IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-001860
First-tier Tribunal No: HU/06220/2017

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 14 July 2023

Before:

UPPER TRIBUNAL JUDGE GILL

Between

Shevqet Kasumi — Appellant
Also known as
Shefquet Kosumi, Shevqet Kasumi, Shefqet Hinterholzner
(ANONYMITY ORDER NOT MADE)

And

The Secretary of State for the Home Department — Respondent

Representation:
For the Appellant: Mr P Georget, of Counsel, instructed by Malik & Malik Solicitors.
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer.

Heard at Field House on 16 June 2023

Decision

1. The appellant, a national of Kosovo born on 15 March 1962, appeals against the decision of Judge of the First-tier Tribunal James who, in a decision promulgated on 29 November 2021 following a hearing that took place over 3 days (19 July, 9 August and 10 August 2021), dismissed his appeal on human rights grounds (Article 8) against a decision of the respondent of 24 March 2015 which refused his human rights claim following the making of a deportation order on the same date. The decision letter also certified the appellant's human rights claim under section 94B of the Nationality, Immigration and Asylum Act 2002.

2. According to the chronology submitted on the appellant’s behalf, he voluntarily departed from the United Kingdom on 8 February 2014. It seems to me that this date is likely to be incorrect and that the correct date is likely to be a date in 2017.

3. It is fair to say that there was extensive evidence before the judge. Not only were there three large bundles of evidence (bundle 1 of 450 pages, bundle 2 of 162 pages and bundle 3 of 140 pages) containing multiple witness statements, she also heard extensive oral evidence. The documents before her included an OASys report, two medical reports and three previous determinations by three immigration judges that

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concerned the appellant's three previous appeals. All of this material was considered in detail by the judge in a 51-page decision.

4. There were seven grounds of appeal. The third ground included, amongst other submissions, the submission at para 14 of the grounds that the judge had misapprehended the oral evidence of the appellant's wife when she said that her oral evidence was that she had been earning £1,800-£2,000 per month for two years from her work as a nanny. Para 14 of the grounds asserts that the wife's evidence was that she had been earning at that level for only two months and that she had not been able to work at all during the lockdown that occurred within the previous two years due to the Covid-19 pandemic.

5. I arranged for the audio recording of the oral evidence of the appellant's wife to be obtained. The relevant part of the audio recording was played at a hearing before me on 22 February 2023. On that occasion, the appellant was represented by Mr L Youssefian, of Counsel. Mr Georget was also present in court, anticipating that he would need to give oral evidence in support of his witness statement attesting to the content of the oral evidence of the appellant's wife and his contemporaneous notes of her oral evidence. The respondent was represented by Mr Walker.

6. Having listened to the audio recording of the evidence of the appellant's wife, it was agreed by all that the judge had misapprehended the evidence of the appellant's wife when she said in her decision that the wife had said that she had been earning £1,800-£2,000 per month for two years as a nanny whereas her evidence was that she had been earning at that level for the last two months. This was confirmed in my "*Note*" signed on 22 February 2023 and sent to the parties on 31 March 2023.

7. At the hearing today, Mr Georget submitted that the judge's misapprehension of the evidence as contended at para 14 of the grounds was material, given her reasoning at paras 92(e)(page 34), 94 (page 36), 116 (page 42), 120 (page 43) and 136 (page 47). Mr Walker agreed.

