IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-000280
UI-2024-000501
First-tier Tribunal No:
HU/52553/2023
LH/04377/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 23 April 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

FLORIAN HIDRI
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. J. Collins, Counsel instructed by Marsh & Partners
For the Respondent: Mr. T. Lindsay, Senior Home Office Presenting Officer

Heard at Field House on 16 April 2024

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of First-tier Tribunal Judge Swinnerton, (the "judge"), dated 27 October 2023, in which he dismissed the appellant's appeal against the respondent's decision to refuse leave to remain on human rights grounds. The appellant is a national of Albania who applied for leave to remain based on his relationship with his son.

2. Permission to appeal was granted to a limited extent by First-tier Tribunal Judge Curtis in a decision dated 29 January 2024 as follows:

> "2. Ground 1 argues that the Judge failed "to make findings on relevant factors" and lists a number of features of the Appellant's case that it is asserted the Judge failed to consider. Assuming that the author of the grounds has read the decision, it is surprising to see the suggestion that the Judge has failed to consider "any" of the factors listed in para. 2. The Judge plainly found that the Appellant had a family life

> with his son (albeit the extent of that family life had been exaggerated), made an assessment of his son's best interests (more on that below) and whether the decision amounts to a disproportionate interference with protected article 8 rights.
>
> 3. Additionally, whether or not the Appellant has a genuine and subsisting parental relationship with his son is immaterial given the child is not "qualifying".
>
> 4. However, there is greater force in the submission that the Judge has erred in his treatment of the independent social worker's (ISW) report. In [20] the Judge sets out the ISW's conclusions and, at [21], observes that the report was provided prior to the period when the child was said to have started spending every weekend with the Appellant. It is not overly clear what the relevance of [21] is other than to support some of the adverse credibility findings about the extent of the Appellant's paternal role. In [22] the Judge says it would be in the best interests of the child to continue to live with his mother noting that he had always done so and suggesting that the child and his mother can visit the Appellant in Albania. There was no explanation for why the Judge disagreed with the ISW as to those best interests nor any obvious reason for why his best interests did not require the continued care, love and affection from the Appellant (the Judge having found the Appellant does play a role in the life of his son. There was also no reference to whether or not the best interests of the child were alternatively served by the family unit relocating to Albania (noting that the Appellant's partner is also Albanian with limited leave to remain in the UK until November 2024).
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> 5. The ground is a challenge to the failure to make findings and is not, in terms, a challenge to the adequacy of reasoning. In that context, I consider it arguable that the Judge has failed to make findings about the evidential scope, and weight of, the ISW report. Since that report goes to the heart of a matter that the Judge was required to treat as a primary consideration, it is arguable that the Judge has erred in this regard."

3. Judge Curtis did not grant permission on Ground 2.

4. The appellant renewed his application for permission to appeal. In a decision dated 15 March 2024 Upper Tribunal Judge Macleman stated:

> "To avoid unnecessary complication of the debate, permission is granted on both grounds."

5. There was no Rule 24 response.

The hearing

6. The appellant and Ms. Kolaveri attended the hearing.

7. Mr. Lindsay stated at the outset that he accepted that the judge's consideration of section 55 of the 2009 Act was inadequate. While the judge had set out the Independent Social Worker's report, there were few findings. However, he submitted that most, if not all, of the judge's findings could be preserved.

8. Mr. Collins therefore limited his submissions to the issue of whether or not any findings could be preserved. He submitted that the decision was "wholly deficient", that there was a lack of findings, and a lack of reasoning given for the findings. He referred to the Ground 2 of the grounds of appeal.

9. I stated that I found that both grounds were made out. I set the decision aside and remitted the appeal to the First-tier Tribunal to be reheard. I set out my full reasons below.

10. The documents before me were contained in the Upper Tribunal bundle of 263 pages.

Error of law

Ground 1 – failure to make findings on relevant factors

11. As accepted by Mr. Lindsay on behalf of the respondent, I find that the judge failed to carry out a proper assessment of the appellant's son's best interests as required. At [22] the Judge states:

> "Based upon the evidence available to me, I find that the Appellant does play a role in the life of his son although not to the extent claimed. That said, Floarn has always lived with his mother, can continue to live with his mother and I find that it would be in the best interests of Floarn to do so. Ms Kolaveri has visited Albania with their son and I find it more likely than not that Ms Kolaveri has contact with her family members despite her claims to the contrary and would be able to visit Albania again with Floarn with the support of her family."

