



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: UI-2022-000633
HU/08824/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 19 July 2022**

**Decision & Reasons
Promulgated
On 9 September 2022**

Before

**THE HONOURABLE MR JUSTICE MORRIS
UPPER TRIBUNAL JUDGE McWILLIAM**

Between

**SHPETIM VANI
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms Samina Iqbal, Counsel instructed by Evolent Law,
Solicitors

For the Respondent: Ms Hannah Gilmour, Senior Home Office Presenting
Officer

DECISION AND REASONS

Introduction.

1. This is an appeal by Shpetim Vani (“the Appellant”) against the decision of First-tier Tribunal Judge Hoffman promulgated on 8 April 2021 (“the FTT Decision”). By the FTT Decision, the judge dismissed the Appellant’s appeal against the decision of the Secretary of State for

the Home Department (“SSHD”) dated 29 April 2019 refusing to revoke a deportation order made against him on 8 November 2013 (“the SSHD Decision”). Permission to appeal was granted by Upper Tribunal Judge Pitt on 19 April 2022.

2. There has been no application for an order to anonymise the Appellant. We have considered Guidance Note 2022 No 2: Anonymity Orders and Hearings in Private and find no reason to make such an order. However, we have used initials when referring to the Appellant’s partner and their children to protect the identity of the children.

Factual background

3. The Appellant was born in Albania on 9 March 1964. He claims to have entered the UK clandestinely on 15 January 2002. Thereafter he used a false identity in order to work illegally, making no attempt to regularise his stay. In July 2006 he married LD, a Kosovan national, in the UK in a religious ceremony which is not recognised in UK law. They have a son, H, born in March 2007 and a daughter, E, born in July 2010.
4. On 5 March 2012 he was convicted on four counts relating to false identity documents and possessing an article used in fraud. He was sentenced to four years imprisonment. As a result the SSHD issued a notice that he was liable to deportation. The Appellant responded to that notice in August 2012, September 2012 and September 2013. On 11 November 2013 the SSHD made a deportation order against him. His appeal against that order was dismissed by the FTT on 5 August 2014. Permission to appeal further was refused.
5. In November 2015 the Appellant made representations including a claim for asylum. In December 2015, his second daughter, N, was born. By the end of 2016 claims to be a potential victim of human trafficking and his asylum and human rights claims had been refused. According to the SSHD, removal from the UK was set for 12 January 2017. Removal was deferred as the Appellant stopped reporting. He applied for judicial review unsuccessfully. Further removal directions were set for 9 February 2018 but were cancelled because of failure to report. Finally in July 2018 the Appellant was arrested for immigration offences and detained. On 3 August 2018 he submitted an application for leave to remain in the UK on Article 8 grounds. On 17 October 2018 LD was granted indefinite leave to remain.

The SSHD Decision

6. By the SSHD Decision, the SSHD rejected the Appellant’s human rights claim and refused to revoke the deportation order. First, in relation to H, the SSHD found that he could remain in the UK and in the care of his mother who had been granted ILR.

