



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000264

First-tier Tribunal No: HU/52488/2022
LH/00929/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 5th March 2024

Before

UPPER TRIBUNAL JUDGE OWENS

Between

Bardhul Tafani
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Slatter of Counsel instructed by Waterstone Legal
For the Respondent: Mr Tufan Senior Presenting Officer

Heard at Field House on 16 November 2023

DECISION AND REASONS

Introduction

1. This appeal comes before me for re-making. I set aside the decision of First-tier Tribunal Judge Peer dated 19 December 2022 dismissing the appellant's appeal against the decision to refuse his human rights claims on the basis that there had been a material error of law for the reasons given in the decision dated 15 May 2023 appended to this decision at Annex A.

Background of the appellant

2. The appellant is a citizen of Albania. His wife is of Albanian origin. She relocated to the UK in 2004 and obtained British citizenship in 2012. The appellant met his wife in Albania in 2008. The couple were engaged in 2010 and married in Albania on 27 August 2014. He applied for entry clearance to join his wife in the UK, but this was refused on the basis that she was not earning enough to meet the

financial requirements of the rules. He entered the UK illegally on 4 March 2019. On 24 November 2020, he was convicted to a ten-month suspended sentence for being involved in the production of cannabis. He applied for limited leave to remain in the UK as a partner under Appendix FM on 31 January 2022. The application was refused on 31 March 2022. This is the decision under appeal.

Positions of the parties

3. The appellant asserts that there are insurmountable obstacles to he and his wife relocating to Albania. These include his fear of being harmed by the money lenders from whom he borrowed money to enter the UK illegally and also his poor mental health which will deteriorate if he is removed, because he will be separated from his wife and living in fear. His removal from the UK would result in unjustifiably harsh consequences and be a disproportionate breach of Article 8 ECHR. It is accepted by the appellant that he is not able to meet the “partner” nor “private life” requirements of the immigration rules because he does not meet the suitability requirements of the rules. The position of the respondent is that the appellant and his spouse can relocate to Albania, the appellant’s claim to have been threatened is not credible and even if it is, it does not amount to an insurmountable obstacle. The removal of the appellant is in the public interest and a proportionate interference in his family life.

Documents

4. The documents consisted of the original appellant’s bundle consisting of 141 pages and a supplementary bundle of 46 pages which included up to date statements, a notarised statement from the appellant’s father and up to date medical evidence. I also had before me the respondent’s bundle. The respondent referred me to the CPIN Albania: Actors of Protection (version 2 December 2022) and on Mental healthcare, Albania, December 2022. Both parties produced up to date skeleton arguments.

New matter

5. At a previous hearing which was adjourned, Miss Isherwood for the respondent consented to the appellant’s claim to have been threatened because he has borrowed money being considered as a “new matter”.

Issues in this appeal

6. Is the appellant at risk of serious harm from money lenders who lent him money? Would it be a disproportionate breach of Article 8 ECHR to remove the appellant from the UK?

Vulnerable witness

7. I indicated that I would treat the appellant as a vulnerable witness in accordance with the Senior President’s Practice Direction and the Joint Presidential Guidance because the appellant has a long history of depression and poor mental health and also experiences bad headaches. He also has PTSD symptoms having been the victim of a traumatic assault. I reminded him that he

was free to take breaks at any time and reminded Mr Tufan to moderate his tone and manner of cross examination accordingly. The appellant did not ask for any other reasonable adjustments. I took into account his vulnerability when assessing his evidence.

Oral Evidence

8. I heard oral evidence through a court appointed interpreter in Albania from the appellant and his wife. Both witnesses confirmed that they could understand the interpreter and there were no problems in interpretation.
9. The appellant adopted his two previous statements, and his oral evidence was as follows: He confirms that he has poor memory. He borrowed £12,000 in Albania in order to fund his illegal entry to the UK by a lorry after his visa to join his wife in the UK was refused. The loan was arranged through a friend called Luan Tufa who knew people who were able to lend money. His friend acted as his guarantor. He did not know the names of the two men who lent him money. He met them with his friend in a café in Durres which is about an hour from his village. The agreement was that he would borrow £12,000 and pay it back with interest. His plan was for he and his wife to work in the UK to repay the money. His friend has subsequently died of cancer. The appellant has not been able to pay any of the money back because he cannot work. His wife is on a low income and is supporting him. If he could obtain employment, he would repay the money in portions and would contact the money lenders through another friend called Ardian. He would arrange for his wife to take the money to Albania or pay it to the money lenders via a bank.
10. The money he borrowed was paid to the people smugglers who brought him here. These people are different to the individuals who lent him the money.
11. The moneylenders have obtained his details including his address from his friend. They have visited his family home to ask for the money and have threatened his parents. His parents told the men they would be repaid when the appellant and his wife have worked to save some money. His father does not know the names of the two men but made a statement to the notary explaining what happened when they came to the house. They were shouting and knocked over furniture. His father was too scared to make a complaint to the police. There has been more than one threat although the appellant cannot remember precisely.
12. The appellant's parents live in a village called Belsh in Elbasan, central Albania. He is their only son although he has two sisters who now live apart from his parents. His parents have always lived in this home. Both his parents are old and ill. They are in their 80's. They do not go out because they are frightened but also because of their ill health. His mother faints and his father has problems with his legs and has high blood pressure and stomach problems. He cannot walk because of his varicose veins.
13. The appellant has skills in general construction as well as skills in laying floors and carpets. He used to do this in Albania whenever he could obtain work. He

also used to do agricultural work in his village. If he were permitted to remain in the UK, he would work.

14. He met his wife in Lushnia which is a city about 25 to 30km away from his village. One of his cousins is married to a cousin of his wife and they were introduced to each other by their respective cousins.
15. The reason he did not claim asylum is because he wanted to apply to join his wife.
16. The appellant's wife also adopted her statements and gave oral evidence. She arrived in the UK in 2004. She was introduced to her husband in 2008, entered into a relationship with him in 2009 and married him in Albania on 27 August 2014. She was naturalised as a British citizen on 31 October 2012. She has returned to Albania about 25 to 30 times in total over the last 20 years. She stays for two weeks or up to a month depending on her work. She does not wish to return to Albania because of the threats to her husband which would make life difficult. She also does not wish to return to Albania because her life is here in the UK. Her employment and friends are here. She does not want to start from scratch again. She has fallen out with her parents because they refused to lend her money so that she could help her husband. She has not spoken to them for eight years.
17. They previously applied for a visa which was refused at that time because her salary was low. The refusal of the visa prompted him to enter the UK illegally. Her husband told her he had borrowed money to enter the UK after he entered the UK illegally.
18. Her husband has not told her how he knows the money lenders. Her husband only told her how much he owed after the threats. Her husband has not paid any money back. She is the only one who is working and supports her husband. She confirmed that in Albania her husband was working in the village. His family were poor. He also did labouring and other sorts of work such as laying carpets and floors. He would do whatever work he could get.
19. She knows the appellant's mother and father. She would stay in the village in Belsh, Elbasan when she used to visit her husband. His parents remain in the same home. They have nowhere to go. They are old now. They have been threatened many times especially over the last two years. She does not know the details of the agreement but knows her husband has to repay the money plus interest. She speaks to his parents on the phone. She does not speak to them in detail about the threats. Every time she speaks to them, they are tearful. Her husband is their only son and culturally he should be in Albania looking after them as they grow older. She believes that they have complained to the police. Later she said that is what she thought her husband had told her and then that her husband does have a poor memory and sometimes contradicts himself. She confirmed that her husband's parents did not tell her themselves that they had reported the threats to the police. When asked about police protection, she appeared slightly incredulous and said "Albanian police! You know how well they function!".

