his behaviour although it

was accepted he has the capacity to give instructions to Mr Yusef when he has been able to speak to him. It was stated that during previous conversations he came across as a different person to the one Mr Yusef spoke to on Friday last.

21. Mr Yusef repeated that he was not calling the 14-year-old daughter to give evidence due to her age.
22. When Mr Yusef was asked why other family members had not attended, there having been another family member in attendance at both the error of law hearing and case management hearing previously, Mr Yusef confirmed that an uncle had been told of the hearing date three weeks ago but had stated he was not coming to court as he had problems at work. When asked when this information was known Mr Yusef claimed it was Friday 28 June 2019. When asked why there was no witness statement from the uncle Mr Yusef stated he had asked the uncle to come into his office and give a witness statement, but the uncle claimed he was too ill to travel to the representatives office. The uncle lives in Birmingham with no medical evidence to support his claim of being unwell to the extent it prevented him making the short journey to his representatives office. Mr Yusef also confirmed he had not spoken to the uncle on the telephone with a view to obtaining a witness statement through such means.
23. The information provided by Mr Yusef indicated (a) that he had faced difficulties taking instructions from his client whose incapacity was such that he was not in a position to provide written or oral evidence to assist the Tribunal, (b) that no attempt had been made to obtain any evidence from schools or other sources, and, (c) that although it was claimed there were other witnesses such as the uncle no witness statements were provided and none had attended the hearing despite being aware of the date of the same. It is also not accepted that Mr Yusef was unaware of the relevant issues in this appeal as he attended the hearings before the Upper Tribunal and had had sight of the decision of Judge Clarke for some time.
24. Mr Howells confirmed the nature of the further evidence sent by the Secretary of State which included the respondent's bundle before the First-Tier Tribunal, which will have included a full copy of the refusal decision under challenge, and the Upper Tribunal documents which will have been served upon Mr Yusef as the appellant's representative in any event.
25. It is also the case that when the issue of the 14 year old daughter and the lack of any evidence from her was further discussed, and the issue of the child's age and understanding raised in relation to which the child clearly had shown she is a capable and intelligent individual, Mr Yusef then accepted that the appellant's daughter had sufficient age and understanding to take part in the proceedings.
26. Mr Yusef also brought with him a short report from the Independent Social Worker who confirmed a meeting with the appellant's eldest daughter and her uncle on 2 July 2019 at their home in Birmingham.

The section of the report headed “Summary of Initial Instructions” is in the following terms:

- “14) I can confirm that I had an initial telephone conversation with Mr [A] this morning who I understand is currently in Albania and this was in the presence of his daughter and cousin.
- 15) I unfortunately had to terminate our conversation as it became apparent that Mr [A] may suffer from some form of hallucination.
- 16) His daughter explained that her father’s symptoms started recently as he is currently in the process of ‘trying to stop his drinking habit’.
- 17) I have explained to his daughter and Mr Alushi’s cousin that it is most likely he is experiencing withdrawal symptoms, which is a sign that he may be physically dependent on alcohol. I have advised if this is the case I believe he should seek immediate medical attention as his condition could deteriorate.
- 18) Due to the short notice and time constraints I have advised the family that I would not be able to assess the impact upon Mr [A]’s children at this stage as I would need adequate time to interview Mr [A] and his children independently.
- 19) Usually, when I undertake an assessment of this sort my principal aim is to assess the wishes and feelings of the child/ren concerned; the impact of the removal of a parent or parental figure may have on them.
- 20) It is for this reason I do not feel that I am in a position to complete such an assessment at such short notice and advise the family that I will need more time to complete my current workload.

Action required

- 21) I would anticipate to complete my current workload in the next three - four weeks whereby I will then need further time to complete my report on the findings following the assessment.

The parties involved

Those involved in the case are as follows:

- [IA]
- [AA]
- Edmir [A]”

27. [IA]’s date of birth is 17 July 2004, [AA] 15 February 2013, and Edmir is the appellant in these proceedings.
28. The report seems to suggest an enquiry into the impact of the removal of a parent but this is the issue that has always been at large from the outset of these proceedings and is the basis of the appellant’s appeal against the respondent’s decision.
29. The adjournment application was refused having considered the submissions made, the overriding objectives, and principle of fairness.
30. This is not a case in relation to which issues have arisen of which parties did not have adequate knowledge. Issues concerning the

appellant and alcohol arose in July 2015 when the appellant was convicted of driving with excess alcohol. Whilst the appellant's inability to provide clear instructions or take part in the proceedings may not have been appreciated until the discussion with the Independent Social Worker and Mr Yusef, the reality of the situation is that the appellant is not going to take any active role in the proceedings and so adjourning for this reason serves no useful or realistic purpose.

