



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

Appeal Nos: UI-2024-000720, UI-2024-000721, UI-2024-722
UI-2024-000730, UI-2024-000731, and UI-2024-000733

First tier number: HU/56624/2023, LH/05833/2023
HU/56625/2023, LH/05832/2023
HU/56627/2023, LH/05790/2023

THE IMMIGRATION ACTS

Decisions and Reasons issued

On 30th of April 2024

Before

Deputy Upper Tribunal Judge MANUELL

Between

**Ms ELONA BAJA
Mr LEJTO BAJA
Ms SHADY SKYLAR BAJA
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Vidal Counsel
(instructed by Haris Ali Solicitors)

For the Respondent: Ms J Isherwood, Senior Home Office Presenting
Officer

Heard at FIELD HOUSE on 18 April 2024

DECISION AND REASONS

Introduction

1. The Appellants appealed with permission granted by Upper Tribunal Judge Pickup on 21 March 2024, against the decision of First-tier Tribunal Judge Mill who had dismissed the linked appeals of the Appellants against the refusal of their human rights claims. The decision and reasons was promulgated on 11 January 2024.
2. The Appellants are nationals of Albania, mother and children, respectively born on 3 October 1982, 4 November 2010 and 10 February 2017. The First Appellant and Second Appellant entered the United Kingdom illegally on 24 October 2016. The Third Appellant was born in the United Kingdom subsequently. The First Appellant claimed asylum on 19 December 2016, which was refused on 19 June 2017 and dismissed on appeal to the First-tier Tribunal on 10 August 2017. On 16 July 2020 further submissions were made on the Appellants' behalf, which were refused on 25 November 2022. On 1 October 2020 the First Appellant applied for leave to remain on the basis of her family and private life, which was refused on 26 August 2021.
3. The First Appellant has a son, Master Jason Bala ("Jason"), born on 27 March 2020. Although he was initially registered as a British Citizen, that registration was revoked by the Respondent. The First Appellant had applied for leave to remain as the parent of a British child, which application was refused. The First Appellant has sole responsibility for Jason.
4. On 13 May 2022 the Appellants again applied for leave to remain in the United Kingdom, which was refused by the Respondent on 11 May 2023. Those decisions were the subject of the linked appeals before Judge Mill.
5. Judge Mill noted the findings made by First-tier Tribunal Judge Lawrence in the decision and reasons promulgated on 10 August 2017, to which Devaseelan* [2002] UKIAT 702 applied. Judge Lawrence found that the First Appellant

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had not been trafficked. She was continuing to live with her husband and her children in the United Kingdom. The First Appellant's husband was the father of Jason, as shown on Jason's birth certificate. The family could return to Albania where they had a large extended family.

6. Judge Mill found that the First Appellant had had the opportunity since 2017 of refuting Judge Lawrence's finding about the paternity of Jason, e.g., by producing DNA evidence, but had failed to do so. Judge Mill found that the First Appellant was neither a credible nor a reliable witness and found that there was no good reason to depart from Judge Lawrence's findings. The First Appellant had had the opportunity to produce other evidence about the family dynamics but had gain failed to do so.
7. Judge Mill went on to find that the family could return to Albania, without facing very significant obstacles, and where the children could continue their education without difficulty and their best interests would be protected. The children could communicate effectively in Albanian. The Second Appellant's education was not at a critical stage and although he had been in the United Kingdom for over 7 years it was reasonable to expect him to leave with his family. The special educational needs of the Third Appellant, not so far formally diagnosed, could be met in Albania. It was not a disproportionate breach of Article 8 ECHR for the Appellants to leave the United Kingdom and they would suffer no unjustifiably harsh consequences. Hence the appeals were dismissed.
8. When granting permission to appeal, Upper Tribunal Judge Pickup considered that it was arguable that Judge Mill had erred not only in the ways identified by First-tier Tribunal Judge Gumsley (who had granted partial permission to appeal) but also arguably by committing procedural unfairness in failing to seek an explanation from the First Appellant as to the absence of DNA evidence concerning the paternity of Jason. It was also arguable, just, that the Judge had failed to assess the relevant country background evidence adequately. Judge Gumsley had considered it arguable that Judge Mill had suggested that the Second Appellant had been pressured into writing a letter without

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having any evidential basis for doing so and in holding against the First Appellant that she was not financially independent. Thus four grounds were the subject of the combined grant of permission to appeal.