20. She is aware that her husband arranged a loan through a friend. When asked about the friend's whereabouts, she said she heard that he had died some time ago of cancer.
21. The last time she visited Albania was in July 2023. She stayed in a hotel. She has a sister and a brother in Albania. Her father is aged 80. Her mother is aged 75 and is paralysed. She could not afford to support her husband whilst he applied to return to the UK. She has credit card debits and bills to pay.

Submissions

22. Mr Tufan relied on his skeleton. He submitted that the appellant is not credible in respect of his claim to fear moneylenders. He asked me to take into account the timing of the assertions. The appellant has not claimed asylum. The existence of the threats was raised late in the proceedings. It is not plausible that two people he did not know lent the appellant such a large amount of money and that the transfer took place in the café. The claim does not have a ring of truth. There is no objectively verifiable evidence. The friend who was the guarantor is dead. The appellant says his parents are self-isolating, but they remain in the same home and have mobility issues. He conceded that the discrepancy about the police being informed may be a confusion with the parents attending a notary for the purposes of these proceedings.
23. Mr Tufan asked me to place no weight on the notarised document received from the parents because of the principles in Tanveer Ahmed. He submitted that the document has no evidential value. He referred me to the various CPIN's. Even if threats have been made, sufficiency of protection is available. Albania is an EU applicant state with a functioning police force and functioning judiciary. There is nothing to suggest that the appellant could not live elsewhere in Albania. He does not need to return to his village. He should return to Albania and apply for the correct entry clearance from abroad. He asked me to dismiss the appeal.
24. Mr Slatter pointed out that the appellant cannot succeed under the family or private life provisions of the immigration rules because I upheld the previous judge's suitability findings. The appeal falls to be considered under GEN 3.2.2 that is whether there are unjustifiably harsh consequences for the appellant and/or his wife. However, the extent to which the appellant comes close to meeting the rules is a relevant consideration. It is also relevant whether there is a risk of harm to the appellant and whether his return would cause a deterioration in his mental health.
25. He asked me to accept the appellant's evidence. It is more likely than not that he has told the truth and that the appellant borrowed money to enter the UK. This is inherently plausible. The appellant would be unlikely to afford to pay money launderers to enter the UK because of the low level of his earnings in Albania which amounted to approximately £900 per year. He submitted that the respondent has misinterpreted JA (human rights claim: serious harm Nigeria [2021] UKUT 00097 (IAC). An Article 3 ECHR claim raised in the context of an Article 8 ECHR claim should be treated with scepticism only if an individual has

been given the opportunity to claim asylum and failed to do so. This does not arise in this appeal because of the late nature of the claim. There is no justification to treat the claim with scepticism. He raised it so that everything could be considered.

26. Mr Slatter submitted that the claim does have the ring of truth. The appellant would not necessarily have known the names of the money lenders. He had a guarantor. The evidence from his father is corroborative evidence to which I can give weight. He would have been expected to produce this evidence. The claim is inherently credible. The money lenders have an incentive to lend money because of the high interest.
27. He states that the insurmountable obstacle test is met. He further submits that it would be unjustifiably harsh for the appellant's wife to have to relocate to Albania when there are real threats to her husband. She played no part in him breaching immigration control or the non-disclosure of the criminal offence. The couple have been in a relationship since July 2008. It is ten years since they have been married. The appellant suffers from emotional hardship and depression. He cannot work. The couple are trying to conceive. The appellant's wife has not been living in Albania for 20 years. S117B(4) does not apply because the relationship was entered into when the appellant was in Albania. The little weight provisions do not apply.
28. If I were to find that there was a real risk of serious harm this would be sufficient. He submitted that the appellant has a subjective fear of a real risk of harm even if not objectively well founded. He also has poor mental health. His submission is that his fear alongside the deterioration in his health could amount to insurmountable obstacles. He did not submit that the Chikwamba principles added anything because the appellant cannot meet all of the requirements of the immigration rules.

Preserved findings

29. These are as follows:
 - a) The appellant last entered the UK on 4 March 2019. He entered illegally.
 - b) He applied to remain in the UK as a spouse on 31 January 2022.
 - c) He met his wife in Albania in 2008. They were married on 27 August 2014. He made an application for entry clearance which was refused because his wife was not earning enough money. The relationship is strong. The couple have been conducting their relationship despite the difficulty of distance for over a decade.
 - d) The appellant was convicted of an offence relating to cannabis production on 25 November 2020 to which he was sentenced to a ten-month suspended sentence.
 - e) He has lived in Albania for the majority of his life. He worked in Albania as a farmer earning about £900/£1000 per month. He speaks Albanian and is familiar with the customs and culture of Albania. He has personal relationships in Albania.
 - f) His parents who are elderly and ill remain living in Albania.
 - g) He deliberately failed to mention his conviction in his application and the suitability considerations apply to him.

