IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004180

First-tier Tribunal No:
HU/53738/2022
IA/05803/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 31 July 2024

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

Secretary of State for the Home Department

Appellant

and

SHPRESIM RADA
(NO ANONYMITY DIRECTION MADE)

Respondent

REPRESENTATION

For the Appellant: Mr M Parvar, Senior Home Office Presenting Officer
For the Respondent: Mr J Gajjar, counsel instructed by SAJ Legal Services

Heard at Field House on 11 April 2024

DECISION AND REASONS

BACKGROUND

1. The appellant in the appeal before me is the Secretary of State for the Home Department ("SSHD") and the respondent to this appeal is Mr Shpresim Rada. However, for ease of reference, in the course of this decision, as the Tribunal did in its 'error of law decision', I adopt the parties' status as it was before the FtT. Hereafter, I refer to Mr Rada as the appellant, and the Secretary of State as the respondent.

2. The appellant is a national of Albania. On 30 August 2001, he was naturalised as a British Citizen. The appellant was deprived of his British Citizenship on 17 May 2019 and a deprivation order was served on 08 March 2022. The respondent subsequently made a decision dated 15 June 2022 having considered whether the appellant should be allowed to remain in the UK on Article 8 grounds. The respondent decided the appellant is not entitled to remain in the UK on family and private life grounds, whether under or outwith the Immigration Rules. The appellant's appeal was allowed by First-tier Tribunal ("FtT") Judge O'Rourke for reasons set out in a decision promulgated on 8 December 2022.

3. The decision of the First-tier Tribunal Judge was set aside for reasons set out in an error of law decision issued to the parties on 29 January 2024. The Upper Tribunal directed that the decision in the appeal as to whether the appellant's removal to Albania will be in breach of Article 8 will be determined by the Upper Tribunal following a further hearing. It is against that background that the appeal was listed for a further hearing before me to remake the decision.

THE ISSUE

4. The issue in the appeal is helpfully summarised in the skeleton argument prepared by Mr Gajjar and filed in advance of the hearing:

> "3. With the Appellant having accepted that he used a false identity to enter the United Kingdom and to obtain British citizen, having been deprived of that citizenship and with the First-Tier Tribunal having historically concluded that there were no very significant obstacles to his re-integration to Albania, the issue in this appeal appears to be a narrow one: whether the decision to refuse leave to remain is proportionate to the legitimate aim."

THE EVIDENCE AND SUBMISSIONS

5. I have been provided with a consolidated bundle that runs to 259 pages and includes the evidence that is relied upon by the appellant.

6. The appellant gave evidence. He adopted the two witness statements previously made by him that appear at pages 86 and 213 of the consolidated bundle. The witness statements are neither signed nor dated by the appellant, but he confirmed before me that those statements were made by him and the content is true and correct.

7. In cross-examination, the appellant said that both his parents and his older brother remain in Albania. His elder brother is married with four children, the oldest of whom is 25/26 years old and the youngest 15/16. The appellant was asked about the 'girlfriend' that he referred to in his evidence before FtT Judge O'Rourke in December 2022. The appellant said that he knew a girl in Albania that he has kept in contact with, but their relationship now is "no-where near what it used to be", and although they remain in contact, he does not know where the relationship will go in the future. The appellant confirmed he has travelled to Albania to visit his

parents and accepted he has a close relationship with his family. Asked about his connections to Albania, the appellant said that he was a child when he left, and he has now spent a considerable period in the UK where he has built a network of friends and relationships. He maintained that his only ongoing connection to Albania is his family and the fact that he spent the first 15 years of his life there. He said that returning to Albania would be like starting a new life.

8. The appellant confirmed that before he was deprived of his British citizenship he was self-employed as a 'car valeter'. That was a business he established in or about 2019. He accepted that he has also gained qualifications in the UK. Asked whether he could work in Albania, the appellant said that the difficulty is that Albania is not thriving economically and even those who are highly educated leave the country because they cannot find employment.

9. The appellant confirmed that he lives with his brother in the UK. He accepted his brother has not provided a witness statement to support the appeal but explained that he did not wish to trouble his brother. The appellant accepted he is not receiving any ongoing medical treatment regarding his health.

10. In answer to questions from me by way of clarification the appellant said that prior to becoming self-employed in about 2019, he studied and was applying for jobs in accountancy, with little success because employers wanted experience. He explained that many years ago he had worked in a kitchen in a restaurant. The appellant said that he last visited Albania in the summer of 2018 and stayed with his family for about 10 days. He remains in contact with his family over the telephone and he speaks to his parents almost daily. He explained that he was previously in a 'relationship' with someone who he described as his 'girlfriend', but he does not speak to her as often now. He last spoke to her about two months ago. He would not describe it as a 'relationship'.

