IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-000133
UI-2023-000134

First-tier Tribunal Nos: HU/54410/2022
HU/54411/2022
IA/06624/2022
IA/06635/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 17 September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

(i) Mrs Bitije Kodrasi
(ii) Mr Albert Kodrasi

(NO ANONYMITY ORDER MADE)

Appellants

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellants: Mr Pipe (Counsel)
For the Respondent: Mr Terrell(Senior Home Office Presenting Officer)

Heard at Field House on 1 August 2023

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Stedman promulgated on 19th December 2022, following a hearing at Hatton Cross on 5th December 2022. In the determination, the judge allowed the appeals of the Appellants, whereupon the Respondent Secretary of State, subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellants

2. The principal Appellant is a female, a citizen of Albania, and was born on 22nd September 1962. The second Appellant is her husband, also a citizen of Albania, a male, and was born on 9th February 1966. They appeal against the decision of the Respondent dated 12th July 2022 refusing them leave to remain in the UK.

The Appellants' Claim

3. The Appellants entered the UK illegally on 29th May 2016, and then without delay, made representations to remain in the UK on the basis of their Article 8 rights, making applications in 2016, 2017 and 2019, all of which were refused. The latest application was dated 20th May 2021, and comprises a subject matter of this appeal, having also been refused. The basis of the Appellants' claim is that they have been in the UK for six years, and that there are very significant obstacles to their integration into Albanian society, consequent upon paragraph 276ADE(1)(vi) of the Immigration Rules. They also claimed that there are exceptional circumstances in their case such as would lead to unjustifiably harsh consequences if there are forced returns, leading to a disproportionate interference with their Article 8 rights.

The Judge's Findings

4. The judge began by observing how the Appellants had not come directly from Albania, but had first moved to Greece in around 2003, from where they made repeated attempts to come to the UK, where they had a daughter, until eventually being able to do so in 2016. The judge heard evidence that the Appellant had lost two children earlier and was badly affected mentally, and dependent upon her daughter in the UK, who supported and cared for her. The second Appellant gave evidence that he and the first Appellant had made three previous unsuccessful applications to come to the UK, and had done so because the first Appellant was not coping well from being away from her daughter. The Appellants' daughter gave evidence that she was caring for her mother at home whilst working part-time from home, because the Appellant lacked motivation, and was at risk of self-neglect.

5. The judge concluded favourably for the Appellants, observing that the daughter gave "clear and cogent evidence and that she was a very honest witness who was placed in a position where her mother had become on her to a significant degree – not through choice but because of her own trauma", and "there were clearly very complex family dynamics", and that "It was clear to me that the family situation was taking its toll on her as well" (at paragraph 10).

6. In coming to his conclusion, the judge observed that "it was not so much the accumulation of factors but rather the very focus and specific issue of the appellant's mental health that provided the basis of my reason for allowing the appeal" (paragraph 12). In this regard, the judge referred to "the very powerful dependency the appellant had on her daughter which was so intertwined with her previous trauma and her current reality that it was impossible to ignore", so that "It certainly met and surpassed the test of dependency between adult family members in the *Kugathas* sense." The judge was clear that "the appellant had become suicidal and she had become suicidal whilst *with* her daughter, and at home", so that "the appellant was extremely vulnerable and in a state of mind where even the smallest change or disruption in her life and the stability she had formed with her daughter would have a very serious impact on her mental health and wellbeing" (at paragraph 12).

7. The judge went on to explain that "Paragraph 276ADE(1)(vi) demands that an elevated threshold be met", and that given "the long passage of time that the appellant has been outside of her country, she would be returning with her husband and would obviously find it very difficult to integrate back into society" (paragraph 13). Nevertheless, the Appellants' case did not fit "within the paradigm of paragraph 276 because I accepted her evidence and that of her daughter that she really lacked the capacity to integrate into society in this country" (paragraph 13). Therefore, "she did not slot into the Immigration Rules in this way" and the Appellants' case had to be "considered outside of the Rules on the basis of very exceptional circumstances", and on this basis the appellant could succeed "because her mental health state, her suicidal ideation was very present and very real and I expected that further disruption to her life to have a far more serious impact on her than a person without mental health problems" *paragraph 14).

8. The judge proceeded to undertake a balancing exercise and made it clear that, "I found that firstly there was significant weight to be given to the public interest, and in fact, there were some very real factors in this case which operated against the appellant and her husband" because "they had ignored and flouted Immigration Rules", but that, "having entered the country, I accept that they immediately sought to regularise their status" (paragraph 15). After embarking on the balancing exercise, the judge concluded that, "in the final analysis, I find that the public interest is outweighed because I find that the appellant is suicidal and that her mental health is directly related to the possibility of her being separated from her daughter who is settled here" (paragraph 16). The appeal was allowed.