31. So far as [AA] is concerned, the child is only 6 years of age and has not been shown to have sufficient age and understanding to be able to take an active role in these proceedings. It is not unrealistic to assume that the child's position will be that he would like his father to be able to return to the United Kingdom.
32. In relation to Imelda, she is nearly 15 years of age. [IA] attended both hearings before the Upper Tribunal previously and was able to provide information to both the Tribunal and Mr Yusef regarding her father's situation. There is nothing to suggest that this young lady is anything other than a person of sufficient age and understanding to enable her to play a role in the proceedings such as the provision of a witness statement and/or to have attended court on the day. Although Mr Yusef initially suggested the opposite he accepted, as noted above, that this is the true position. Notwithstanding this fact no witness statement was provided from [IA] who did not attend the hearing, Mr Yusef repeatedly claiming that the Independent Social Worker had been instructed to record the child's views in a case in which [IA] is quite capable of expressing such views herself. No acceptable reason was provided for why such evidence was not provided in accordance with the directions to establish was appropriate in all the circumstances to adjourn the matter further for something that could easily have occurred.
33. It was not made out it was appropriate to adjourn to allow the uncle to attend as clearly he had been fully aware of the hearing yet had not provided a witness statement, despite being asked by Mr Yusef, and had failed to attend before the Upper Tribunal claiming work-related issues when there was no evidence supporting such a claim.
34. There has been ample time to obtain reports from the school or other sources yet no action had been undertaken to secure the same. Mr Yusef stated he had told the family such information was required but, again, none was forthcoming.
35. It is not considered there is any need for a report from an Independent Social Worker as the evidence for which the same had been instructed to obtain could be obtained from other sources and there was no need established in the submissions that any particular expertise required in this case to enable best evidence to be obtained.
36. Whilst it is accepted there may be difficulties in a case where there is conflict between the appellant and the children's mother this does not explain the issues that have arisen with regard to the evidential aspects of this appeal. Indeed, Judge Clarke at [7] of the determination of 21 November 2017 notes that no application had

been made for evidence to be given from Albania and no witness statements or other documentary evidence had been served nor any witnesses attended to support the appeal on that occasion too. This reflects the situation that exists again.

37. The adjournment application was refused. Having asked Mr Yusef his position in light of the same he confirmed he was in a position to make submissions behalf of the appellant. The matter therefore proceeded to the substantive hearing on the basis of submissions received from both Mr Howells on behalf of the Secretary of State and Mr Yusef on behalf of the appellant.

Discussion

38. The factual history in relation to the appellant's immigration history and criminality is not in dispute. There is arguable merit in Mr Howell's submission that the appellant's conduct demonstrates a clear disregard for the laws of the United Kingdom, a fact further demonstrated by the appellant entering the UK in breach of the deportation order on a further occasion.
39. The appellant had the opportunity to appeal the order of his deportation from the United Kingdom, but such challenge failed, and he was deported.
40. It was noted that Mr [A] lived in the United Kingdom and it is not disputed that his daughter and stepson remain here. The children will however remain in the UK with their mother.
41. The issue in this appeal has always been, as accepted by the appellant, whether his continued exclusion from the United Kingdom will be unduly harsh upon the children.
42. Whilst 9 years have passed since the making of the deportation order it has not been established to be such a period that warrants the granting of the appellant's appeal per se, especially in light of the unlawful re-entry to the United Kingdom in breach of the deportation order.
43. The relevant provisions of the Immigration Rules state:

Revocation of deportation order

390. An application for revocation of a deportation order will be considered in the light of all the circumstances including the following:

- (i) the grounds on which the order was made;
- (ii) any representations made in support of revocation;
- (iii) the interests of the community, including the maintenance of an effective immigration control;
- (iv) the interests of the applicant, including any compassionate circumstances.

390A. Where paragraph 398 applies the Secretary of State will consider whether paragraph 399 or 399A applies and, if it does not, it will only be in exceptional circumstances that the public interest in maintaining the deportation order will be outweighed by other factors.

391. In the case of a person who has been deported following conviction for a criminal offence, the continuation of a deportation order against that person will be the proper course:

- (a) in the case of a conviction for an offence for which the person was sentenced to a period of imprisonment of less than 4 years, unless 10 years have elapsed since the making of the deportation order when, if an application for revocation is received, consideration will be given on a case by case basis to whether the deportation order should be maintained, or
- (b) in the case of a conviction for an offence for which the person was sentenced to a period of imprisonment of at least 4 years, at any time,

Unless, in either case, the continuation would be contrary to the Human Rights Convention or the Convention and Protocol Relating to the Status of Refugees, or there are other exceptional circumstances that mean the continuation is outweighed by compelling factors.

