



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

Appeal Number: UI-2022-000414
(PA/04296/2020)

THE IMMIGRATION ACTS

**Heard at Field House
On 20 October 2022**

**Decision & Reasons Promulgated
On 30 December 2022**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**EDMOND PRENGA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Zeb, Counsel

For the Respondent: Mr Williams, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Albania. On 5th September 2020 a decision was made to refuse his claim for international protection and on the same day, a decision was made to make a deportation order by virtue of section 5(1) of the Immigration Act 1971.
2. The appellant's immigration history and offending history is set out in the respondent's decision and is recited in paragraphs [3] to [28] of the

decision of the First-tier Tribunal. For present purposes it is sufficient for me to note that the background to the respondent's decision under appeal is that on 9th September 2019, the appellant was convicted at Nottingham Crown Court of possession of a controlled Class B drug, 2 counts of possession or control of identity documents with intent, and of dishonestly making false representations to make gain and commit an act/series of acts with the intent to pervert the course of public justice. The appellant received a total of 10 months imprisonment.

3. The appellant's appeal against the respondent's decision to refuse the asylum and human rights claims made by the appellant, was dismissed by First-tier Tribunal Judge Hatton for reasons set out in a decision promulgated on 20 September 2022.
4. The appellant advances three grounds of appeal. First, he claims Judge Hatton erred, having found at [122], that the appellant is not a "foreign criminal" within the meaning of s117D(2) of Part 5A of the Nationality, Immigration and Asylum Act 2022, in his assessment of the medical evidence and the best interests of the appellant's children. Second, having found that the appellant is not a "foreign criminal", Judge Hatton adopted "the wrong approach" in his consideration of the report of the independent social worker and his assessment of the best interests of the appellant's children. Third, the appellant claims Judge Hatton "has made assertions and/or findings of dishonesty" on matters which were not put to the appellant in his oral evidence.
5. Permission to appeal was granted by Upper Tribunal Judge Kamara on 29 March 2022. She said:

"It is arguable that the judge failed to have regard to the medical report of Dr Verma regarding the appellant's child, N, when finding that there was "little to suggest" that the appellant would be incapable of continuing family life in Albania. There is also merit in the second ground which argues that the judge erred in finding that the experienced social worker who provided an independent report lacked sufficient knowledge and expertise"

6. I am grateful to Mr Zeb who appeared before me on behalf of the appellant for his succinct and focused submissions. Having heard from Mr Zeb, I did not call upon Mr Williams to respond. I informed the parties that the appeal is dismissed. I now set out in writing the reasons for my decision that were summarised at the end of the hearing.

7. At the outset of the hearing before me, Mr Zeb confirmed the appellant's partner Daniella Prenga, who is not a party to this appeal, but is the mother of the appellant's children, has submitted a fresh application to the respondent for leave to remain with the assistance of his firm, Charles Morgan. That application, in which the appellant's children are named as dependents, was sent to the respondent on 15th October 2021 and is based on Article 8 family and private life grounds. A decision is yet to be received. Mr Zeb confirmed that as far as he is aware, neither the appellant's partner Daniella Prenga nor the appellant's two children, [N] who is now almost 6 and [S] who is now 3 years old, have any lawful basis to be in the UK. They had, he accepts, no lawful basis to be in the United Kingdom in September 2021 at the time of the decision of Judge Hatton.

8. I turn then to address each of the appellant's grounds. There is in my judgment no merit to the first ground of appeal. Mr Zeb referred me to paragraph [166] of the decision of Judge Hatton in which he refers to the opinion of Dr Verma that [N] "*does not like major changes*", but went on to say "*..there is no indication thereafter that such change would cause [N]'s wellbeing and/or health to suffer..*". Mr Zeb accepts Dr Verma does not say in her report that any change would in fact cause [N]'s wellbeing and/or health to suffer as was being submitted by Mr Zeb. Mr Zeb referred me to the report of Dr Verma, a 'Speciality Doctor' that was at pages 1 to 5 of the appellant's supplementary bundle. In her 'Diagnostic Assessment Report' she records that [N] was referred due to concerns around his social skills and autistic features. Under the heading 'Repetitive and Stereotyped Behaviours', Dr Verma states:

"[N] is flexible with daily routines at home but does not like major changes. For example going to a new place or a new shop. He is attending only one hour session at nursery. He gets upset and distressed if he's for a longer period at nursery.."