- h) The appellant's spouse is of Albanian origin. She has lived in the UK for over a decade. She naturalised as a British citizen on 31 October 2012. She currently works as a waitress. She has strong private life in the UK with friends, employment and friends.
- i) She speaks Albanian and is familiar with Albanian culture. She has travelled to Albania on holiday. She also speaks English. Her parents live in Albania. She would not face any cultural or linguistic barriers to building a life in Albania even though she has not lived there for a significant period.
- j) The couple would be able to support themselves through work in Albania.
- k) The couple are having difficulty conceiving a child.
- l) The appellant has poor mental health. He suffers from headaches, depression and anxiety. He has had headaches for over 20 years and takes medication. He has memory problems. The appellant's wife is a source of support for him.
- m) At the date of the decision the appellant met the relationship and English language requirements of the rules. He did not meet the financial requirements. By the date of the hearing the sponsor had been earning over £18,600 for the last 12 months.
- n) When the appellant entered into his relationship with his wife, he was aware that he would need to satisfy the immigration rules to live in the UK and when he entered illegally, he knew he could not meet the requirements of the rules given the previous refusal

Fear of threats from money lenders

- 30. I first turn to the credibility of the appellant's claim to have been threatened. I do not accept Mr Slatter's argument that the appellant has not been invited to make an asylum claim and therefore I should not be sceptical of a protection claim which was made in the context of an Article 8 ECHR claim. It was open to the appellant to claim asylum at any time, and he is represented. I am entitled to view his failure with some scepticism and to take into account that this means that the appellant has not put himself forward to be interrogated by the Secretary of State and I bear this in mind when assessing credibility. I also take into account that the evidence about threats was not raised in the initial application but was raised for the first time in witness statements before the First-tier hearing.
- 31. Nevertheless, I have had the opportunity to hear oral evidence from the appellant and his wife and they have been subject to detailed cross examination.
- 32. I make a few initial observations. The appellant is now 51 years old. He did not come across as a sophisticated or educated individual and this is consistent with his background of growing up in a village carrying out some agricultural and labouring work. His evidence was very simple. He was not evasive. He answered all the questions put to him in a very straightforward way. He did not have to be prompted. He did not appear to be adding more elaboration or detail in a bid to bolster his story. He gave evidence that was not particularly helpful to him such as volunteering that he is able to lay carpets and laminated flooring. His evidence was not internally inconsistent, nor inconsistent with either his wife's evidence (apart from in one respect which I deal with below) nor the background evidence.
- 33. The appellant wanted to join his wife in the UK. He has been in a relationship with her since 2008 and married since 2014. He applied via the proper route. The

application was refused because his wife's income at that time was too low. Manifestly the UK has the right to set income limits. The appellant being desperate to join his wife and realising that he would not be able to enter the UK legally at least for some time, decided to take matters into his own hands and arranged to enter the UK illegally. On any view this is not to be applauded and was an attempt to frustrate UK immigration control.

34. However, it is possible to understand the motivation of the appellant to some extent. He wanted to be with his wife and partner of many years.
35. In Albania he was earning a low income. The cost of entering the UK illegally is expensive. This is in the public knowledge which is why the government is so determined to end the pernicious people smuggling trade. In these circumstances, I find it highly plausible that the appellant would need to borrow money to pay the people smugglers for his journey. His own family are poor and live in a village in Elbasan. His own income was low. I accept that he would need to approach some kind of money lender to raise the funds. It is unlikely that a legal institution such as a bank would lend such a large amount of money to someone on such a low salary for the purpose for which he wanted to use the money.
36. It is plausible that having asked around, a friend may have put him in touch with individuals who are prepared to lend large amounts of money on the basis that they will achieve high returns. I do not agree with Mr Tufan that this is not credible. This is likely particularly in a society like Albania where such informal transactions are not uncommon. I do not find it implausible that the appellant would not learn the names of these people. They were acting illegally. They presumably knew the purpose of the loan and believed that the appellant would be able to work in the UK to pay the money back. They had his friend's details as guarantor.
37. I find that this account is plausible. I also find that it is plausible that the money lenders after a period would make threats in order to put pressure on the appellant to repay the money owed. The statement of the father does have the ring of truth. I accept his wife's evidence that they are tearful, frightened and are elderly. I find that they remain inside their home out of mixed motives including their disability and fear. I also agree with Mr Slatter that the letter from the appellant's father is evidence that the appellant would have been expected to produce and it would have been a factor held against him had he not obtained this evidence. It is plausible that the appellant's parents would promise that the appellant would repay the money. Indeed, the impression I formed is that the appellant does intend to repay this loan as soon as he is able. I also disagree with Mr Tufan's submission that the parents would not remain in the area if they have been threatened. They are very ill and aged, have limited mobility and have lived in their home all of their life. It is plausible that they would not have the means or will to relocate elsewhere.
38. Similarly, I find that it is plausible that the appellant's parents have not approached the police. They are 75 and 85 respectively. They live in a village. Although the police have made recent efforts to modernise and reform, in the

appellant's parents' lifetime things have very different and it is not surprising that as elderly people they mistrust the police. The background evidence in the CPIN also refers to ongoing police corruption, despite recent reforms and the appellant's frail parents have already been subject to intimidation and threats of violence from people who know where they live.

39. The appellant's wife's evidence also came across as unrehearsed and on almost every aspect she gave the same evidence as her husband even about matters which had not been raised in the witness statements. For instance, she also stated that the guarantor had died of cancer and that her husband had worked as a carpet fitter. She appeared to have a resigned attitude to the ability of the Albanian authorities to offer protection.
40. The only major inconsistency was that she stated that her husband had told her that her parents had been to the police to report the threats. In re-examination she confirmed that she was not sure about this. Her husband is sometimes forgetful, and she did not receive this information directly from her parents in law. Mr Tufan conceded that she may have confused this with the visit to the notary and I do not attach great weight to this inconsistency. I find it more likely that the appellant's elderly parents did not report the threats to the police.
41. In summary, even having taken into account the timing of the appellant's claim and the fact that he has not made a formal claim for asylum, I find his account to be consistent, plausible and in line with the background material. I find that he has made efforts to substantiate those elements that he is able to, and I find his account to be credible.
42. I therefore find that he borrowed £12,000 from money lenders in order to pay people smugglers to enter the UK illegally, that the deal was brokered in an informal way by a friend who knew these people and that the agreement was that he would pay the original amount plus a large amount of interest. I find that he has not been able to make any payments. I find that the money lenders obtained his home address from a friend and that they have visited his parents demanding payment and making threats on at least two occasions. I accept that the money lenders were threatening and threw furniture about. I accept that as recently as 2023 the money lenders were able to contact the appellant through a friend and repeat the threats.
43. I accept on this basis on the balance of probabilities that the appellant has a subjective fear of returning to Albania. I find that he has very good reason to believe that should he return to his village or home area he will be approached by the money lenders and that if he is not able to repay them that he would quickly come to some harm. I also find that his wife holds a similar subjective fear of him returning to Albania. I find that in his home area, the money lenders are intent on harming him and he will not have sufficiency of protection because the background evidence is that there are serious weaknesses in the criminal justice system in Albania and corruption is rife. It is likely that the local thugs will have local connections. I find that he is at risk of serious harm in his home area.

