



**Upper Tribunal
(Immigration and Asylum Chamber)**

Case No: UI-2023-004743

First-tier Tribunal No: HU/55312/2022

THE IMMIGRATION ACTS

**Decision & Reasons
Promulgated**

January 2024

5th

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**GS
(Anonymity order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Awan, Counsel

For the Respondent: Mr M Parvar, Home Office Presenting Officer

DECISION AND REASONS

Heard at Field House on 13 December 2023

The Appellant

1. The Appellant is a citizen of Albania born on 6 March 1982. He appeals with permission against the determination of Judge of the First-tier Tribunal Abebrese dated 5 October 2023. That determination dismissed

the appellant's appeal against a decision of the respondent dated 9 August 2022. The appellant had applied for leave to remain as a parent on 27 July 2022 pursuant to paragraph R-LTRPT of Appendix FM to the Immigration Rules and Article 8, (the right to respect for private and family life) of the European Convention on Human Rights. The appellant had previously visited the United Kingdom but was removed and remained in France waiting for an opportunity to come to the United Kingdom. Eventually the appellant entered on 3 October 2020 by lorry. On 27 July 2021 he submitted an application for leave to remain the refusal of which has given rise to the present proceedings.

The Appellant's Case

2. The appellant claimed to have a genuine and subsisting parental relationship with his son AS born 28 May 2016. He plays a significant role in the life of his AS. He is divorced from the child's mother, his ex-wife Shrepsa Susaj, but she supports his application to remain in the United Kingdom and encourages the appellant to maintain a relationship with AS. She gave evidence that the Appellant has reconnected with his son and that father and son have a good relationship. She states that she cannot imagine that the Appellant and AS will not continue to have a relationship going forward. The Appellant's positive relationship with his son had been of assistance to AS emotionally. AS lives with her in the United Kingdom, she has visited Albania on several occasions. She also has a 3 year old child after a relationship with a British Citizen who is now serving a prison sentence. The appellant states that he has a step-parental relationship with this child.

The Decision at First Instance

3. The appellant provided photographs of himself with his son AS in support of the appeal and claimed that these photos were taken in 2023. The judge noted that the photos that were in the bundle from page 49 onwards were taken whilst the appellant was in Albania, but there were no photographs taken after 2021. The judge was concerned that although the appellant claimed to have regular telephone contact with his son there was no evidence to support that claim. The judge found the Appellant not to be a credible witness. The Appellant had on two occasions been removed from the United Kingdom and had taken some time to make an application to legalise his stay after his latest unlawful entry. The Appellant had failed to provide a plausible reason for this delay. The lack of evidence regarding direct contact between the appellant and his son was regarded by the judge as being at the core of the appeal. The judge was not satisfied that the relationship between the Appellant and his son was either subsisting or genuine and there was insufficient evidence of the relationship. The judge dismissed the appeal.

The Onward Appeal

4. Following the dismissal of his appeal, the appellant appealed to the First-tier Tribunal seeking permission to appeal. The grounds set out some of the background to the case. AS and his mother, the appellant's ex-wife entered the United Kingdom in 2018, the appellant followed two years later in order, it was said to assist with the upbringing of his son. They did not in fact all live together, the appellant's ex-wife had a relationship with another man and a daughter Ambra by that relationship. The evidence provided as part of the appellant's bundle showed the appellant and AS together as well as evidence of how the appellant was involved in AS' life. The photographs and other evidence provided showed that the appellant was having direct contact with his son in the United Kingdom. There was a letter from the appellant's cousin, Mario Susaj which corroborated the relationship between the appellant and AS. However, reading the decision, it did not appear that this letter had been considered.
5. It was not reasonable to criticise the appellant for failing to have documentary evidence of photographs and telephone calls. The appellant would have regularised his stay earlier if he had had the financial resources to do so. The judge had not considered the appellant's relationship with AS' half sibling Ambra. It was not reasonable to expect the appellant's ex-wife to visit the appellant in Albania as she had limited financial resources herself. It was in the best interests of AS that he should be brought up by both parents. The First-tier Tribunal granted permission to appeal on the following basis:

The judge appears to have failed to consider or consider in any detail the supplementary evidence uploaded after the hearing bundle (a 59 page bundle) as this includes evidence of the contact between father and son, notably but not limited to a letter from the son and a letter from the son's school referring to the fact that his father often does school drop offs and collections. There is reference in paragraph 29 to the letter from the school being "clearly....insufficient." Arguably it was a material error not to explain why. For completeness it was also arguably an error of law to not consider the best interests of Ambra Susaj, in whose life the Appellant claims to take a stepfather role (and who is a British citizen).

