



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002681

First-tier Tribunal No: HU/57360/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 17 September 2023**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

ENTRY CLEARANCE OFFICER

Appellant

and

**ELSONEDA TUSHA
(AMONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant: Mr E Terrell, Senior Home Office Presenting Officer
For the Respondent: Mr A Chakmakjian, instructed by Kilby Solicitors

Heard at Field House on 15 September 2023

DECISION AND REASONS

1. Although this is an appeal by the Secretary of State, I shall refer to the parties as they were in the First-tier Tribunal. The appellant is a citizen of Albania born on 11 November 1989. Her appeal against the refusal to revoke a deportation order was allowed on human rights grounds by First-tier Tribunal Judge R Sullivan ('the judge') on 10 June 2023.
2. The Secretary of State appealed, and permission was granted by First-tier Tribunal Judge Austin on 13 July 2023, on the grounds the judge erred in law in finding the appellant has a genuine parental relationship with her two British citizen children in light of SR (subsisting parental relationship - s117B(6))

Pakistan [2018] UKUT 00334 (IAC) and SSHD v VC [2017] EWCA Civ 1967 at [42]. It was submitted the appellant did not have day to day care of her children and the judge failed to give adequate reasons for finding there would be unduly harsh consequences. Secondly, the judge wrongly took into account the residence permit, issued to the appellant in error, in allowing the appeal on an exceptional basis.

3. The appellant arrived in the UK in 2011 on a forged French passport. She was convicted of using a false document and sentenced to 12 months' imprisonment. A deportation order was signed on 31 March 2011 and the appellant was deported to Albania in August 2011.
4. The appellant subsequently re-entered the UK in breach of the deportation order. Her first child was born in 2014 and she applied for leave to remain on the basis of family life in November 2017. Her second child was born in 2019 and her appeal against the refusal of leave to remain was allowed. In November 2019, the Upper Tribunal set aside this decision and remade it, dismissing the appellant's appeal.
5. In December 2019, the appellant applied for revocation of the deportation order. On 11 March 2020, she was granted leave to remain in the UK and issued with a biometric residence permit. The appellant travelled to Albania with her family for a holiday in February 2022. She was denied entry to the UK on 5 March 2022 by reason of the deportation order and her leave to remain was cancelled on 11 March 2022. The appellant has been in Albania since 18 February 2022.
6. The appellant's application for revocation of the deportation order was refused on 28 April 2022 and her appeal came before the First-tier Tribunal on 25 May 2023. The judge found the respondent's claim to have received the application for revocation on 24 April 2022 was factually inaccurate and was not indicative of a reliable system underpinning immigration control.
7. The judge found that, notwithstanding the appellant's absence from the UK, she had a genuine and subsisting parental relationship with her children and it would be unduly harsh to expect the children to live in Albania or to remain in the UK without the appellant. The judge weighed all the circumstances and concluded that, "exceptionally there are compelling circumstances which outweigh the public interest in the maintenance of the deportation order."

Preliminary Issue

8. On 14 September 2023, the day before the hearing, the respondent applied to amend the grounds of appeal to reformulate the first ground and include a third ground that the judge erred in law in concluding there were compelling circumstances and allowing the appeal. The respondent seeks to incorporate into ground 1 the submission that the judge took into account the residence permit, issued in error in March 2020, in finding that there would be unduly harsh consequences for the children. This was an irrelevant factor and therefore the judge erred in law. It was submitted this was within the scope of the grant of permission.
9. In respect of relying on a third ground of appeal, the respondent submitted the judge failed to consider section 117C(6) of the 2002 Act and wrongly allowed the

appeal outside the legislative framework. The judge failed to explain the circumstances over and above the exceptions.

10. Mr Terrell relied on his skeleton argument dated 14 September 2023 and apologised for the late application. He submitted the grounds had merit, the application was made in writing and there were serious consequences for the respondent in maintaining the deportation of a foreign criminal.
11. Mr Chakmakjian submitted ground 1, as pleaded in the application for permission to appeal, was asserted on misleading terms because it was accepted by the respondent that the appellant had a genuine and subsisting parental relationship with her children. As a result of the respondent's actions, the judge granting permission had been misled and the respondent was now seeking to circumvent the process. There was no reason to extend time and permission to appeal had not been granted in respect of grounds 1 and 3 as pleaded in the respondent's skeleton argument.
12. I refused the application to amend the grounds because there was no satisfactory explanation for the delay, permission had not been granted on the grounds as now pleaded and the amended grounds lacked merit in any event.
13. It is clear from the respondent's decision dated 28 April 2022 refusing to revoke the deportation order that it was accepted the appellant was the primary carer of her children and had a genuine and subsisting parental relationship with them. Ground 1 was misconceived and was grossly misleading.
14. Ground 1 as pleaded in the skeleton argument lacks merit because it is clear from reading the decision as a whole the judge found that it would be unduly harsh for the appellant's children to remain in the UK without her at [28]. The judge then went on to consider the appellant's actions following the erroneous grant of a residence permit at [31] and [32]. The judge did not find that the appellant was lawfully resident in the UK, but that the appellant made decision on the basis she believed she was lawfully resident.
15. Mr Terrell accepted that ground 3 was dependent on ground 1 as amended. In any event, ground 3 lacks merit given paragraph 399D had been deleted from the Immigration Rules at the date of hearing and it is apparent from reading the decision as a whole that the judge considered the appeal through the statutory framework.

Conclusions and reasons

16. Mr Terrell accepted that ground 1, as originally pleaded and upon which permission was granted, could not succeed given the respondent's concession that the appellant had genuine and subsisting parental relationship with her children.
17. The respondent was well aware of the appellant's immigration history. The appellant's appeal made a human rights claim in 2017. Her appeal was allowed by the First-tier Tribunal and the respondent appealed. The Upper Tribunal set aside the decision of the First-tier Tribunal on the grounds the judge had failed to consider the deportation provisions. The Upper Tribunal remade the decision and

dismissed the appellant's appeal in November 2019. The appellant subsequently applied for revocation of the deportation in December 2019.

18. Notwithstanding, the dismissal of the appellant's appeal and her subsequent application for revocation of the deportation order, the respondent mistakenly granted the appellant leave to remain and issued a biometric residence permit in March 2020.
19. In relation to ground 2, I find that the judge was entitled to rely on the appellant's actions after she was granted a residence permit in March 2020. The appellant had made an application for revocation of the deportation order and had subsequently been granted a residence permit. The judge's finding that it was reasonable for the appellant to make decisions on the basis she was lawfully resident and develop her family on that basis was open to the judge on the evidence before her.
20. The judge was not under the misapprehension that the appellant was lawfully resident in the UK. The judge was well aware at [21] that the appellant entered the UK in breach of a deportation order. The appeal before the judge was against the refusal to revoke the deportation order. There was no error of law as submitted in ground 2.
21. The judge properly applied section 117C of the 2002 Act and she gave adequate reasons for finding the maintenance of the deportation order would be unduly harsh and disproportionate under Article 8. Accordingly, I find there was no material error of law in the decision dated 10 June 2023 and I dismiss the respondent's appeal.

Notice of Decision

The Secretary of State's appeal is dismissed

J Frances

Judge of the Upper Tribunal
Immigration and Asylum Chamber

15 September 2023