8. Relevant paragraphs of the judge's decision, including those mentioned in my preceding paragraph, read as follows:

> "92(e)[1] …This claim of destitution is undermined by the daughter's complaint about expensive hotel costs due to the protracted period she booked at a hotel, and the cost of one flight made by the family to Kosovo, and the fact that the wife and her two adult children have earned income. In particular the wife's claim to earn £1,800-£2,000 pcm net from her own business that she runs for the last two years. The daughter by her own oral evidence earns on average £300 pcm in addition to her student loan payments received. This materially undermines the claims of destitution. I was not persuaded by the wife's oral evidence that despite earning up to £2,000pcm for the last two years that she has chosen not to increase the money she sends her husband in Kosovo due to her expenses in the UK, despite her rent on her housing association property being only £300 pcm and her income has increased three fold at minimum. Prior to that she confirmed that she sent her husband £100 per week (then later changed to per month) herself, and her daughter would send him £50 each occasion. It is simply not credible that the Appellant in receipt of such sums would be unable to pay for accommodation in Kosovo at that level, which was before the wife started earning up to £2,000pcm over the last two years. These incredible claims, contradictions and discrepancies in the evidence presented tend to materially undermine the claim of homelessness and destitution made in this appeal. Towards the end of her oral evidence the wife confirmed that her husband was residing in a hotel in Kosovo, clearly being able to afford such stays."

[1] At page 34 of the judge's decision

93[2]. … I also do not accept that the Appellant is a witness of truth for reasons set down herein.

94[3]. This view was confirmed during their oral evidence for the following reasons, inter alia: the Appellant disclosing for the first time his seven to eight year marriage to a German national, and his various periods of custody in prison in Germany; after claiming to be destitute and this claim supported by his wife and children, the wife confirmed in oral evidence she was in receipt of housing from the council, and welfare benefits, in addition to the earned income of £1,800-£2,000 pcm net from her own business that she runs, for the last two years and yet claiming only to have paid £100 tax since her 2019 self-assessment tax return submitted; the daughter claimed to earn on average £300 pcm; and that they routinely rent a house to live in whilst visiting Pristina.

116[4] It is also claimed that the wife has symptoms of a stroke and is waiting a CT scan, however the diagnosis was that the wife has migraine. It is also claimed that the wife cannot cope, due to all the work, and cooking and cleaning for her adult children who reside with her that she undertakes. If matters are as claimed, it is open to the adult children to undertake their own household chores to support their mother if they so wish. In addition it appears the health issues of the wife claimed over these years have not impinged upon her ability to run her own business, or undertake paid employment in Iceland and elsewhere, whilst claiming working tax credits as confirmed by the HMRC letter of 2019 and her business net profit of £6,274. During oral evidence the wife claimed to earn £1,800-£2,000 pcm over the last two years from her own business, although on her previous 2019 tax return only paid £100 tax.

120[5] During her oral evidence the wife confirmed she continues to work cleaning and babysitting at her own business, as well as previously working for Iceland and similar employers, earning about £1,800-£2,000 pcm for the last two years despite Covid. She also confirmed at no point has she received welfare benefit based on any disability claim, as she was in receipt of universal credit due to lack of a job. Mrs Kasumi confirmed she worked 8-9 hours a day. I therefore seriously doubt her mental health is as friable in character as claimed in these proceedings.

135[6] In regard to the Appellant, the psychiatric clinic letter dated 6 September 2018 from Doctor Drevinja of Kosovo refers to the Appellant receiving treatment from 30 May 2017 onwards. His emotional state de-stabilized after 3-4 months treatment, displaying depressive thoughts. He is treated through regular use of therapy and psychopharmacy. He is now more relaxed and ready to be united with his family, but his "bad thoughts have contributed to the loss of confidence." There is a diagnosis of prolong *[sic]* reaction of depressive reaction. A return to his family is recommended as he regrets his decision by leaving London without thinking properly. Without his family symptoms of depression, preoccupation and regret have appeared. There is a letter dated 14 July 2021 from Imri Zabeii a clinical psychologist (no address provided) who confirms the Appellant is attending psychological treatment. No further details are provided of the Appellant's apparent treatment received other than this generic assertion.