The Hearing Before Me

6. In consequence of the grant of permission the matter came before me to determine in the first place where there was a material error of law in the decision of the First-tier Tribunal such that it fell to be set aside. If there was then I would make directions on the rehearing of the appeal. If there was not the decision at first instance would stand.
7. For the appellant counsel relied on her skeleton argument. There were two grounds of appeal. The first was that the judge had not given reasons why for example the letter from the school was described as clearly insufficient. The hospital letter was attached but that too was not

discussed by the judge in the determination. The documents showing NHS attendance and school drop off were evidence of direct contact between the appellant and his son. Weight should have been given to these documents rather than them being described as insufficient. There were no findings regarding the child's best interests pursuant to section 55. This was a qualifying child for the purposes of article 8 of the immigration rules. The question was whether it was reasonable to expect the child to leave the United Kingdom. The judge focused on the appellant's precarious immigration status.

8. The second ground concerned the appellant's stepdaughter Ambra. The child was five years old and of school age. The child's biological father was British and still in the United Kingdom. Neither Ambra nor her mother could be expected to leave the United Kingdom. In the case of **ZH Tanzania** it was described as an error of law to place an overemphasis on the mother's immigration status. Ambra's rights should be taken into account. The children were at an age where they would feel abandonment if the appellant left the United Kingdom. The judge had not made findings on the evidence or given adequate reasons for his decision.
9. In reply the presenting officer argued that the original grounds on which permission to appeal was granted were not the same as the skeleton argument now advanced on the appellant's behalf. The skeleton argument argued that there had been inadequate consideration of the school letter and section 55 had been introduced when it was not part of the original grounds of appeal. Those original grounds were merely a re-argument of the case. When it came to these new issues no application had been made to admit the extra grounds. The appeal procedures were there to require parties to identify the issues. The letter from the cousin Mario was very brief and that person had not attended to give evidence. There was no requirement on the judge to set out each and every piece of evidence in the case. There was no material error by the judge in not mentioning the letter from the cousin. It would have made no difference.
10. The original grounds argued that the appellant would not have known he was required to provide extensive documentary evidence. The appellant had not said that in his witness statement. The appellant had been unable to answer during the hearing why he had no evidence of telephone contact. The school letter was not enough to show active involvement see [20] the determination. The appellant had accepted under cross-examination during the hearing that the letter from the school was irrelevant. It was difficult to see why it was being raised now. If one looked at the documents which were before the First-tier, no claim was being made that the appellant was the stepfather of Ambra. There was no argument made that the appellant's return to Albania would be harsh for the child. He was not in a relationship with that child. Indeed the appellant's ex-wife made no such claim. There was no mention in the skeleton argument of whether Ambra's best interests were relevant to

the case. If it had been mentioned it would have been a new matter because it was not in the original application for leave to remain. Therefore there was no obligation on the judge to mention it.

11. The judge had looked at photographs which were served late and that was most of the evidence in the supplementary bundle (referred to in the grant of permission). The judge had made the point in the determination that the appellant failed to provide evidence of direct contact.
12. In conclusion counsel argued that section 55 best interests had not been referred to in the determination because the judge had not got to that stage. The judge should have looked at section 55 as part of his analysis. The judge had made no finding on the respondent's submissions relating to section 55. Although the bundle was largely photographs the letter from the schoolteacher re-pickups of AS from school by the appellant was a weighty factor. This was about the quality of the evidence not the quantity.