Submissions

9. Ms Vidal for the Appellants relied on all four grounds of onwards appeal. Counsel submitted that Judge Mill had acted unfairly by neglecting to put to the First Appellant (a) why she had not obtained DNA evidence concerning Jason's parentage and (b) what she claimed her current domestic situation was. These should have been put as they were not raised in the Respondent's reasons for refusal letter. They were matters which were material to the judge's decision so should have been asked.
10. Ms Vidal submitted that the Judge had acted perversely when he had suggested at [27] of his decision that the Second Appellant had been pressured to write his letter which stated that he wished to remain in the United Kingdom. Again the Judge's approach had been wrong.
11. Counsel also relied on the remaining grounds (the Judge's treatment of exceptional circumstances and the country background evidence) but accepted that these grounds were less persuasive. The whole decision was wrong and should be set aside, so that the appeal could be reheard in the First-tier Tribunal by another judge.
12. Ms Isherwood for the Respondent submitted that none of the Appellant's grounds of appeal had been made out and no material error of law had been shown. The Judge had carefully examined all of the evidence and had given adequate reasons for the adverse credibility findings he had reached independently of Judge Lawrence's findings in 2017. There was no need for the Judge to have asked the First Appellant about DNA evidence. She was represented and she had simply tried to reargue her case without fresh evidence. There had been no challenge in the grounds to the Judge's finding that the Second Appellant could continue his education in Albania (and spoke sufficient Albanian to do so). The Judge had considered very

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significant obstacles, including the implications for the children, and had given adequate reasons for his findings, including the availability of support for the Third Appellant. The appeals should be dismissed.

13. In reply, Ms Vidal emphasised that a fair approach required the Judge to have asked questions about the absence of DNA evidence. Because the Judge had given little weight to the Second Appellant's letter, he had not considered the Second Appellant's life in the United Kingdom, when the Second Appellant was old enough for his opinion to have required consideration. (It was accepted that because the Third Appellant had not been formally diagnosed as autistic, she had as yet no learning plan.)

No material error of law finding

14. The Tribunal reserved its decision at the conclusion of submissions, which now follows. Both sides accepted that Devaseelan* [2002] UKIAT 702 applied and so the previous determination was correctly the Judge's starting point. The Judge found that there was no cogent or compelling evidence which justified a departure from the previous findings. On the contrary, the First Appellant had persisted in advancing a case or story which had been discredited.
15. It was not incumbent on Judge Mill to enquire of the First Appellant, who was legally represented, why she had not produced DNA test evidence as to the paternity of Jason or why she had not produced better evidence of her current domestic circumstances. All Judge Mill did at [21] of his decision was to point out that the First Appellant had had 6 years to obtain DNA evidence since 2017. That was obviously the only means of proving paternity if Jason's birth certificate was challenged (and that her earlier claim as to Jason's paternity was true), contrary to Judge Lawrence's finding. It was open to the Judge to find that the First Appellant had not produced satisfactory evidence of her current domestic circumstances. It is quite wrong to suggest that any procedural unfairness occurred since Judge Lawrence's adverse findings were fundamental obstacles to the Appellants' case. There had been no appeal. The inference which Judge Mills drew from the

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absence of DNA evidence of Jason's paternity was the proper one and was open to him, particularly as the First Appellant's evidence had been found unreliable on several other matters. His finding that Jason's father is the First Appellant's husband is secure.

16. As to the assertion that Judge Mill had acted perversely when finding that the Second Appellant had been pressured into writing the letter expressing his wish to remain in the United Kingdom, that is not what the Judge said at [27] of his decision. He merely commented that he doubted the independence of the letter. That doubt naturally arose from the unreliability of the First Appellant's evidence generally. The doubt did not feed into the Judge's findings about the Second Appellant's best interests, for example, the Second Appellant's ability to communicate in Albanian and the unchallenged fact that the Second Appellant's education was not at a critical phase. It was in any event obvious enough that the First Appellant and the Second Appellant wished to remain in the United Kingdom, despite their unlawful presence.
17. The remaining grounds were weak and require little discussion. The Judge found that the First Appellant could return to Albania without difficulty as she had lived there for most of her life, was familiar with the language and culture, and had family there who would continue to support her, as would her husband. The Judge did not accept that the First Appellant had been disowned by her family. The children's education could continue. That sufficiently addressed the claim that there were exceptional circumstances. The country background evidence was sufficiently covered and was had little relevance because the First Appellant's central claims were discredited.
18. The Tribunal thus finds that none of the grounds of appeal advanced on the Appellants' behalf has any merit. Judge Mill's decision is a thorough, well-structured and logical analysis of the Appellants' renewed claim. The fact is that the elaborate repackaging of the Appellants' 2017 case failed to improve it.

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19. Indeed for some the present appeals, coming on top of the previous dismissed appeals as well as the other repeated failed applications to the Home Office, may recall Ward, LJ's opening remarks in TM [2012] EWCA Civ 9: "This is another of those frustrating appeals which characterise – and, some may even think, disfigure – certain aspects of the work in the immigration field. Here we have one of those whirligig cases where an asylum seeker goes up and down on the merry-go-round leaving one wondering when the music will ever stop. It is a typical case where asylum was refused years ago but endless fresh claims clog the process of removal."
20. The onwards appeals are dismissed.

Notice of decision

The appeals are dismissed_

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged.

Signed R J Manuell

Dated 23 April 2024

Deputy Upper Tribunal Judge Manuell