7. Turning to the Article 8 claim, the SSHD considered the Appellant's circumstances in accordance with the Immigration Rules and sections 117A to 117D of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). It was noted that the Appellant's deportation was conducive to the public good and in the public interest because he had been sentenced to a period of imprisonment of at least four years. As a result, the public interest required deportation unless he was able to demonstrate very compelling circumstances over and above those described in the exceptions to deportation set out under paragraph 399 and 399A of the Rules. The SSHD did not accept that there were very compelling circumstances in his case.
8. As regards the Appellant's three children, the SSHD noted that, as part of his earlier deportation appeal, the FTT had concluded that the children could remain in the UK with their mother. As regards H in particular, the SSHD accepted that removing him from the UK could have a detrimental effect on his education and social development and that his best interests were for him to remain in the UK under the care of his mother and to continue his education. H had always been under the care of his mother and for most of his life and had not lived with the Appellant. No evidence had been provided to show that H had suffered any hardship during the time that the Appellant had absconded from the family home and had been serving a custodial sentence. The SSHD concluded that there was no independent objective evidence to suggest that H's well-being would suffer once the Appellant had been deported. As regards his daughter E, the SSHD said that removing her from the UK would cause emotional hardship and could have a detrimental effect on her education and social development. It was in her best interests to stay in the UK and remain under her mother's care. If no steps were taken to regularise E's status, she too faced removal to Albania and the SSHD considered she was young enough to adapt to new surroundings and could adjust to life in a new country with the help of her father and family members. As regards N, the SSHD did not accept that the Appellant had provided sufficient evidence to show that he had a genuine subsisting relationship with her.
9. The SSHD went on to consider the Appellant's relationship with LD and found that she was not reliant on the Appellant for care and there was no evidence to suggest that his removal would affect her health and well-being or cause financial or emotional hardship. It was therefore not accepted that by separating the two of them the deportation would constitute very compelling circumstances to warrant a grant of leave to remain in the UK. Finally, the SSHD considered the Appellant's private life and concluded that, having spent his youth and formative years in Albania he could reintegrate into that country. The SSHD concluded that she did not accept that there were very compelling circumstances which outweighed the public interest in seeing him deported.

Legal Framework

10. The deportation of foreign national offenders is governed by the UK Borders Act 2007 (“the 2007 Act”). Section 32 provides:

“32 Automatic deportation

(1) In this section “foreign criminal” means a person—

- (a) who is not a British citizen,
- (b) who is convicted in the United Kingdom of an offence, and
- (c) to whom Condition 1 or 2 applies.

(2) Condition 1 is that the person is sentenced to a period of imprisonment of at least 12 months.

(3) Condition 2 is that—

- (a) the offence is specified by order of the Secretary of State under section 72(4)(a) of the Nationality, Immigration and Asylum Act 2002 (c. 41) (serious criminal), and
- (b) the person is sentenced to a period of imprisonment.

(4) For the purpose of section 3(5)(a) of the Immigration Act 1971 (c. 77), the deportation of a foreign criminal is conducive to the public good.

(5) The Secretary of State must make a deportation order in respect of a foreign criminal (subject to section 33).

(6) The Secretary of State may not revoke a deportation order made in accordance with subsection (5) unless—

- (a) he thinks that an exception under section 33 applies,
- (b) the application for revocation is made while the foreign criminal is outside the United Kingdom, or
- (c) section 34(4) applies.

(7) Subsection (5) does not create a private right of action in respect of consequences of non-compliance by the Secretary of State.

11. Section 33 of the 2007 Act sets out the exceptions to automatic deportation. The following provisions are relevant to the present appeal:

“33 Exceptions

(1) Section 32(4) and (5)–

- (a) do not apply where an exception in this section applies (subject to subsection (7) below), and
 - (b) are subject to sections 7 and 8 of the Immigration Act 1971 (Commonwealth citizens, Irish citizens, crew and other exemptions).
- (2) Exception 1 is where removal of the foreign criminal in pursuance of the deportation order would breach—
- (a) a person's Convention rights, or
 - (b) the United Kingdom's obligations under the Refugee Convention.

[...]"

12. When considering Article 8 claims raised by foreign criminals, s.117A of the 2002 Act requires that the Court must have regard to the contents of sections 117B and 117C. The latter provision applies specifically to cases involving the deportation of foreign criminals, and provides:

"117C Article 8: additional considerations in cases involving foreign criminals

- (1) The deportation of foreign criminals is in the public interest.
- (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
- (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
- (4) Exception 1 applies where—
 - (a) C has been lawfully resident in the United Kingdom for most of C's life,
 - (b) C is socially and culturally integrated in the United Kingdom, and
 - (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
- (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the

effect of C's deportation on the partner or child would be unduly harsh.

(6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2.

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted.”

(emphasis added)

The FTT Decision

13. In the FTT Decision, the judge summarised the facts and the relevant law, the evidence and the parties' respective cases. The Appellant's case was that, under section 117C(6), he could establish very compelling circumstances.