136[7] Unfortunately the Appellant's oral evidence undermined these two doctors letters. During examination in chief the Appellant claimed not to be taking any medication for his mental health, claiming he was unable to afford the medication, although he had paid for this medication he claims from 2018 until about March 2021. I do not find it credible that if this medication was required for the Appellant's mental health that he was unable to fund such medication, especially in light of the costs of rental of the flat (as described by the Appellant in his oral evidence) or house (as described by the wife and daughter in their oral evidence) for family stays, flights for three of the family and protracted stays in hotels by the daughter, that funds could be found for those items but not the basic medication for the Appellant's mental health. Not least due to the wife's admitted income of up to £2,000 pcm in addition to her housing benefits. The Appellant did not throw any additional light on the generic assertion of psychological treatment by Imri Zabeli."

[2] At page 36
[3] At page 36
[4] At page 42
[5] At page 43
[6] At page 47
[7] At page 47

9. Taking the judge's decision as a whole with particular emphasis on the paragraphs quoted above, it is clear that:

   (i) The judge considered that it went against the credibility of the appellant's wife that she had only paid tax of £100 on her earnings and that she had claimed benefits. It is clear that the judge considered that there was dishonesty on the part of the appellant's wife not only by reason of the fact that she had not paid the amount of tax that was due on the level of her earnings which the judge understood to be £1,800-£2,000 pcm but also by reason of the fact that she had claimed benefits. This led her not only to doubt her evidence about the amount of her remittances to the appellant but also her general credibility concerning, amongst other matters, her health and the impact of the separation of the appellant from his family.

   (ii) The judge assessed the claimed health issues of the appellant's wife in the context of the fact that she had nevertheless been able to run her business as a nanny to the extent that she was able (as the judge understood it to be) to earn £1,800-£2,000 pcm over two years. On any reasonable view, the judge was effectively saying at paras 116 and 120 that the ability of the wife to earn £1,800-£2,000 over two years cast doubt on her evidence concerning her health issues.

   (iii) At para136, the judge considered the evidence concerning the appellant's health. She did not find the appellant's evidence that he was not taking medication because he could not afford the medication credible. In giving her reasons, she relied, in part, on her understanding that the appellant's wife had been earning £1,800-£2,000 pcm for two years.

   (iv) It is clear that the judge's misapprehension of the evidence of the appellant's wife about her earnings materially affected her view of the credibility of the evidence of not only the wife but also the appellant and his daughter.

10. It is true that the judge gave other reasons fore her adverse credibility assessment of the evidence of the witnesses. Her assessment of the evidence before her was very detailed. It is clear that she misapprehended the evidence on an issue which she repeatedly relied upon in assessing the case as a whole. I am very mindful not only of the fact that the judge plainly considered all of the evidence with great care and that her decision was a very careful and detailed consideration of the many aspects of the evidence in this appeal but also of the history of this case. It is most unfortunate that the judge misheard (as she plainly did) the oral evidence of the appellant's wife on what was plainly of material significance in her adverse credibility assessment.

11. However, for the reasons given above, I simply cannot say that the misapprehension of the evidence could not have affected the outcome and/or that the outcome would inevitably have been the same.

12. For the reasons given above, I set aside the decision of the judge in its entirety.

13. In the majority of cases, the Upper Tribunal when setting aside the decision will re-make the relevant decision itself. However, para 7.2 of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal (the "Practice Statements") recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it is satisfied that:

"(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

14. In my judgment, this case plainly falls within para 7.2 (b).

15. This appeal is therefore remitted to the First-tier Tribunal for a judge for a fresh hearing by a judge other than Judge of the First-tier Tribunal James.

Notice of Decision

The decision of the First-tier Tribunal involved the making of errors on points of law such that the decision is set aside in its entirety. This case is remitted to the First-tier Tribunal for a fresh hearing on the merits by a judge other than Judge of the First-tier Tribunal James.

Signed: Upper Tribunal Judge Gill Date: 27 June 2023

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**
3. Where the person making the application is <u>in detention</u> under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 <u>working</u> days, if the notice of decision is sent electronically).**
5. **A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**
6. **The date when the decision is "sent' is that appearing on the covering letter or covering email**