9. I have read the report of Dr Verma and it is clear that she does not express the opinion that change would cause [N]'s wellbeing and/or health to suffer. Mr Zeb submits that any move to Albania would be a major change for [N]. He submits Dr Verma refers to the impact upon [N] of going to a new place or a new shop and being at nursery for long periods. Dr Verma notes [N]'s diet is restricted and he does not like to try new food items. [N] is noted to like sniffing everything and in the past he used to get upset with the sound of the Hoover. In her clinical observation, Dr Verma noted [N] played with a mobile. He did not respond to his name. There was no eye contact with Dr Verma or his mother. [N] got upset when Dr Verma

tried to examine him. Mr Zeb submits these are also features that point to the impact any move to Albania will have upon the health and well-being of [N].

10. In her summary, Dr Verma said:

“[N] has clear difficulties with social interaction and communication with speech delay. His difficulties would be consistent with a diagnosis of Autism spectrum disorder. Due to the concerns around early development, I will arrange for the first line blood tests for developmental delay for which verbal consent has been obtained by his mum. [N] will hopefully continue accessing support from speech and language team. I will refer [N] to the small steps for enrolment in the Cygnet’s parenting programme. Parents will also be invited to attend the post-diagnosis advice and information session by the specialist nurses.”

11. Dr Varma sets out her recommendations noting that all children have individual needs which change and develop over time. She said parents are encouraged to identify these needs, access support through the range of services available locally and nationally, and bring them to the attention of the professionals involved in their care.

12. I reject the claim made by Mr Zeb that the judge either failed to have adequate regard to the report of Dr Varma or that there was sufficient evidence contained in the report that [N] is autistic and does not like major change, so that it was irrational for the judge to disregard the medical evidence and conclude that it would be reasonable for [N] to endure a substantial change and follow his father or parents to Albania, a country in which he has never lived. In my judgment it is clear when one reads the decision of the First-tier Tribunal that the judge did give due weight to the matters set out in the report of Dr Verma and the impact upon [N]. Although ‘major change’ may present some difficulties, particular in the short term, it would not necessarily cause [N]’s health and well-being to suffer.

13. At paragraph [162] Judge Hatton stated he accepts [N] is autistic. He noted there is insufficient evidential basis for finding that any treatment [N] may require in respect of his condition, is unavailable in Albania. At paragraph [163] Judge Hatton records that when he asked Mr Zeb to clarify the evidential basis for his assertion that [N] would be unable to continue the treatment he is currently receiving, in Albania, Mr Zeb effectively distanced himself from that claim. At paragraph [164] Judge Hatton referred to the claim that any change of routine would have a negative impact on [N]’s wellbeing and health, and at paragraph [165] he

said there is remarkably little evidence in support of Mr Zeb's contention. He referred to Dr Verma's report and said, at [166], that although Dr Verma opines that [N] "does not like major changes" there is no indication that such change would cause [N]'s wellbeing and/or health to suffer. Dr Verma also noted that "[N] is flexible with daily routines at home". Judge Hatton also referred to the evidence before the Tribunal in the form of a "Best Interest Report" dated 9 April 2021, prepared by the independent social worker Lynn Coates. Judge Hatton noted she had stated: "*Mrs Dunn advised that consistency is massively important for [N] and that any changes to his routines or environment would have a significant negative impact on his emotional well-being.*". Mrs Dunn is a teacher at Nettleworth Infant and Nursery School that [N] attends. That was at odds with Dr Verma's observations regarding [N]'s flexibility with daily routines at home.