14. The judge set out his findings and reasons at §§41 to 78 of the FTT Decision. The starting point were the findings made by the FTT (“the Panel”) during the deportation appeal in 2014. In that appeal the Panel had recognised that the key issue was the effect of the deportation on his children. The Panel found that it was in the best interests of the children to be brought up by both parents, but the children were not British citizens or settled in the UK (at that time) and the family could live together in Albania. Overall the Panel concluded that the public interest outweighed the Article 8 rights of the Appellant and his family.

15. At §§44 to 57, the FTT judge addressed the public interest considerations. At §46 he concluded that the interests in maintaining an effective immigration control weighed heavily in favour of deportation. At §§49 to 51, he considered the seriousness of the Appellant's offence, concluding that he had played an important role in a sophisticated operation to create false identity documents on a significant scale and that those documents would have been used in furtherance of other crimes and facilitated travel in and out of the UK. He addressed the Appellant's arguments that the SSHD had delayed in effecting deportation and that the Appellant had been assessed as posing a low risk of reoffending and, since the last appeal, had not offended again. He concluded at §57 that none of this altered the approach to be taken to the public interest considerations.

16. At §§58 to 67, the FTT judge considered the position of the Appellant's three children. As regards N, the youngest, the judge

concluded that the Appellant had not met the burden of demonstrating that there were any very significant obstacles to her relocating to Albania with her father, although he did not believe it would be in her best interests to be separated from her mother and siblings by doing so.

17. Critically for the purposes of this appeal, the judge then turned to the question of whether deportation would be unduly harsh for the two elder children, H and E (under Exception 2 in section 117C(5)). This was addressed at §§60 to 67, and in particular in the context of a report from an independent social worker, Mr Palamani, who had been instructed to assess the best interests of the three children. He concluded at §67 that the Appellant had “fallen far short of demonstrating that his deportation would be unduly harsh for his children, let alone to being able to point to any very compelling circumstances over and above that”. His detailed reasoning, leading to this conclusion, included the following:

“60. Mr Palamani interviewed the family on 5 October 2019. Mr Palamani notes that none of the three children has any developmental problems; they are all healthy young people (para 13). He was not made aware of any behavioural issues with them (para 15). [LD] found it “extremely difficult” to manage the children while the appellant was in prison, and this was “a stressful time in their life”; Mr Palamani states that the “children are extremely likely to achieve if they have both parents present in their daily life” (section 10, para 1). The fact that the appellant is unable to work in the UK due to his immigration status has resulted in the family having to rely on benefits and [LD’s] part-time work. It “was clear that the family was struggling financially as the house was sparingly furnished, however the children had all the essential toys and a wide selection of books” (section 11, para 1). Mr Vani helped with household chores and has taken a leading role in assisting the children with their education; both [H] and [E] had a strong bond with their father and in Mr Palamani’s professional opinion, if the appellant was removed, “it is most likely that the children will regress educationally” (section 12, para 1). Without their father, they would not reach their full potential and it was “plausible to hypothesise that their career prospects would be limited” (section 13, para 1). [H] and [E’s] mental wellbeing would be negatively affected by their father’s removal. If their father was removed, Mr Palamani recommended that they be “afforded play therapy to express their anger, wishes and feelings in a safe environment”. Mr Palamani also reports that [LD] is “a good mother, however her mental health will also be adversely effect [sic] which would affect how she parents the children manages their emotional needs”. Mr Palamani was unable to comment on local children’s services as he was not familiar with the area

the family lived in, but he recommended that [LD] approaches Children's Services and possibly Early Help who could offer some support, although the appellant's role would be "irreplaceable" (section 14, para 1).