44. The appellant has not given evidence that the money lenders are part of a country wide criminal gang or international smuggling gang or that they have strong connections politically or with the police. Nevertheless, they have been able to contact him in the UK via a friend reiterating their threats and behaved aggressively in front of his elderly parents, throwing furniture around, no doubt to inspire fear and to reinforce their intentions to harm the appellant if not repaid. I accept the appellant's evidence that his parents are very frightened.
45. I take into account that Albania is a small country and that word travels fast. In AM and BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC) the UT concluded that Albania is a country in which internal relocation may be problematical for a victim of trafficking but that the assessment is fact sensitive. In the later case of BF (Tirana- gay men) Albania CG [2019] UKUT 93 (IAC) it was accepted that evidence of a person's whereabouts may become known in Tirana by word of mouth because Albania is a relatively small country, and it was entirely plausible that a person might be traced via family or other connections.
46. Both the appellant and his wife have family and friends in Albania, and I find it likely that if the appellant were to return to Albania to another town such as Tirana which is north of Elbasan or to Vlore which is south of Elbasan, news of his return would eventually come to the money lenders. I am satisfied that the money lenders have some motivation to find the appellant and threaten him. They are owed a significant amount of money in Albanian terms, and I infer that if they need it to be known in terms of their business model that if they are not repaid there are consequences. Albania is a small country, and it is not easy to disappear. On this basis I find that sooner or later the money lenders will learn of the appellants presence and that his fear of this happening is subjectively well-founded. This is the case either if he returned to Albania on his own to claim entry clearance or if he returned to live there permanently with his wife.
47. The appellant would need to relocate to a city outside of his home area such as Tirana or Vlore and would have to try to evade being found. If he applies for entry clearance, this would be unlikely to be a swift process. The appellant has a criminal conviction in the UK and has previously entered illegally. There are likely to be further enquiries made. The evidence before the First-tier Tribunal was that there are significant delays even in straightforward applications for entry clearance. I find that it is likely that it would take several months for the appellant to receive a decision on his application and that a successful outcome is no means guaranteed.

Sufficiency of protection

48. I have considered the background evidence in the CPIN on agent of protection. The CPIN presents a mixed picture. The CPIN asserts that in general sufficiency of protection is available to the Horvath standard but also refers to inherent weaknesses in the judiciary and police force. There is still a high level of corruption as well as a high level of organised crime and the evidence is that there are links between organised crime, the government and state security apparatus including the judiciary and police. There have been improvements but there is much to be done. I have therefore considered this issue very carefully. Mr Slatter did not address me in detail on sufficiency of protection and the appellant

did not seek to adduce any further supporting evidence as to why he could not seek protection from the authorities. In this appeal, I have found that the agents of persecution are local thugs and money lenders. I do not find that they have connections with central government or the police as this is not the appellant's evidence. On this basis I find that there would be sufficiency of protection to the appellant in a larger town such as Tirana or Vlore outside of his own area because I find that the money lenders are not powerful or well connected. If the appellant is threatened, he can seek assistance from the authorities and there is no reason to believe that they would not assist him and would not investigate allegations of intimidation or threats. It is not suggested that the decline in the appellant's mental health would be so significant that he would not be able to function. Nor is it suggested that he has any vulnerability by virtue of being a victim of trafficking. I therefore find that the appellant would have sufficiency of protection in another area in Albania. He does not have an objectively well-founded fear of serious harm, albeit his fear is genuine and there is a real risk that he will be threatened.

Internal relocation

49. In terms of internal relocation, I have had regard to relevant authorities including R v SSHD Ex p Robinson [1998] QB 929 and Januzi v SSHD [2006] UKHL 5. I must determine whether it would be unduly harsh for the appellant to relocate to another area in Albania to avoid serious harm. In particular I must consider whether he can, in the context of the country concerned lead a relatively normal life, without facing undue hardship. I firstly take into account that it is not submitted that another part of Albania would be inaccessible nor that it would involve physical danger for the appellant to relocate, nor that in Tirana or Vlore the appellant would not be able to access the basic norms of civil, political or socio-economic rights.
50. I accept the appellant's situation now is different from his situation prior to leaving Albania. Then, he was able to live with his parents and had links with the local community to find work. He was, I find, even at that time stressed and depressed as a result of the lengthy separation from his wife and also had headaches but this did not prevent him from working.
51. His mental health has deteriorated since being in the UK. He has been diagnosed with a depressive disorder. He suffers from low mood, irritability, forgetfulness, feelings of hopelessness and poor memory. He takes mirtazapine and amitriptyline and has been referred to Talking therapy although it is unclear if he has recently been offered any therapy. He did not take it up the therapy that was offered in the past. His poor mental health was made worse after a traumatic incident in May 2020 when he was burgled and beaten up. Some of his mental health difficulties arise from his precarious situation in the UK.
52. I find that if he is returned to Albania now his mental health would deteriorate further because of his separation from his wife who is providing him with support and because of his fear of being harmed. Nevertheless, there was no specific medical evidence before me to suggest that the appellant would be suicidal nor any evidence which addresses the extent of any deterioration. I note in this respect that the burden is on the appellant. It is clear from the CPIN on mental

health, that the appellant would be able to obtain medication and treatment for his mental health difficulties in Albania. There is good provision and treatment is often free because of the national insurance system. Indeed, whilst living in the UK, the appellant has purchased the medication from Albania because it is cheaper. However, it seems unlikely that even with treatment he will recover entirely given that the main factors which cause his depressive disorder (separation from his wife and fear of moneylenders) would continue to be present. I also find that the appellant would be provided with some emotional support from his wife through telephone calls, social media and visits. She previously visited frequently.

53. I find that although the appellant has employment skills, it would be harder for him to find work outside his home area because he is an older man, he will not have local connections and he will be depressed and fearful. Nevertheless, he does have skills to enable him to secure some employment and I find that he is likely to secure some casual work. I also find his wife despite herself being on a low income with debts would be able to assist with some limited financial support to help pay for basic accommodation and essential living items. Both the appellant and his wife also have siblings, extended family and friends in Albania who might be able to assist. The witnesses were silent on this but since they both refer to siblings and were introduced by cousins, I infer that they have relationships with these individuals. I also infer from the quantity of visits to Albania that that appellant's wife has ongoing personal connections with Albania. I accept that culturally it might be difficult for the appellant to live in a different part of Albania when his frail, ill and elderly parents would expect him to look after them in their home as their older son.
54. Nevertheless, having considered all of these factors holistically in the round, despite the difficulties the appellant would face and the deterioration in his mental health, I find that it would not be unduly harsh for him to relocate to another area of Albania to avoid serious harm. He would not be destitute; he would have family to assist him; his wife can offer some financial and emotional support and can visit and he has access to medical treatment.
55. In summary, I do not find even to the lower standard that there is a real risk of the appellant being subject to harm contrary to Article 3 ECHR if he is returned to Albania.

Article 8 ECHR

56. I turn to consider this issue in the context of Article 8 ECHR. In respect of insurmountable obstacles, I have considered the test in Lal v SSHD [2029] EWCA Civ 1925.
57. It is not in dispute that the appellant cannot meet the requirements of the immigration rules because he does not meet the suitability requirements. I have found that there is not a real risk of serious harm to the appellant in Albania.
58. Both the appellant and his wife are of Albanian heritage and familiar with the language and culture. The appellant's wife despite the length of her absence has regularly returned to Albania and has relatives in Albania notwithstanding that

she is not on good terms with her parents. She is employed in the UK and has skills to find work. If the appellant and his wife were both to return to Albania, they would be returning as adults with employment skills and would be able to support themselves financially. These factors do not amount to insurmountable obstacles. Understandably, the appellant's wife does not wish to return to Albania because of her long residence, ties, financial security and friendships in the UK but again these do not amount to insurmountable obstacles.

59. It is submitted that the deterioration in the appellant's mental health is an obstacle that could not be overcome and would entail very serious hardship. If the appellant's wife was present with her husband in Albania, he would not be depressed about being separated from her and she could support her husband with his mental health. He also has access to mediation and treatment. In these circumstances I do not find that the appellant's mental health is an insurmountable obstacle to return.
60. Further, the medical evidence before me came nowhere near demonstrating that the appellant has an Article 3 ECHR medical claim, and little supporting evidence was submitted. Both the appellant and his wife are worried about threats but I have found that although the risk is high in the local area, the appellant can mitigate the risk elsewhere by seeking protection from the authorities. I am not satisfied that this fear on its own, however genuine is sufficient to amount to insurmountable obstacles. Taking into account all of the factors including the genuine fear and the deterioration of the appellant's health I do not find that these obstacles are sufficient to meet the test.
61. My understanding of the evidence is that the appellant's wife will not return to Albania, not least because she needs to remain in the UK to work in order that her husband can meet the financial requirements of the immigration rules. It is of course open to her to visit her husband in Albania as she has done over many years and it is open to them to put in a proper application.
62. Turning to the wider Article 8 ECHR proportionality exercise, I take into account that the maintenance of immigration control is in the public interest. The appellant entered the UK illegally after his application was refused and he has remained in the UK unlawfully. Further he has been convicted of a criminal offence and deliberately failed to declare the conviction on his application to remain in the UK. These are weighty factors in the public interest.
63. In the appellant's favour, he and his wife have been in a longstanding relationship which has lasted for ten years, they did not enter the relationship at a time when he was in the UK unlawfully and I give substantial weight to the quality of their family life. The couple are trying for a child. The appellant's private life attracts little weight. The appellant speaks English and has been financially self-sufficient because his wife has been supporting him. If permitted to remain in the UK he would work and would have no recourse to public funds which is in the public interest. He has poor mental health. I have accepted that this would deteriorate if he returned to Albania because of his subjective fear or being harmed and I have found that it would be difficult for him in Albania for these reasons. I also accept that that his wife would be worried. Nevertheless, I do not find that these factors alone constitute unjustifiably harsh consequences

which outweigh the public interest. I find that the Article 8 ECHR proportionality balance falls in favour of the respondent. The expectation is that the appellant will return to Albania and reapply under the immigration rules which is the proper course.

Notice of Decision

64. I remake the appeal and dismiss it under Article 3 ECHR and Article 8 ECHR.

R J Owens

Judge of the Upper Tribunal
Immigration and Asylum Chamber

5 March 2024

Annex A



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000264

First-tier Tribunal No: HU/52488/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

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Before

UPPER TRIBUNAL JUDGE OWENS

Between

BARDHUL TAFANI
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Slatter, Counsel instructed by Waterstone Legal
For the Respondent: Mr Basra, Senior Home Office Presenting Officer

Heard at Field House on 26 April 2023

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Peer (“the judge”) sent on 19 December 2022 dismissing his appeal against a decision dated 31 March 2022 refusing his human rights claim.
2. The appellant is a citizen of Albania. He last entered the UK illegally on 4 March 2019. On 31 January 2022, he applied for limited leave to remain in the UK as a partner under Appendix FM.
3. In July 2008 he formed a relationship with Ms Bali who he met in Albania when she was on holiday there. The couple were married in Albania on 27 August 2014. The appellant previously applied for entry clearance to join his spouse in the UK, but this had been refused on the basis that she was not earning enough money to meet the financial requirements of the rules. The appellant then decided to enter

the UK illegally to join her and applied to remain in the UK on the basis of his relationship.

The decision of the First-tier Tribunal

4. The judge noted that the issues in the appeal were whether Article 8 ECHR was engaged and if so, whether it would be a disproportionate breach of Article 8 ECHR to remove the appellant from the UK.
5. The judge considered that Article 8 ECHR was engaged in respect of the appellant's private and family life. She found that the appellant could not satisfy the requirements of 276ADE(1)(vi) of the immigration rules because there were no very significant obstacles to the appellant's integration to Albania. She found in respect of Appendix FM that there were no insurmountable obstacles to the appellant and the sponsor relocating to Albania. She found that the suitability considerations had been correctly applied because the appellant had failed to declare in his application that on 24 November 2020, he was convicted to a ten-month suspended sentence for being involved in the production of cannabis. Finally, she carried out the wider proportionality exercise taking into account the factors at s117B of the Nationality Immigration and Asylum Act 2002 and found that it would not be disproportionate for the appellant to be removed to Albania, including for the temporary purposes of reapplying to come to the UK. She dismissed the appeal under Article 8 ECHR.

Grounds of appeal

6. The appellant advances three grounds of appeal.
 - a) The judge failed to make a finding on whether the appellant owed money to individuals in Albania, whether he had received threats and whether as a result he had a subjective fear of being harmed in Albania which would lead to a deterioration of his mental health on return.
 - b) When considering this issue, the judge took into account an irrelevant factor by considering the length of time the appellant had lived in Albania. The threats had taken place after he left Albania.
 - c) The judge erred in her consideration of suitability because she failed to take into account the medical evidence that demonstrated that around the time the appellant made his application, he had stopped taking his medication and was experiencing headaches and poor concentration.

Rule 24 response

7. Mr Basra for the respondent confirmed at the outset of the hearing that there was no rule 24 response but that he intended to oppose the appeal.

Documentation

8. The parties confirmed that they both had sight of all of the documentation including the grounds of appeal, the grant of permission, the decision, the original bundles and appellant's skeleton. Mr Slatter also supplied a brief statement

prepared by counsel who had represented the appellant at the hearing before the First-tier Tribunal.