14. Mr Zeb also claims Judge Hatton erred in his assessment of the report of the independent social worker. That in my judgment is to completely disregard the very careful analysis of the report of the independent social worker, which is apparent from a careful reading of what is said by the judge at paragraphs [167] to [186] of the decision. The judge gives a number of reasons for finding Ms Coates lacks sufficient knowledge and/or expertise for the assertions made in her report, which in any event have insufficient evidential basis. It was undoubtedly open to the judge to refer to the fact that Ms Coates, in reaching her conclusions and opinions, relied upon an erroneous factual premise. For example, Judge Hatton noted at paragraph [175] that Ms Coates accepted at face value the appellant's claim that there is no support network available to them in Albania. However, that was at odds with the fact that in her witness statement of 9th December 2019, Ms Prenga asserted, at [8], that she and the appellant "*moved to Hajmel which is on the outside of Shkoder and my husband's family lives there too*". Judge Hatton refers to other anomalies in the evidence before the Tribunal regarding the support available to the family in Albania, that Ms Coates was ignorant of, when expressing her opinions that were based on the appellant and his partner having no friends or support networks in Albania. It was undoubtedly open to the judge to attach little weight to the evidence of Ms Coates for the reasons set out in his decision.
15. Reading the decision as a whole, I am satisfied Judge Hatton considered all the evidence, including the evidence of Dr Verma and Ms Coates in the

round, and made findings that are neither irrational nor unreasonable. The findings and conclusions reached by the judge regarding any impact upon [N] were open to Judge Hatton on the evidence before him.

16. Finally, as far as the third ground of appeal is concerned, Mr Zeb submits that the judge erred in making findings of dishonesty relating to matters that were never put to the appellant. That ground too has no merit. It is now well established there where an individual asserts a fact before the Tribunal which the SSHD did not challenge and the Judge did not raise with the individual any doubts as to the truthfulness of his assertion, the Judge was not obliged to accept the assertion as proved. The burden of proof was on the appellant. It is clear in my judgment from a careful reading of the judge's decision, that at paragraphs [2] to [28], the judge carefully set out the appellant's immigration history. The appellant's immigration was referred to extensively in the respondent's decision. The judge is not obliged to put any matters that are of concern to the appellant. It was for the appellant and his representatives to provide proper explanations in relation to matters arising from the appellant's immigration history.
17. It follows that in my judgement Judge Hatton's decision is not vitiated by a material error of law and this appeal is dismissed.
18. I have already noted that the appellant's partner and children have an extant application for leave to remain before the respondent that is awaiting a decision. It is only proper that in the circumstances of this family unit, the respondent is able to reach a decision, fully appraised of the facts. The immigration status of the appellant is likely to be relevant to any decision made upon the extant application that is before the respondent.
19. In the circumstances I direct that the decision of First-tier Tribunal Judge Hatton and my decision, once it is promulgated in writing, is to be provided by the appellant's representatives to the respondent. It is in my judgment, important and in the interests of justice that the respondent is aware of the decisions made in relation to the appellant so that they can be factored in when the respondent reaches any decision upon the application that has been made by the appellant's partner and children, who are likely to be dependents on that application. The appellant's solicitors are to confirm in writing to the Tribunal within seven days of any period for applying for permission to appeal having expired, that they have forwarded a copy of the relevant decisions to the respondent.

Notice of Decision

1. **The appellant's appeal is dismissed. The decision of First-tier Tribunal Judge Hatton stands.**
2. **The appellant's solicitors shall provide a copy of the decision of First-tier Tribunal Judge Hatton and this decision to the respondent so that it can be linked to the extant application for leave to remain that was made by the appellant's partner Daniela Prenga on or about 15th October 2021.**
3. **The appellant's solicitors are to confirm in writing to the Tribunal within seven days of any period for applying for permission to appeal having expired, that they have forwarded a copy of the relevant decisions to the respondent.**
4. **No anonymity direction is made.**

Signed

V. Mandalia

Date

9th December 2022

Upper Tribunal Judge Mandalia