Discussion and Findings

13. The principal issue in this case is a disagreement by the appellant with the First-tier judge's determination. The appellant stated that he had a substantial relationship with his son AS. The respondent did not accept that and the judge did not either. The judge pointed to two things in particular support of that view, the first was the lack of documentary evidence to support the existence of a relationship between the appellant and AS and the second was the lack of credibility in the appellant's evidence in the light of his poor immigration history and the length of time the appellant took to make an application for leave to remain on the basis of his relationship with AS once he had arrived in United Kingdom (for the second and last time).
14. The analysis of the evidence was a matter for the judge and I remind myself that the judge had the benefit of seeing the witnesses give evidence. The appellant's evidence was bolstered by the fact that he called his ex-wife, the mother of AS to give evidence. She indicated that she would support the appellant in developing a relationship with AS which rather indicated that there were grounds for improvement in the relationship at that stage. The evidence of the appellant's relationship itself with AS was sparse. The letter from the school referred to, talks of the appellant sometimes dropping the child off at school. That might have been construed as evidence in support of some form of relationship between the appellant and AS but was somewhat undermined by the appellant's own admission in cross examination that the letter was of no evidential value.
15. Another point of dispute between the parties was whether the evidence contained in photographs showed a relationship between the appellant and AS. The difficulty here was that the photographs seemingly were

taken in Albania and were not of recent origin. The burden of proof was on the appellant to show that he had a genuine and substantive relationship with his son. The appellant was being legally advised and would have been aware that a hearing was approaching yet he seems to have produced very little evidence indeed of any relationship. In those circumstances it was reasonable for the judge to conclude that there was no relationship.

16. Reliance was placed in the grounds of appeal on the failure of the judge to consider a supplementary bundle produced after the hearing bundle. The respondent rejected that criticism of the determination on the basis that the supplementary bundle was mainly photographs and it was clear from the determination that the judge had had regard to them, since he explained why in his view the photographs did not take the case any further. Again it was a matter for the judge to decide what weight he was putting on this photographic evidence and his reasons why little weight was being assigned.
17. One of the reasons for the grant of permission to appeal was that it was arguable that the judge had not dealt with the letter from the school regarding the dropping off at school of AS by the appellant. Since the appellant himself had accepted that that letter was worthless it was difficult to see why the judge should have given it any more credence.
18. It was not a feasible option for AS to leave the United Kingdom and live in Albania and it was hardly an error of the judge not to refer to an option that no one in the case thought was acceptable. Similarly there was no suggestion that AS would not continue to live with his mother. In those circumstances the need for a section 55 analysis was limited. Had the judge found that there was a genuine and subsisting relationship between the appellant and AS. then it follows that a section 55 analysis of AS' best interests would have been necessary. Since that was not the judge's finding the question of section 55 did not arise as the case did not get that far.
19. The second ground on which permission to appeal was granted was that the judge had not dealt with the appellant's claimed relationship with the child Ambra. He was not the biological father of Ambra and it does not appear from the determination that any particular argument was made at the hearing that Ambra was in any way relevant to these proceedings. The appellant's application to the respondent was not made on the basis that Ambra was involved in the case and as with AS there was little evidence of the appellant's relationship with the child. He was not the father, he did not live with Ambra and the biological father is present in the United Kingdom and presumably will assume his paternal role upon release. In those circumstances it is hardly surprising that the judge did not deal with Ambra or her best interests. This was a new matter introduced into the grounds of onward appeal and it is difficult to

see what relevance it had to do with the central issue, the appellant's claimed relationship with AS.

20. I agree with the characterisation of the grounds made by the respondent in the hearing before me that they amount to no more than a disagreement with the judge's findings. The appellant had a poor immigration history and his credibility was undermined. This was a case which depended very much on an analysis of credibility and the judge gave his reasons albeit somewhat briefly as to why he did not accept what the appellant was saying. Although it is a relatively low threshold that needs to be crossed to demonstrate a family life between a parent and child, there does need to be some evidence of a family life to satisfy the immigration rules and/or to demonstrate that a protected right has been interfered with by the respondent's decision. For the reasons I have given I find it was open to the judge to conclude that the appellant was not able to demonstrate the existence of a family life. In those circumstances there was no material error of law in the judge's determination and I uphold the dismissal of the appellant's onward appeal.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal

Appellant's appeal dismissed

I continue the anonymity order already made.

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT