



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-000686  
[EA/02580/2023]

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On 12<sup>th</sup> of July 2024**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**  
**DEPUTY UPPER TRIBUNAL JUDGE SILLS**

**Between**

**NDOC GJONI**  
**(Anonymity Order Not Made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Rashid  
For the Respondent: Mr McVeety

**Heard at Manchester Civil Justice Centre on 5 July 2024**

**DECISION AND REASONS**

**Introduction**

1. The Appellant appeals against the decision of Judge Dixon (the FTT Judge) dated 21 December 2023, in which the Judge dismissed the Appellant's appeal under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 (the 2020 Regs) against the Respondent's decision dated 14 June 2023 to make a deportation order against the Appellant.

**Factual Background**

2. The Appellant is an Albanian national. On 18 March 2022 he was issued leave to enter the UK valid until 18 September 2022. On 6 August 2022 he was granted limited leave to remain under the EUSS until 7 August 2027.
3. On 26 May 2023 the Appellant was convicted of Violent Disorder and sentenced to 27 months imprisonment. The date of the offence was either 11

October or 11 November 2022. For present purposes it does not matter which of those dates is correct.

4. In the decision of 14 June 2023, the Respondent made a decision to deport the Appellant on the basis that the Appellant's deportation was conducive to the public good under s3(5)(a) of the Immigration Act 1971 (the 1971 Act). As a person with EUSS leave, the Appellant had a right of appeal against the decision under Reg 6 of the 2020 Regs. The Appellant appealed. In response to the s120 one-stop notice issued with the decision, the Appellant also made a human rights claim. That claim remains outstanding.
5. Before the FTT Judge, the Respondent applied for an adjournment to enable the Respondent to make a decision on the outstanding human rights claim. That application was refused. At the hearing, the Appellant did not argue that the decision breached any rights the Appellant may have under the Withdrawal Agreement. The FTT Judge found that the Respondent had erred in public law terms in the decision. The Respondent had not given any proper consideration to whether Exception 1 (the human rights exception) to the automatic deportation provisions as set out at s32-3 of the UK Borders Act 2007 (the 2007 Act) applied. However, the error was not material because if the Respondent had considered the human rights exception, it was inevitable that the Respondent would have reached the same decision. The Judge went on to give reasons why the Appellant could not satisfy the requirements of s117C of the Nationality Immigration and Asylum Act 2002 (the 2002 Act).
6. The Appellant's application for permission to appeal was refused. In the renewed application the Appellant argued:
  - a. The Judge's reasoning was confused and failed to consider s33(7) of the 2007 Act. The Judge erred in conducting a public law review.
  - b. The Judge had failed to engage with the 'new matter' provisions concerning the human rights claim made in response to the notice under s120 of the 2002 Act.
  - c. The Judge's consideration of the human rights claim was inadequate.
7. UTJ LK Smith granted permission on 18 April 2024.

### **The Hearing**

8. At the hearing, Mr McVeety for the Respondent conceded that the FTT Judge had been wrong to assess the Respondent's consideration of the human rights exception under the 2007 Act and the Appellant's ECHR Article 8 rights. The Appellant's human rights claim had not yet been decided and there was no appeal on human rights grounds before the Tribunal. However, he maintained that the FTT Judge had been right to dismiss the appeal, which could not succeed, as the offence was committed after the end of the transition period. Mr Rashid for the Appellant confirmed that the Appellant's concern was that the FTT Judge had considered his ECHR Article 8 rights. That issue aside, Mr Rashid did not advance any arguments as to why the decision breached any rights the Appellant may have under the Withdrawal Agreement, or why the decision was not in accordance with s3(5) of the Immigration Act 1971 (the 1971 Act). The parties agreed that the FTT Judge's had erred in considering the Appellant's ECHR Article 8 rights in the context of the human rights exception under the 2007 Act, but that as the Appellant had no basis to challenge the decision under appeal, the error

was not a material error of law. We confirmed at the hearing that we agreed with the position adopted by the parties and we would produce a written decision confirming our decision on that basis.