61. In closing submissions, Mr Ojo argued that the case did not meet the unduly harsh threshold. To the extent that the independent social worker said that [H] and [E] would regress academically without their father and their career prospects damaged, Mr Ojo submitted that this was mere speculation. In reply, Mr Dhanji said that the independent social worker was not speculating, but was basing his assessment on his professional experience. I note that in his report Mr Palamani says that he has an MA in social work and that he had enrolled on in a postgraduate diploma in social work at the University of East Anglia; that he is registered with the HTPC (whoever that is); and was employed by Norfolk County Council as a social worker with the People from Abroad Team. However, Mr Palamani does not provide any information about how many years he has practiced as a social worker. It is therefore difficult to gauge how much professional experience he has. Nevertheless, I accept the evidence that the appellant does assist his eldest two children with their schoolwork, that [H] in particular is a promising student (particularly when it comes to maths), and that in the absence of their father, [H] and [E]'s school work could reasonably be expected to suffer, at least in the short term. However, given [H] and [E]'s young ages (14 and 10 respectively), I find that Mr Palamani's claim that their father's deportation will have a detrimental impact on their career prospects is indeed speculative. ..."
62. In my view, it is inevitable that the deportation of a parent will have a detrimental impact on any children with whom the deportee has a genuine and subsisting relationship who is left behind. But that does not automatically mean that the effect on the child is unduly harsh. In *KO (Nigeria) v Secretary of State for the Home Department* [2018] UKSC 53, the Supreme Court held that "unduly harsh" means something more than unreasonable; the decision-maker is required to assess whether there is "*a degree of harshness going beyond what was necessarily be involved for any child facing the deportation of a parent*": see para 23. In the present case, the appellant and [LD] have plainly come to an agreement that were the appellant to be deported, she and the children would remain in the UK. That is clearly a decision for them. But I do not accept that the effect on the family would meet the unduly harsh threshold.
63. I accept that the appellant's absence would make it more difficult for [LD] to look after her children. Firstly, it is clear

that since his conviction the appellant is not financially responsible for his family in any way. Secondly, [LD] did manage to look after her children alone whilst the appellant was in prison (albeit she had only two children at that point). She has also had to look after them alone whilst the appellant absconded around 2017 or 2018 (according to his evidence, for three months) to avoid being detained by immigration authorities, and also whilst he was in immigration detention. Also, in a letter to the Home Office dated 12 August 2013, [LD] wrote that she and the appellant separated in 2006, 2007 and 2008 because of uncertainty about his immigration status... ([H] was born in March 2007).

64. I take into account the findings of the First-tier Tribunal in 2014 that [LD] was a resilient woman with “the inner resources to support her children herself...with dignity” (para 33). They were struck by her “obvious parenting strengths” who had been a “tower of support and an anchor for the children” (para 34). That assessment is supported by Mr Palamani, who says that she is a good mother. I can find no reasons to depart from those assessments. I accept that the absence of the appellant will make it **more difficult** for her to support her three children. Nevertheless, there is nothing in the evidence before me, including in Mr Palamani’s report, that indicates that by being brought up by their mother alone, that this would be unduly harsh for the children. As Mr Ojo pointed out, according to the independent social worker’s report, the children appear to be doing well in school, they have not displayed any behavioural issues and, in circumstances where they do require support to cope with the absence of their father, Mr Palamani suggests that they could seek help from their local Children’s Services or other resources.”

(**emphasis** added)

18. At §65, the judge accepted again that life would be more difficult for [LD] but she was a capable mother and resourceful woman and would be able to continue to bring up her three children alone.
19. In the remaining parts of the FTT Decision, the judge addressed the Appellant’s relationship with his partner (§§68 to 70), his own private life (§§71 to 73) and stated his conclusions on Article 8 (§§75 to 78) repeating his view that (1) the consequences for his wife and children would not be “unduly harsh”, let alone demonstrated any very compelling circumstances and (2) there would not be any very significant obstacles to the Appellant re-establishing his private life, let alone any very compelling circumstances over and above such obstacles.

Relevant parts of the Social Worker's report

20. Given their prominence in this appeal, the following parts of Mr Palamani's report are relevant:

“9. What impact, if any, did Mr. Vani's incarceration in prison have on his partner and children?”