Grounds 1 & 2

9. In relation to ground 1, it was submitted by Mr Slatter that the appellant gave evidence, both in his witness statement and his oral evidence that he was frightened of returning to Albania because he had borrowed £12000 in order to fund his journey to the UK. He had not repaid this money. The people to whom the money was owed had threatened him by sending him messages and had also threatened his family. Although the appellant had not made a protection claim the judge should have considered this evidence when deciding whether there were very significant obstacles to the appellant returning to Albania.
10. It is submitted that the judge failed to make proper findings on this issue. The judge did not indicate whether she accepted this evidence or not and did not adequately provide reasons if she meant to reject the evidence in line with MK (duty to give reasons) Pakistan [2013] UKUT. Further, when considering this issue, the judge took into account an irrelevant factor because the fact that the appellant had lived in Albania for the majority of his life until the age of 46 years was irrelevant. The threats had occurred to him after he had left Albania.
11. Mr Basra submitted that the judge's reasoning was adequate. The judge had found that the appellant had made a "bare assertion". There was no supporting evidence. The judge was entitled to treat the evidence with scepticism because the appellant had not made a claim for asylum. The judge had directed herself to the relevant law on "very significant obstacles" and her task was to determine whether the appellant would be enough of an insider to be able to participate in society in Albania. Having considered all of the factors in the round and taking a holistic view, the judge found that there would be no very significant obstacles to his integration. The judge's conclusion was lawful and adequately reasoned.
12. Both representatives relied on JA(human rights claim, serious harm)Nigeria [2021] UKUT 97 to support their submissions. Mr Slatter submitted that JA is authority that the decision maker can consider the issue of risk as part of the Article 8 ECHR exercise and Mr Basra stated that the judge had in fact considered this evidence in line with JA.
13. I firstly set out the chronology relating to when the appellant introduced this evidence. In the original application for limited leave to remain under Appendix FM, the appellant asserted that he could meet the requirements of the immigration rules because although he was not able to meet the immigration status requirements, he could satisfy EX1. He also asserted that he could meet the financial requirements of the rules. There was a covering letter to the application dated 16 February 2022 prepared by his representative Waterstone Legal. This addressed the issue of EX1 citing the difficulties the couple were having in conceiving a child and the difficulties they would face in Albania. The covering letter did not mention that the appellant owed money, nor that he had received threats, nor that he was frightened of returning to Albania, either in the context of him having a subjective fear of return which would contribute towards a decline in his mental health or in terms of having an objective fear of being at risk of serious harm from third parties.

14. As a result, the refusal did not deal with this issue. Unlike in the factual scenario in JA this appellant did not raise this issue in his initial application and was not informed that it was open to him to make an application for asylum.
15. The first time that the appellant raised this issue was in his witness statement which was adduced in support of his appeal. He also did not raise this issue in his grounds of appeal against the decision of the respondent. The grounds only referred to the appellant's failure to mention his conviction in his application form asserting that he did not appreciate the relevance of the conviction.
16. In his witness statement he said at paragraph 9.

"Furthermore, another reason why I cannot return to Albania is because I owe £12,000 (with interest) to some friends from whom I borrowed since 2019. They have threatened me that they will kill me if I am returned to Albania and blow me [sic] house up. They have also threatened to kill my parents. The threats started in May 2020. They threatened me via telephone calls and sent people over to meet me in person. I did not mention this in my original application as I did not think it was relevant."
17. In his partner's witness statement, she said at paragraph 5:

"Further he cannot return to Albania as he has received threats that he will be killed and that his parents will be killed. This is due to the fact that he has large debts in Albania which he has not repaid."
18. The appellant gave further evidence on this issue in the appeal which is recorded at [29] of the determination in which the judge states:

"The appellant said he hadn't given the money yet to pay for his travel to the UK and they were visiting his parent's house and asking for money".
19. The sponsor's evidence is recorded at [32]. (She is erroneously referred to by the judge as the appellant). Her evidence was:

"The appellant said she could not go to live in Albania with her husband if he was returned there. She said it would put him at risk".
20. The witness Genjan Menci's evidence is recorded at [34] as follows:

"Genjan Meci said that he knew the appellant had some issues with people he borrowed money from".
21. In the skeleton argument prepared by counsel in support of the appeal the issue was characterised in the following way:

"Although this is not an asylum claim and the Appellant is not therefore asking the Tribunal to consider whether he has a well-founded fear of persecution on return to Albania, he does maintain that he has a subjective fear of some former friends in Albania. They loaned him £12,000 in 2019 and he has been unable to repay the debt, so they have threatened to kill him and his parents. This subjective fear would prevent him from living freely in Albania".
22. The skeleton does not suggest that the appellant would face a risk of harm on his return to Albania. It is submitted that the fear is "subjective" and would prevent the appellant from living "freely". Mr Slatter's submission is that the evidence of the appellant himself goes further than this. His evidence was that he

would be harmed. Mr Slatter conceded that the appellant's bundle did not include any further background evidence on the ability of the Albanian authorities to protect the appellant.

23. As a result of the late stage at which this evidence was raised, the respondent considered this evidence for the first time in the review which states:

"The Appellant has also raised that he has a subjective fear of some former friends in Albania- it is submitted this is not an asylum claim, therefore the Appellant's subjective fear will not be considered as it is a protection claim and does not amount to an insurmountable obstacle".

24. The respondent in the review did not assert that this factual scenario of the appellant having a fear of being harmed on his return to Albania amounted to a "new matter". I raised this issue in the error of law hearing. Mr Basra was not able to point to the respondent making any submission that this was a "new matter" before the First-tier Tribunal. The issue of a "new matter" had manifestly been raised in respect of additional wage slips adduced on the day of the hearing but not in respect of the appellant's subjective fear of return. I asked the parties their views on this issue. Mr Basra had nothing to add. He did not make any further submission that this was a "new matter". Mr Slatter's view was that this was not a "new matter" as it formed part of the evidence relating to whether there would be very significant obstacles to the appellant returning to Albania and was part of the Article 8 ECHR assessment. Further the Secretary of State had dealt with the issue in the review of the evidence prior to the hearing.

25. It is clear from JA that where an appellant raises a risk of serious harm in the context of a human right's claim the Tribunal must consider the issue in that context. Headnote 2 of the decision says:

(2) There is no obligation on such a person to make a protection claim. The person concerned may decide to raise an alleged risk of serious harm, potentially falling within Article 3 of the ECHR, solely for the purpose of making an application for leave to remain in the United Kingdom that is centred on the private life aspects of Article 8, whether by reference to paragraph 276ADE(1)(vi) or outside the immigration rules. If so, the "serious harm" element of the claim falls to be considered in that context.