11. The submissions made by the parties are a matter of record and I do not set them out in this decision at any length. In summary, Mr Parvar submits the appellant is unable to establish that there are very significant obstacles to his integration into Albania. He is a young adult male who spent the first 15 years of his life in Albania. He has family in Albania that he has visited and remains in contact with. The appellant has the advantage of qualifications and experience, and there is no evidence before the Tribunal to support his claim that he would be unable to secure employment. Mr Parvar submits that the appellant secured British citizenship fraudulently and he established his private life in the UK having done so. In all the circumstances, he submits the decision to refuse leave to remain is entirely proportionate.

12. In reply, Mr Gajjar adopts the matters set out in his skeleton argument. He submits the appellant has been entirely candid and accepts he entered the UK under a false identity. The appellant himself volunteered the deception. The appellant accepts the deception cannot be excused, but Mr Gajjar submits, the appellant arrived in the UK against the backdrop of

a difficult childhood in Albania, that was mired by the financial struggles the family faced and a very difficult and traumatic journey to the UK as set out in his witness statement. The appellant, as a naïve 15 year old, believed that there were no restrictions on movement around the globe and he was under the direction of an agent during his journey. The appellant accepts what he did was wrong, but the background puts into context why the appellant had used a false identity. Mr Gajjar submits the appellant's voluntary disclosure deserves recognition and the appellant has spent the formative years of his life as an adult in the UK. He has obtained qualifications including a Degree and a Masters' and has done his best to work and support himself. The appellant has ties to Albania but those ties are limited to his relationship with his immediate family. What was previously referred to as a relationship with a 'girlfriend', appears to be more akin to an 'acquaintance' and the appellant is clear that he does not know how that relationship may develop in the future.

DECISION

13. This is an appeal brought under Article 8 of the European Convention on Human Rights ("ECHR"). The burden of proof is upon the appellant to show, on the balance of probabilities, that he has established a family and/ or private life and that his removal from the UK as a result of the respondent's decision, would interfere with that right. It is then for the respondent to justify any interference caused. The respondent's decision must be in accordance with the law and must be a proportionate response in all the circumstances.

14. The appellant does not have a partner or children in the UK. The appellant lives with his brother and his nieces and nephews in the UK. It is well-established in the authorities that there is no relevant family life for the purpose of Article 8 simply because there is a family relationship between two adults. There must be something more than normal emotional ties: see *Kugathas v Secretary of State for the Home Department* [2003] EWCA Civ 31. The appellant's brother, Zamir Rada has previously provided a witness statement in support of the appeal (*page 89 of the Consolidated bundle)*. The statement is unsigned and undated. Although the appellant's brother did not attend the hearing before me, he did attend the hearing before First-tier Tribunal Judge O'Rourke on 7 December 2022 and gave evidence. Judge O'Rourke referred to the decision of the Court of Appeal in *Kugathas* and accepted there is no doubt the appellant is a fond and supportive uncle to his nephew and nieces. Judge O'Rourke however went on to say:

> "33. … There is no 'dependency' in this case. While the Appellant may assist his nephew and niece with their homework, their education is not dependent upon him. He is, he agreed, financially independent and while he may choose to live with his brother and his family, he could, when working, live independently, if he wished."

15. Mr Gajjar accepts that finding and accepts there is nothing in the evidence before me to undermine that finding. Judge O'Rourke did however accept that the appellant's private life would suffer interference,

sufficient to engage the Convention. The appellant arrived in the UK as a child aged 15 and has now lived in the UK for a period in excess of 20 years. I accept his evidence that during his lengthy presence in the UK, he has established a 'network of relationships' and connections to the UK. His relationship with his brother and his nieces and nephews may not amount to 'family life' for the purposes of Article 8 but do form part of the private life he has undoubtedly established over the years. I too accept the appellant has established a private life in the UK and Article 8 is engaged.

16. I find that the decision to refuse the appellant leave to remain has consequences of such gravity as to engage the operation of Article 8. I accept that the interference is in accordance with the law, and that the interference is necessary to protect the legitimate aim of immigration control and the economic well-being of the country. The issue in this appeal, as is often the case, is whether the interference is proportionate to the legitimate public end sought to be achieved.

17. It is common ground that the appellant is unable to satisfy the requirements of Appendix FM and Appendix Private Life of the Immigration Rules. At the outset of the hearing before me, I was told by Mr Gajjar that on 8 July 2023 the appellant made an application for leave to remain in the UK on private life grounds on the basis that he had by that date, been continuously resident in the UK for more than 20 years. The appellant is yet to receive a decision on that application. The application could not be made earlier because the appellant could not satisfy the requirement that he has been continuously resident in the UK for more than 20 years. Mr Gajjar accepts Judge O'Rourke had previously made an unchallenged finding that the Appellant would not face very significant obstacles in reintegrating into Albania. Judge O'Rourke carried out the broad evaluative assessment referred to in *SSHD -v- Kamara* [2016] EWCA Civ 813.