1. Mrs Dalipi informs that she found it difficult to look after the family, pay the bills and managing [H's] emotional needs was a challenge as he kept talking about his father and wanting to see him. [LD] informs that she was on medication for depression. [LD] was scared of the prospect of living on her own and having to raise three children without her husband. It was apparent that [LD] was petrified of the prospect of being left to raise her children on her own and I do believe she would struggle to manage the children's emotional needs. Mr Vani appears to have a good bond with his children and is able to manage [H's] emotional needs and provide the male/father figure role that [H] needs.

10. What impact, if any, did Mr. Vani's conviction have on his partner and children?

1. [LD] found managing the children extremely difficult and they would wake up wanting to see their father and that was a stressful time in their life. The children are extremely likely to achieve if they have both parents present in their daily life.

...

13. What impact, if any, would Mr. Vani's deportation from the UK have on his partner and children? Please comment on (a) children's education; (b) children's career prospects; and (c) children's physical and mental wellbeing.

1. In my professional opinion, [H] and [E] will most likely regress educationally as they have formed a strong bond with their father, as such it is likely that they may not achieve their full potential if their father is not in their life offering the emotional and practical support, however this is not to say that the children will fail educationally. It is very difficult to comment on the children's career prospects as they are too young, however based on the interview I have formed a view that they are unlikely to achieve their full potential educationally if their father is not present. It is plausible to hypothesise that their career prospects will be limited, however that needs to be balanced with the fact that one does not need to have achieved educationally to build a

successful career. In terms of mental wellbeing, in my professional opinion both [H] and [E] will be negatively affected. It is unreasonable to force them to be raised in a single parent household, given they have a strong bond with their father and the family wishes to remain together as a unit. If Mr Vani is removed, I would strongly recommend that [H] and [E] are afforded play therapy to express their anger, wishes and feelings in a safe environment. During the interview, I observed [LD] to be a good mother, however her mental health will also be adversely affected which would affect how she parents the children and manages their emotional needs.

...

15. What difficulties would Mr. Vani's partner have in raising her children alone in the UK?

Having interviewed the family, [LD] will most likely face the following issues

- 1.1 Loneliness - [LD] will find it difficult to live on her own with three of her children and when Mr Vani was in prison, she stated she suffered from stress and was prescribed medication. [LD's] routine will have to adjust overnight and as such she will struggle and potentially isolate herself with the children.
- 1.2 Instilling discipline on her three children - [LD] will most likely find it difficult to instil discipline on [H] and [E] as it is those two who have a strong bond with their father.
- 1.3 Low self-esteem - [LD] will be judged by the Kosovan and Albanian community as being the wife of a criminal and now a single parent. This will most likely lead into [LD] further isolating herself and contribute to her loneliness which undoubtedly will adversely affect the children.
- 1.4 Financial constraints - [LD] informs that she is used to being on a low income, but fears that as her children grow up she would not be able to meet their needs as she would like.
- 1.5 As a single parent, [LD] will need to ensure that her children are fed, attend school, assist them with their homework, attend to all the household's chores amongst others. [LD] will find it difficult to manage as a single parent and she fears that it will affect her children."

(emphasis added)

The grounds of appeal

21. Against this background, the Appellant appeals against the FTT Decision on the following two grounds:
- (1) The FTT judge failed to resolve conflicts of opinion on material matters.
 - (2) The FTT judge failed adequately to explain why he assessed LD's future struggles to be "more difficult" rather than "extremely difficult".
22. These two grounds both relate to the issue whether deportation would be unduly harsh for the two older children under section 117C(5). The Appellant contends that these two errors were material because they undermined the FTT judge's conclusion at §67 that the deportation would not be unduly harsh in that regard. Before turning to the specific grounds, we make two observations. First, the FTT judge carried out a detailed and careful assessment of this issue at §§60 to 67, including properly directing himself as to the relevant test to be applied. Secondly, the judge correctly applied the principle in *Devaseelan* [2002] UKIAT 702 that the starting point had to be the findings made by the Panel in 2014 and then considered whether the further evidence before him, and in particular the social worker's report, justified departing from those findings.