Grounds of Application

9. The Secretary of State's grounds of application state that the judge made a material misdirection in law, because the judge had no regard to both Appellants' ability to speak English or whether they were financially independent, as required by Sections 117B. Secondly, the judge made a perverse or irrational finding when he concluded that the proportionality balance tipped in favour of the Appellant, having earlier found that, "a case such as this, even one where there are mental health problems, is not one that has any great merit because of the strength of the public interest element and that there really has to be very strong features to enable the factors in favour of the appellant to outweigh it" (at paragraph 15).

10. Permission to appeal was granted by the Upper Tribunal on the basis that it was arguable that he judge had not carried out a proper balancing exercise, and had not referred to factors which arguably would have weighed against allowing the appeal. The judge had adopted a broad brush approach but that arguably there were material errors which led him into an error of law.

Submissions

11. At the hearing before me on 1st August 2023, Mr Terrell, appearing on behalf of the Respondent, began by explaining that, having had the benefit of a prehearing discussion with Mr Pipe of Counsel, he was content to concede that ground 2 of the application was no longer sustainable insofar as it alleged that the decision of the judge was perverse or irrational, because he had earlier (at paragraph 15) taken the view of the Appellants that "there's really was an uphill struggle" because "a case such as this, even one where there are mental health problems, is not one that has any great merit …". This is because the view expressed here was an

initial view, and the judge having subsequently considered all the evidence and balanced it out in a proportionate manner, was entitled to come to the conclusion that he did.

12. However, as far as ground 1 was concerned, Mr Terrell was firm in his argument that the public interest, as expressly set out in Section 117B(2) and (3) required a consideration of a person's ability to speak English and to be able to demonstrate that they were financially independent, and not reliant upon the State. The reason why this was important was that the judge, in relation to the public interest consideration, had actually stated that (it became clear to me that by a narrow margin, there were particularly strong features to this case which meant that both in relation to the test of very significant obstacles and by an analysis outside of the Rules, the appellant's case was to succeed" (paragraph 11). Had the judge factored into his analysis the absence of the Appellant's ability to speak English and to be financially independent, then it was clear that the judge would not have been able to allow the appeal "by a narrow margin", but to have very possibly gone the other way.

13. For his part, Mr Pipe referred to his Rule 24 response and submitted that since Ground 1 in relation to the public interest, was the only ground in issue, the judge was entitled to come to the view that he did for the following reasons. He began by stating that there was "clear and cogent evidence" from "a very honest witness" before him (paragraph 10). He then concluded that there were "particularly strong features to this case" (paragraph 11). What then tipped the balance was his clear finding that, "I was left with the impression, having surveyed the medical evidence, that the appellant was extremely vulnerable and in a state of mind where even the smallest change or disruption in her life and the stability she had formed with her daughter would have a very serious impact on her mental health and wellbeing" (paragraph 12).

14. These were the exceptional circumstances that the judge found. He then moved on to undertaking the balancing exercise and made it quite clear that "there was significant weight to be given to the public interest" and that because "The appellants private life was established entirely at a time when their status was unlawful …. therefore I must give limited weight to it" (at paragraph 15).

15. Mr Pipe submitted that he had to accept that the judge does not say anything about the appellant's English and financial independence. However, he does conclude, "the public interest is outweighed because I find that the appellant is suicidal and that her mental health is directly related to the possibility of her being separated from her daughter who is settled here" (paragraph 16). Mr Pipe ended with the observation that any error, must be one that ultimately is a material error, and given that the judge had observed "there are particularly strong features" to this appeal. The decision from the judge's point of view could only have gone one way.

16. In reply, Mr Terrell submitted that one could not escape the fact that if something is not considered, the failure to have brought it into consideration in the balancing exercise, can lead the decision maker into a place where he or she otherwise would not have been. Afterall, this was a case where the judge only allowed the appeal by a narrow margin. He maintained that there was an error of law.

No Error of Law

17. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law, such that it falls to be set aside. It is true that the judge in this case does not in terms consider the Section 117B requirement of a party's ability to speak English and his or her financial independence. The question is whether, in the circumstances of this appeal, that is a material error.

18. The reality is that the judge did in the determination give maximum weight to the public interest. However, there was unchallenged evidence before him of the appellant's mental health and suicidal tendency, conditions which were directly related to the feeling of "being separated from a daughter who is settled here" (paragraph 16).

19. In the end, the judge based his decision not just on "a risk of suicide" but that, "I find there would be a very real serious impact on the appellant's wellbeing and to a lesser but important degree on her daughter and the grandchildren". If one was to have " regard to the history and severity of the appellant's mental health that the decision to remove her and her husband who forms part of the family unit" would have (paragraph 16).

Notice of Decision

20. There is no material error of law in the judge's decision. The determination shall stand.

Satvinder S. Juss

Judge of the Upper Tribunal
Immigration and Asylum Chamber

12th September 2023