18. In *Hesham Ali v Secretary of State for the Home Department* [2016] UKSC 60, Lord Reed emphasised that the failure to meet the requirements of the Immigration Rules is a relevant and important consideration in an Article 8 assessment because the Immigration Rules reflect the assessment of the general public interest made by the responsible minister and endorsed by Parliament. As set out by the Court of Appeal in *TZ (Pakistan)* [2018] EWCA Civ 1109, compliance with the immigration rules would usually mean that there is nothing on the respondent's side of the scales to show that the refusal of the claim could be justified. At paragraphs [32] to [34], the Senior President of Tribunals confirmed that where a person meets the rules, the human rights appeal must succeed because 'considerable weight' must be given to the respondent's policy as set out in the rules. Conversely, if the rules are not met, although not determinative, that is a factor which strengthens the weight to be attached to the public interest in maintaining immigration control.

19. The importance of, and weight to be given to immigration control has been underscored by Parliament in s117 of the Nationality, Immigration and Asylum Act 2002 (as amended). I accept the appellant can speak

English and he has in the past demonstrated his ability to integrate into society and support himself. They are however factors that are at their highest, neutral. S117B(4) of the Act provides that little weight should be given to a private life that is established by a person at a time when the person is in the United Kingdom unlawfully and s117(5) provides that little weight should be given to a private life established by a person at a time when the person's immigration status is precarious. I accept the appellant was initially granted exceptional leave to remain as a minor and then granted indefinite leave to remain under the respondent's legacy policy. The appellant subsequently applied to naturalise and was naturalised as a British citizen. Although that may be regarded as lawful presence in the UK, the inescapable fact is that the appellant's lengthy presence in the UK arose from the deception perpetrated. To that end, he will have known, certainly by the time that he made his application for naturalisation as a British citizen, that his immigration status was precarious in the sense that if the true facts came to light, his immigration status may be reviewed.

20. Nevertheless I have considered whether refusal of leave to enter would be a "fair balance" for the purposes of Article 8(2) ECHR. In reaching my decision I have regard to all the evidence before me and carried out an evaluative assessment of the circumstances the appellant finds himself in.

21. There are factors that weigh in favour of the appellant: (i) I accept, as Mr Gajjar submits, the appellant arrived in the UK as a minor following a traumatic journey to the UK. The circumstances of that journey are set out in his witness statement and there is no reason for me to set out the detail in this decision; (ii) there was a period between 2006 and May 2010 during which there was a delay on the part of the respondent in reaching a decision upon an application for leave to remain. On 13 May 2010, the appellant was granted ILR under his alias under paragraph 395c based on his long residence; (iii) I give due weight to the private life the appellant has established in the UK over a considerable length of time, during some of which time the appellant was a child and during some of which time the appellant's private life will have strengthened because of a delay in reaching a decision; (iv) The appellant has completed his GCSE's and higher education, including professional qualifications in the UK; (v) The appellant's voluntary disclosure of the deception; (vi) the appellant's commitment to supporting himself and moving forward with his life to build upon his achievements; (vii) the appellant's relationship with his brother and his brother's family.

22. The appellant no doubt wishes to continue living in the UK, and to build upon his achievements but that does not equate to a right to do so. Factors that weigh against the appellant include (i) the fact that the appellant maintains strong ties to Albania where he has a good relationship with his parents and his brother. He has also formed an 'acquaintance' with a 'girlfriend' that has endured over a considerable period of time; (ii) the absence of any reliable or cogent evidence that the appellant could not live a full and successful life in Albania drawing upon the skills and qualifications he has secured during the time he has been in the UK; (iii) the fact that the appellant has established his private life in the

UK over the period during which he used deception to secure leave to remain and then naturalise as a British citizen.

23. In my final analysis and in carrying out the balancing exercise, I have also had regard to the respondent's policy as set out in the immigration rules. The appellant is unable to satisfy the requirements of the immigration rules. I have also had regard to the public interest considerations set out in s117B of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). I acknowledge that the maintenance of immigration control is in the public interest. I find the appellant's protected rights, whether considered collectively or individually, are not in my judgement such as to outweigh the public interest in the maintenance of immigration control.

24. It follows that in my judgement, the decision to refuse the appellant leave to remain is in the public interest and not disproportionate to the legitimate aim.

NOTICE OF DECISION

25. The appeal is dismissed.

V. L Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 July 2024