Ground (1): inconsistent findings on detrimental impact upon the children

23. The Appellant contends that there is an inconsistency in the FTT judge's material findings which he failed to resolve. Ms Iqbal submits that the judge's finding, on the one hand, that the social worker's claim that the Appellant's deportation would have a detrimental impact on the career prospects of the two elder children was speculative (§61) is inconsistent with his finding, on the other hand, at §62, that there would be a detrimental impact on the Appellant's children, if he was deported. She submits that it is therefore not clear which of these alternative findings formed the basis of the FTT judge's conclusion that the unduly harsh test was not satisfied. She further submits that it is unclear why the judge rejected the social worker's claim about detrimental impact on career prospects.
24. In our judgment, this contention is misconceived. First, there is no inconsistency between §§61 and 62 of the FTT Decision. At §61 the judge makes an express finding about detrimental impact in the present case upon the two children (and specifically in relation to career prospects); by contrast in the first sentence of §62, the judge makes a general statement, in the context of applying the legal test of "unduly harsh", applicable to every case where children are left behind ("deportation of a parent... impact on any children"). That passage in §62 does not in terms find as a fact that there was a detrimental impact upon these two children, and in any event, distinguishes

between detrimental impact and meeting the “unduly harsh” threshold. Secondly, the finding in §61 that the social worker’s claim was speculative was clearly explained and one which was open to the judge. As explained at §61, the SSHD had argued that the claim was speculative; the Appellant had argued that it was not, relying on the social worker’s professional experience. The judge accepted the former argument, not least because, as he explained (at §61), he was not convinced of the degree of professional experience and because of the young age of the children. Moreover, the judge’s conclusion that the claim was speculative is further supported by the social worker’s own view which was tentatively expressed due to their young age (see highlighted answer to Question 13 above).

25. For these reasons Ground (1) fails.

Ground (2): “difficulties” for LD

26. The Appellant contends that the judge failed to explain why, at §64, he assessed the future struggles of LD in supporting her children as being only “more difficult” and not “extremely difficult” (as the social worker had said); and that if he had found the latter, that would have satisfied the “unduly harsh” test. Whilst at §64 the judge says that he is not departing from the 2014 decision, the Panel did not have any expert evidence before them as to the impact on the children. By contrast, the judge did now have the social worker’s expert evidence of “extreme difficulty”.

27. We consider that this ground is unfounded. First, contrary to Ms Iqbal’s submission, we consider that, by this argument, the Appellant was contending that the judge wrongly failed to depart from the 2014 decision, on the basis of new evidence from the social worker.

28. Secondly, the judge properly considered the new evidence from the social worker, but, as he was entitled to do, reached his own conclusion on the degree of difficulty which would be experienced by LD. The judge was entitled to find that supporting the children would be “more difficult” rather than “extremely difficult”. As regards the latter assessment, first, it is not clear whether this was the social worker’s view or merely what LD had reported to him; secondly, it related only to the historic effect of the Appellant’s past conviction; thirdly, in any event the social worker’s own description of the effect whilst in prison was not consistent (compare answer to Question 9 – merely “difficult”). In any event, it is the answer to Question 15 which sets out the social worker’s evidence about difficulties going forward. There is no statement there that she would encounter “extreme difficulty”.

29. Thirdly, the Appellant’s reliance upon a description in one sentence in the social worker’s report to satisfy the “unduly harsh” test is misplaced. The judge correctly identified that test in §62. The relevant question for the judge was not whether LD’s position would be “more

difficult” or “extremely difficult”; but whether the effect on the mother would render matters “unduly harsh” for the children. The judge’s own reasoning is at §64, where he concludes, in the application of that correct test, that such difficulties as there would be would not mean that being brought up by LD alone would be unduly harsh for them. We consider that, at §64 and overall, the judge took account of all relevant matters when assessing the impact of deportation upon the children.

30. For these reasons Ground (2) fails.

31. There is no error of law in the decision of the First-tier Tribunal and there is no reason for us to interfere with that decision.

Notice of Decision

32. The appeal is dismissed. █

33. No anonymity direction is made.

Signed

Date 27 July 2022



The Honourable Mr Justice Morris