391A. In other cases, revocation of the order will not normally be authorised unless the situation has been materially altered, either by a change of circumstances since the order was made, or by fresh information coming to light which was not before the appellate authorities or the Secretary of State. The passage of time since the person was deported may also in itself amount to such a change of circumstances as to warrant revocation of the order.

- 44. The grounds on which the order was made was that as a result of the appellants offending the public interest requires his removal from the United Kingdom. The evidence available to this Tribunal supports Mr Howell's submission the appellant's continued exclusion is conducive to the public good and in the public interest especially in light of the alcohol in other issues identified and the appellant's conduct in breaching the terms of the deportation order; indicating that it is inappropriate to find there is non-ongoing reason for his continued exclusion.
- 45. Mr Yusef in his submissions in support of revocation refers to family circumstances and the impact of the appellant's continued exclusion. There is no relationship between the appellant and his wife any

longer. Submissions made that the appellant's exclusion will have a detrimental effect upon his children, particularly his daughter, such as to impact upon her schooling and possibility chance of accessing university and future employment prospects are not supported by any evidence and are speculation. Whilst there is no reasons to doubt the claim [IA] has a close bond with her father and would like her father to return to the United Kingdom so she could continue to have a direct relationship with him, it has not been established that the consequences of the appellant's continued exclusion from the United Kingdom will result in unduly harsh consequences for her or any other member of this family unit.

46. The interests of the community, including the maintenance of an effective immigration control are clearly issues that count against the appeal being allowed. There is no evidence that the appellant is a reformed character and indeed the evidence suggests he is a person who will continue to breach the laws of the United Kingdom if it suits him to do so. Alcohol appears to be in issue in relation to which there is no evidence to show the appellant will not continue to pose a threat to the interests of the community in the United Kingdom by breaching the U.K.'s laws by the commission of further offences. There is a strong deterrent element in enforcing the effectiveness of immigration control, especially in relation to a person who on more than one occasion has breached the terms of deportation order by re-entering the United Kingdom. It appears only to have been when it was indicated at an earlier hearing that he could be sentenced to a further period of imprisonment having entered the United Kingdom in breach of the deportation order on a second occasion that the appellant chose to return to Albania. Why it was thought appropriate or acceptable to re-enter the United Kingdom in breach whilst he had an appeal pending has never been explained.
47. There is no evidence to support the claim that the interests of the appellant warrant the deportation order being revoked. On the basis of the available evidence the only compassionate circumstances which could be relied upon are those relating to the children and in particular [IA]. As noted above, it is accepted that she would like her father to be allowed to re-enter the United Kingdom and that she misses him greatly. This is the understandable reaction of a young teenager who has a bond with her father. The reality of the situation is, however, that [IA] and her brother will continue to reside in the United Kingdom with their mother. It was not made out that any difficulties that may exist between [IA] and her mother are other than the normal conflict that may exist between a teenager and a parent. There was no evidence to suggest otherwise and as [IA]'s mother refuses to take any active part in these proceedings, and in light of the failure to obtain evidence from [IA], there is nothing to suggest otherwise. [IA] is upset as a result of the continued separation but that is not enough to establish that the decision to maintain the deportation order will be unduly harsh. The best interests of both children will continue to be met by remaining in their current family home in the United Kingdom.

It is not made out that any emotional or developmental issues arise in relation to the children other than the normal consequences of being separated from their father as a result of his deportation. There was no credible evidence that the educational needs of either of the children will be materially prejudiced such as to amount to unduly harsh consequences.

48. Whilst it is accepted that indirect contact is not the same as direct contact it was not made out that the children would not be able to visit their father in Albania for the purposes of the holiday or otherwise or that the current contact arrangement will not continue.
49. Having considered all the evidence in the round I find the appellant fails to establish an entitlement to have the deportation order revoked pursuant to the Immigration Rules. I find the respondent has discharged the burden of proof upon him to the required standard to establish that the decision not to revoke the deportation order is proportionate to any continued interference with the family life that exists between the appellant and his children who continue to live in the United Kingdom on the facts of this matter.
50. The appeal is dismissed. There is insufficient evidence to warrant any other finding.

Decision

51. **I remake the decision as follows. This appeal is dismissed.**

Anonymity.

52. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as no such order was requested.

Signed.....
Upper Tribunal Judge Hanson

Dated the 4 July 2019