## **Findings**

9. We make some brief remarks to explain why it is that the FTT Judge erred in law in considering the Appellant's ECHR Article 8 rights in the context of the human rights exception set out at s33 of the 2007 Act. The decision under appeal is the Respondent's decision to deport the Appellant under s5(1) of the 1971 Act on the basis that the Appellant is liable to deportation under s3(5) of that Act. S3(5) and s3(5A) of the 1971 Act state as follows:

*'S3(5) A person who is not a British citizen is liable to deportation from the United Kingdom if—*

*(a) the Secretary of State deems his deportation to be conducive to the public good; or*

*(b) another person to whose family he belongs is or has been ordered to be deported.*

*(5A) The Secretary of State may not deem a relevant person's deportation to be conducive to the public good under subsection (5) if the person's deportation—*

*(a) would be in breach of the obligations of the United Kingdom under Article 20 of the EU withdrawal agreement, Article 19 of the EEA EFTA separation agreement, or Article 17 or 20(3) of the Swiss citizens' rights agreement, or*

*(b) would be in breach of those obligations if the provision in question mentioned in paragraph (a) applied in relation to the person.'*

10. Article 20 of the Withdrawal Agreement states:

*'Article 20*

*Restrictions of the rights of residence and entry*

*1. The conduct of Union citizens or United Kingdom nationals, their family members, and other persons, who exercise rights under this Title, where that conduct occurred before the end of the transition period, shall be considered in accordance with Chapter VI of Directive 2004/38/EC.*

*2. The conduct of Union citizens or United Kingdom nationals, their family members, and other persons, who exercise rights under this Title, where that conduct occurred after the end of the transition period, may constitute grounds for restricting the right of residence by the host State or the right of entry in the State of work in accordance with national legislation.'*

11. The available grounds of appeal under the 2020 Regs are as follows:

*'8.— Grounds of appeal*

*(1) An appeal under these Regulations must be brought on one or both of the following two grounds.*

*(2) The first ground of appeal is that the decision breaches any right which the appellant has by virtue of—*

(a) [Chapter 1, or Article 24(2), 24(3), 25(2) or 25(3) of Chapter 2]1, of Title II [, or Article 32(1)(b) of Title III,]2 of Part 2 of the withdrawal agreement,...

(3) *The second ground of appeal is that—...*

(d) *where the decision is mentioned in regulation 6, it is not in accordance with [section 3\(5\) or \(6\)](#) of the 1971 Act (as the case may be)'*

12. The purpose of the 2020 Regs must be borne in mind. As per para 1 of the Explanatory Note:

*'These Regulations make provision for appeals in connection with various immigration decisions which relate to, or are connected to, leave to enter or remain in the United Kingdom granted under residence scheme immigration rules or relevant entry clearance immigration rules.'*

13. The right of appeal concerns decisions connected to leave to remain granted under the residence scheme immigration rules, which is the EUSS. In this context, the right of appeal is against the Respondent's decision to make a decision to deport the Appellant under the domestic legal provisions, rather than the saved provisions of Chapter VI of Directive 2004/38/EC. That question turns on whether the conduct occurred after the end of the transition period on 31 December 2020 as per Article 20 of the Withdrawal Agreement. In the Appellant's case it plainly did. That question, in our view, decides both available grounds of appeal against the Appellant and neither party suggested otherwise. The parties were both of the view that the ground of appeal 'not in accordance with section 3(5)' of the 1971 Act did not require or entitle the FTT Judge to consider whether the Respondent had lawfully considered the human rights exception to the automatic deportation provisions set out at ss32 and 33 of the 2007 Act. We agree that that falls outside the scope of the statutory grounds of appeal available against the decision under appeal.

14. In view of the above, we find that the FTT Judge erred in law in assessing the Respondent's consideration of the human rights exception under s33 of the 2007 Act and the Appellant's ECHR Article 8 rights. The FTT Judge's assessment of that issue and consideration of the Appellant's ECHR Article 8 rights are therefore a nullity and are set aside. It remains for the Respondent to make a decision on the Appellant's outstanding human rights claim. However, the FTT Judge's error had no material impact on the FTT Judge's decision to dismiss the appeal. The FTT Judge was correct to find that the decision did not breach any rights the Appellant may have under the Withdrawal Agreement and that the Appellant had not established that the decision was not in accordance with s3(5) of the 1971 Act. We therefore dismiss the appeal.

### **Notice of Decision**

The decision of the First-tier Tribunal is set aside to a limited extent: its findings on Article 8 are set aside.

The appeal is dismissed.

Judge Sills

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

9 July 2024