12. This is the extent of the judge's findings in relation to the appellant's son's best interests. As acknowledged by Mr. Lindsay, the starting point is that it is in child's best interests to remain with both parents, but there is no consideration here of the appellant's son's relationship with his father. The judge finds that the appellant plays a role in his son's life, but fails to consider this role when considering the appellant's son's best interests.

13. The appellant had provided an Independent Social Worker's report. The judge refers to this in his findings at [20] and [21]. He quotes from the conclusions where the Social Worker states:

> "I extremely strongly recommend that it would be in the best interests of Floarn for Florian Hidri to be granted legal status to remain the UK, where he can continue to provide parenting care to his son". It is also stated: "I very strongly recommend that it would be in the best interests of Arsenita Kolaveri for Florian Hidri to be granted legal status to remain in the UK, where he can continue to provide parenting care to their son. Thus enabling her [to] sustain momentum towards her career goals, and to better provide for their child."

14. Despite this evidence from the Independent Social Worker, when assessing the best interests of the appellant's son there is no reference to these conclusions. There is no consideration of the best interests of the appellant's son with reference to his father, or any consideration of the effect of separation on the appellant's son. There is no reference to any other parts of the Social Worker's evidence, either that contained in the report or her oral evidence. The failure properly to make findings on her evidence and to carry out a proper best interests assessment is a material error of law. This assessment is relevant to the proportionality assessment, which aside from the argument put forward in the grounds that it is inadequate, is also vitiated by this material error of law.

Ground 2 – unreasoned findings of fact

15. It is submitted that the judge gave "scant reasoning of the evidence before him" with reference in particular to the findings at [17] that Ms. Kolaveri's evidence was implausible, at [18] that the appellant did not pick up his son every day as claimed, and at [22] that Ms. Kolaveri had contact with her family.

16. Mr. Lindsay submitted that the judge had given clear reasons for doubting the credibility of the witnesses. It was not plausible that Ms. Kolaveri would take such a long journey by bus to breastfeed her son, and the judge had not accepted this evidence. He submitted that the findings were adequate and sustainable. Mr. Collins submitted that the judge had given no reasons for his finding that Ms. Kolaveri would not take this journey. He relied on the grounds in relation to the other findings.

17. I find that the judge's reasoning is inadequate. In relation to Ms. Kolaveri travelling to breastfeed her son he states:

> "In relation to the Appellant's son staying with him every weekend, Ms Kolaveri had stated that she continues to breastfeed her son and gave evidence that she would go to her son on both Saturdays and Sundays in the mornings to breastfeed him and also stated that the journey there was one hour and twenty minutes by bus. I do not find that plausible and I do not believe it."

I find that the Judge has failed to give reasons for why he has rejected this evidence except to state that it is implausible.

18. In relation to the finding that the appellant does not pick up his son every day, the Judge states at [18]:

> "I do accept, though, that the Appellant does play some role in picking up his son from the nursery albeit he was not able to state the name of the nursery and I do not find that he picks up his son every day as claimed."

He has not given reasons for his finding that the appellant does not pick up his son every day. He has not referred to the evidence to support the appellant's claim which was consistent and which included evidence from the previous nursery.

19. Ms. Kolaveri's evidence was consistent that she was not in contact with her family, but the judge has found "it more likely than not that Ms Kolaveri has contact with her family members despite her claims to the contrary". He gives no reasons for this. He has not made an earlier finding that she is not a reliable witness, but has found her evidence at [17] implausible without giving reasons, and has simply rejected this part of her evidence, again without reasons.

20. I find that the judge has failed to make adequate findings which are properly reasoned. I find that this is a material error of law. I find that ground 2 is made out.

21. I find that the decision involves the making of material errors of law. In considering whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade I have taken into account the case of Begum [2023] UKUT 46 (IAC). At headnote (1) and (2) it states:

> *"(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.*
>
> *(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal."*

22. I have carefully considered the exceptions in 7(2)(a) and 7(2)(b) when deciding whether to remit this appeal. The Judge failed to make adequate findings, and failed to carry out a proper best interests assessment for the appellant's son. Given the extent of fact finding required, I consider that it is appropriate to remit this appeal to be reheard in the First-tier Tribunal.

Notice of Decision

23. The decision of the First-tier Tribunal involves the making of material errors of law and I set the decision aside. No findings are preserved.

24. The appeal is remitted to the First-tier Tribunal to be reheard.

25. The appeal is not to be listed before Judge Swinnerton.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
22 April 2024