26. The judge's approach to this evidence is set out at [46]. The judge says:

"The appellant has also given evidence that he fears persons that he owes money to due to his travel to the UK. This evidence is bare assertion without any concrete detail. I do not consider that the fact that the appellant may have borrowed money or owe others money of itself amounts to a very significant obstacle to his integration into the country he lived in for the majority of his life until he reached the age of 46".

27. I firstly comment that if I find that there is no error in the suitability criteria, any error in respect of the judge's findings on this issue would not be material to whether the appellant can meet the requirements of the immigration rules because if the suitability criteria apply, the appellant would not be able to satisfy paragraph 276ADE(1)(vi) by virtue of the part 9 of the immigration rules or R-LTRP by virtue of S-LTR 2.2(b).

28. However, on any view, if there were a positive finding that the appellant would be threatened or that he would be at risk of harm on return or that this would cause a deterioration in his mental health, such a finding would, of course, impact

on how far he could show that he came close to meeting the rules and this would also clearly be a relevant factor in the wider proportionality exercise.

29. The judge's treatment of this evidence at [46] is very brief. She categorises the evidence as a "mere assertion". This wording is unhelpful. Mr Basra submitted what the judge meant was that the evidence was not detailed or supported by independent evidence. Nevertheless, evidence contained in a witness statement and oral evidence is still evidence and the judge needs to decide whether to accept or reject it and what weight to accord it. The problem with [46], in my view, is that it is not clear what the judge meant. I do not understand if she meant to say she did not accept the evidence or whether she meant to say that she did, but it did not amount to a very significant obstacle in which case she should have explained why. Ultimately three witnesses gave evidence that the appellant had received threats. The appellant's evidence was that he would be killed, or his house blown up. There was no clear finding made by the judge in respect of this and as a result no adequate reasons were given. I am also in agreement with Mr Slatter that the fact that the appellant had lived in Albania for the majority of his life until the age of 46 years was an irrelevant factor when considering the impact of the threats because these had according to him taken place after he had left Albania. Ground 2 is also made out.
30. I am therefore satisfied that there was a material error of law in that the judge failed to consider this issue and I aside set the decision dismissing the appeal on Article 8 ECHR grounds on this basis. There was no challenge by the appellant to the judge's remaining factual findings on the situation he would find himself in Albania and I preserve these findings below.

Ground 3 - Suitability criteria

31. Mr Slatter asserts that the judge's attention was specifically drawn to the medical evidence in the bundle which demonstrated that about the time that the appellant made his application for further leave to remain he had ceased taking his medication which had caused him to have headaches and loss of concentration. He drew my attention to counsel's statement in this respect. He submitted that the judge had failed to take into account this evidence when considering whether the discretionary suitability criteria applied. Had the judge taken this evidence into account, she would have accepted that the appellant's failure to mention his previous conviction was as a result of his poor mental health and would have found that the discretionary grounds of suitability did not apply.
32. Mr Basra argued that the judge was well aware of the appellant's poor mental health. The judge had regard to the medical evidence when he found the appellant to be a vulnerable witness and took this into account when assessing his evidence. At [48] the judge noted that the appellant was assisted by advisors when making the application. The judge recorded that the appellant did not answer directly when asked about whether he signed the application form and that he only conceded that he may have signed the form when he went into the representative's office. Even allowing that the appellant is a vulnerable witness the judge did not accept his evidence. Further the judge was not required to repeat every piece of evidence that she considered. In response, Mr Slatter submitted that this issue was not about whether the appellant was a vulnerable witness but whether the suitability criteria were made out.

33. It is not in dispute that the appellant's application form omitted to mention that he had a conviction dated 25 November 2020 for cannabis production for which he was given a suspended sentence of ten months. The appellant was asked "At any time have you had any of the following: A criminal conviction, A penalty for a driving offence, for example disqualification for speeding or no motor insurance. An arrest or charge for which you are currently on or awaiting trial. A caution, warning reprimand or other penalty?" He responded "No" and did not disclose the conviction.
34. The grounds of appeal assert that the appellant "did not understand the relevance of his criminal conviction to his current application".
35. The reason given by the appellant for his failure to omit this information in his witness statement was:
- "The only reason why I answered no to the question concerning any criminal conviction is because I did not understand the question properly."
36. In his oral evidence he said that there was a misunderstanding about answering "no" to the question about criminal convictions. He said the application was done over the phone with lawyers and he had heard something about a car penalty, and he did not remember what he had done afterwards. The appellant clarified that maybe he signed it when he went to his lawyer and took some documents, but he had memory issues and didn't remember when.
37. At [31] the judge records:
- "The appellant explained that he had been hit in the head and took amitriptyline and mirtazapine for depression. The appellant said that he was not in a good situation if he did not take his medication and sometimes not in a good situation even if he took his medication. The appellant said he had his headaches for over 20 years. The judge also recorded the witness evidence that the appellant had memory problems".
38. The judge manifestly took into account the medical evidence before her. At [21] she records that she had sight of the appellant's skeleton argument and to the appellant's bundle containing the medical evidence. She noted at [22] that the appellant also filed a prescription. She clearly had regard to the appellant's statements, oral evidence and medical evidence. At [26] the judge treated the appellant as a vulnerable witness noting that he "suffers from headaches and depression and anxiety". The judge also recorded that she had heard submissions from both parties. I am satisfied on this basis that the judge had this evidence in mind when considering this issue.
39. I note that the skeleton argument did not specifically address the suitability issue although I accept given counsel's statement that specific submissions were made on this point in the hearing and the judge's attention was drawn to the GP evidence.
40. The judge gave consideration to the appellant's explanation for not disclosing the conviction at [49] where she says:
- "The appellant says that he misunderstood matters at the time. The appellant submitted that given the fact was so easily discoverable there was nothing to gain by not disclosing the information. I do not accept this submission given that ostensibly the

appellant had something to gain by failing to disclose this material fact being the potential not to be refused on suitability grounds. The appellant told the Tribunal that the application was done over the phone with advisors. The appellant was asked several times about signing it by the respondent and did not give direct answers and then in response to a request by me for clarification said that maybe he signed it when he took some documents to lawyers but as he had memory issues he did not remember when. Even allowing for the appellant as a vulnerable witness with some stated memory issues, I do not wholly accept his evidence on this point. I have considered the appellant's explanation and I do not find that it is a satisfactory explanation and I do not accept it".

"I accept that the appellant may have some issues of recall. He was clear that the application was completed over the phone but then said that perhaps he signed it in person when attending to provide documents. Applications of this type are submitted online. Further this evidence doesn't completely explain why he would answer this particular question wrongly. The appellant seems to recall he was referred to penalties for driving at the time but not other circumstances of his completion of the application, which I find convenient even allowing for impacts on his recall. The question around whether the appellant had ever had a criminal conviction is an important question and the list includes arrests/cautions all of which as content would signpost the nature of the question being asked and as not just about driving penalties".

"The appellant had advice and assistance in completing the form and in addition to answering questions he had to affirm and declare that the information given was true and therefore had an opportunity to reflect again on that information being provided and check its accuracy. The form contained a range of requests for information including information that needed to be quite precise concerning address details and passport numbers and these were entered correctly even if the form was completed by advisors working with the appellant over the telephone. I do not accept that the advisors who remain instructed by the appellant were inattentive given the accuracy of the questions."

41. I am satisfied that the judge fully took into account all of the evidence in relation to the appellant's mental health when rejecting his explanation that he accidentally omitted to mention his criminal conviction. The judge did not need to list in the decision every factor which she considered, and it is manifest from reading the decision as a whole that she was well aware of his health problems, that she had taken into account the appellant's statement and oral evidence and had taken into account his explanation. I am satisfied that the judge took into account the GP evidence. She refers to both this evidence and counsel's submissions in the decision. She is not required to set out the submissions in full. The judge manifestly had regard to the "sea" of evidence before her. Her reasoning is very clear. The judge was entitled to find that the existence of the conviction was an important question, that the appellant was represented, that the form had otherwise been completed correctly with detailed information and that there was a motive for the appellant failing to mention the conviction. The judge was manifestly entitled to reject the appellant's explanation that this omission was accidental, due to a lack of concentration due to poor health. The judge was manifestly entitled to find that the omission was deliberate and to find that the suitability considerations applied to him. Her decision is adequately reasoned.
42. Ground 3 is not made out. The judge's finding in relation to the suitability criteria is cogent, grounded in the evidence and sustainable. I do not set aside this finding.

43. This has the result that the appellant is not able to meet the requirements of paragraph 276ADE(1)(vi) of the immigration rules, notwithstanding if there are “very significant obstacles” and further that he cannot meet R-LTRP 1.1(d) notwithstanding that there are “insurmountable obstacles” to he and his partner living in Albania because of the effect of S-LTR 2.2 (b). Although of course any factual findings on this issue would be relevant to how far the appellant could demonstrate he could meet these requirements and is relevant to the wider Article 8 ECHR exercise.
44. Nevertheless, having found that Ground 1 is made out, I set aside the decision dismissing the appeal pursuant to Article 8 ECHR.

Disposal

45. The parties indicated to me at the outset of the decision that they were not in agreement with disposal. Subsequent to the hearing, in response to directions, both parties made written submissions. The respondent had no view on the matter. The appellant asserted that the decision should be set aside in its entirety and remitted to the First-tier Tribunal because the appellant had been deprived of having his subjective/objective fear examined by the Tribunal, because of the extent of the fact-finding exercise to be carried out and because of the appellant’s vulnerability.
46. The normal course is for the appeal to be retained in the Upper Tribunal. The majority of the judge’s factual findings remain unchallenged, and the fact-finding exercise relates to a discrete issue. The Upper Tribunal is able to carry out the same functions as the First-tier Tribunal and is well equipped to take into account the appellant’s vulnerability. In these circumstances it is appropriate to retain the appeal in the Upper Tribunal with the findings below at [48] preserved.

Preserved findings

47. The following factual findings were not challenged and are preserved.
- a) The appellant last entered the UK on 4 March 2019. He entered illegally.
 - b) He applied to remain in the UK as a spouse on 31 January 2022.
 - c) He met his wife in Albania in 2008. They were married on 27 August 2014. He made an application for entry clearance which was refused because his wife was not earning enough money. The relationship is strong the couple have been conducting their relationship through the difficulty of distance for over a decade.
 - d) The appellant was convicted of an offence relating to cannabis production on 25 November 2020 to which he was sentenced to a ten-month suspended sentence.
 - e) He has lived in Albania for the majority of his life apart from a period living in the UK and since 2019. He worked in Albania as a farmer earning about £900/£1000 per month. He speaks Albanian and is familiar with the customs and culture of Albania. He has personal relationships in Albania.
 - f) His parents remain living in Albania who are elderly and ill.

- g) He deliberately failed to mention his conviction in his application and the suitability considerations apply to him.
- h) The appellant's spouse is of Albanian origin. She has lived in the UK for over a decade. She naturalised as a British citizen on 31 October 2012. She currently works as a waitress. She has strong private life in the UK with friends, employment and friends.
- i) She speaks Albanian and is familiar with Albanian culture. She has travelled to Albania on holiday. She also speaks English. Her parents live in Albania. She would not face any cultural or linguistic barriers to building a life in Albania even though she has not lived there for a significant period.
- j) The couple would be able to support themselves through work in Albania.
- k) The couple are having difficulty conceiving a child.
- l) The appellant has poor mental health. He suffers from headaches, depression and anxiety. He has had headaches for over 20 years and takes medication. He has memory problems. The appellant's wife is a source of support for him.
- m) At the date of the decision the appellant met the relationship and English language requirements of the rules. He did not meet the financial requirements. By the date of the hearing the sponsor had been earning over £18,600 for the last 12 months.
- n) When the appellant entered into his relationship with his wife, he was aware that he would need to satisfy the immigration rules to live in the UK and when he entered illegally, he knew he could not meet the requirements of the rules given the previous refusal.

48. I do not preserve the findings that there would not be very significant obstacles to integration as this will be impacted by a consideration of the asserted threats to the appellant.

49. I do not preserve the findings that there are no insurmountable obstacles to the appellant and his wife relocating to Albania as this will also be impacted by any findings on threats to the appellant.

Notice of decision

50. The decision involved the making of an error of law.

51. The decision that the removal of the appellant from the United Kingdom is not a disproportionate breach of Article 8 ECHR is set aside with the findings above preserved.

52. The appeal is adjourned for re-making at the Upper Tribunal.

Directions

53. The appeal is to be listed on the first available date with a time slot of 3 hours.

54. The clerk is to arrange for an Albanian interpreter.
55. The appellant is, no later than 14 days prior to the hearing, to file and serve on the Tribunal and respondent a skeleton argument addressing the issue of risk on return and subjective fear, cross referenced to any relevant evidence as well as a complete chronology of the appellant's immigration history. Any additional evidence should be accompanied by written rule 15(2A) notices.
56. In the same timeframe, the appellant should file and serve on the Tribunal and respondent a consolidated bundle of evidence.
57. The respondent, no later than 7 days prior to the hearing, should file on the Tribunal and serve on the Respondent a position statement/ skeleton argument addressing the appellant's skeleton and further evidence.

R J Owens

Judge of the Upper Tribunal
Immigration and Asylum Chamber
15 May 2023