



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001330
UI-2024-001085
HU/55489/2023
LH/05978/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 1 August 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**LEFTER GJOKA
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Dhanjal (Counsel)

For the Respondent: Mr N Wain (Senior Home Office Presenting Officer)

Heard at Field House on 21st June 2024

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Zucker, promulgated on 13th January 2024, following a hearing at Taylor House on 12th January 2024. In the determination, the judge allowed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Albania, and was born on 7th April 1973. He appealed against the refusal of his application to remain in the UK on the basis of his private life (long residence) in a decision made on 4th April 2023.

The Appellant's Claim

3. The essence of the Appellant's claim is that he has been in the UK for 25 years continuously, having arrived on 31st July 1998. On arrival, he gave a false identity, claiming to be a Kosovar, rather than an Albanian. He has lived and worked in this country and paid some taxes. He himself then eventually volunteered the fact that he was an Albanian. Now that he has completed more than twenty years in this country he is entitled to indefinite leave to remain.

The Judge's Findings

4. The judge observed (at paragraph 4) that the Respondent had rejected the Appellant's claim for three reasons. First, the Appellant failed to meet the suitability requirements under the Rules because he had in his previous applications claimed to be a Kosovar, and only in his current application had he claimed to be an Albanian, his actual national origins. Second, he failed to adduce sufficient evidence of continuous residence in the United Kingdom for a period of twenty years. Third, he failed to demonstrate that there would be very significant obstacles to his integration into Albania if he were required to leave the UK because he spoke the language of Albania and he still had family residing there in Albania.
5. The judge, however, allowed the appeal with the observation that, "I have not found this a difficult case at all", because although it was the case that "immigration control is in the public interest and considerable weight is to be attached to that", nevertheless, "it did not appear from the evidence that the Respondent had taken steps to remove the Appellant from the jurisdiction during the lengthy time that he, the Appellant had been in the United Kingdom" (at paragraph 11).
6. The judge further noted that "the State (United Kingdom government) had notice that the Appellant was working unlawfully because it was not in dispute that he was at one time paying tax; he had corresponding P60s", so that "there appears to be a lack of joined up government because it appears that if the Inland Revenue had been able to pick up that the Appellant, who had been working at a time when he had no right to be in the United Kingdom, had informed the Respondent, something might have happened ..." (paragraph 14).
7. The position now was, according to Judge Zucker, that ultimately, "this case turns on proportionality" (at paragraph 15) and the length of time that the Appellant had been in the UK meant that his appeal stood to be allowed.

Grounds of Application

8. The grounds of application state that the judge erred in mitigating the Appellant's deception by placing too much weight on the fact that the Appellant was never removed from the United Kingdom; it could not be proved by the Appellant that he had remained in the UK for the last 25 years; and the appeal being allowed on proportionality grounds failed to take into account the Appellant's deception. Permission to appeal was granted on 12th March 2024.

Submissions

9. At the hearing before me on 21st June 2024, Mr Wain, appearing on behalf of the Respondent Secretary of State, submitted that the judge was wrong to have allowed mitigation of the Appellant's deception in the manner that he did on grounds that he had never been removed, because the Appellant was considered by the state authorities to have been a Kosovar, was dealt with as such, and had gained an immigration advantage through awards of discretionary leave, precisely on this basis. Second, it could not be assumed that the Appellant, having entered the UK on 31st July 1998, had never left this country because the onus was upon the Appellant to provide evidence that this was indeed the case. Third, the judge was wrong to have allowed the appeal on proportionality grounds, given that he had accepted that return to Albania would not be unduly harsh for him (see paragraph 17), because the legislation is clear that private life built in the UK illegally is to be given little weight. To suggest, as the judge did (at paragraph 14) that because the Appellant was working unlawfully and was at one time paying tax, and had a P60 given to him, that there was a lack of joined up governmental thinking, given the refusal of the Inland Revenue to inform the Home Office of the position of the Appellant, cannot be right because the public interest lies in the enforcement of immigration control and significant weight must be given to this objective.
10. Mr Wain also proceeded to point out that the Upper Tribunal had now granted permission on the ground that the Appellant cannot simply be assumed to have lived in the UK for 25 years (which was the sole ground upon which the First-tier Tribunal previously had not granted permission). Mr Wain then proceeded to summarise the main points raised by the Respondent Secretary of State in this appeal.
11. First, the judge's finding that the Respondent had taken no steps to remove the Appellant when this could have been done was irrational because between 4th July 2014 and 6th January 2017 there was a period of discretionary leave given to the Appellant who had claimed to have been a Kosovan national. Prior to his leave expiring in that period, the Appellant had then made an in-time application, whereupon he was granted an additional period of discretionary leave to remain until 29th January 2022. In short, the Respondent could not have removed the Appellant during this time when he had leave to remain. The Appellant's immigration history was set out in the documentation before the Tribunal (see page 264 of the composite bundle). It was not until much later that the Appellant's true nationality became known to the Respondent. The reasoning by the judge below, that no steps had been taken to remove him only made sense, if the Respondent knew that the Appellant was here unlawfully as an Albanian national, which the Respondent was plainly unaware of. In the circumstances, it cannot be said to have been disproportionate to expect the Appellant to return back to Albania now.
12. Second, it was clear that the Appellant had not always paid taxes whilst working in the UK because when this question was put at the hearing to the Appellant, it is recorded by the judge that, "the Appellant on advice did not answer on the basis that to do so might incriminate him" (paragraph 10). There is insufficient reasoning provided here by the judge as to why this does not go so much against the Appellant that his removal would indeed be proportionate now.
13. Third, the balancing exercise that the judge engages in (from paragraphs 11 to 14) makes no reference to the public interest consideration requiring the

maintenance of effective immigration control and the lack of exceptional circumstances in this case. Although the judge draws attention to the factors against the Appellant (at paragraph 16) this does not include a reference to the Appellant's exercise of deception.

14. For his part, Mr Dhanjal submitted that this had been an application under the twenty year Rule for the Appellant to be allowed to remain here on the basis of his long residence. The judge had not overlooked the fact that the Appellant had exercised deception because at the outset (at paragraph 5) the judge recognised that the Appellant could not meet the suitability requirements under the twenty year Rule because of the deception that the Appellant had exercised, which he had himself informed the authorities about, namely, that he was not a Kosovar but an Albanian. The fact was that in the 1990s many Albanians entered the UK in this manner, claiming to be Kosovars when they were not, but there had now been a passage of considerable time, and it cannot be said that allowing an appeal on this basis is perverse, because perversity is a very high threshold, and a decision maker who has taken everything into account, is entitled to come down on one side or the other.
15. In this case the judge was aware of the serious nature of the deception. He states in terms that, "to lie about one's identity is a serious matter", because "It operates to undermine the system ..." (paragraph 11). This indicates that the judge had been live to all the public interest considerations that would weigh heavily on the decision maker in a case such as this. When the judge goes on to say (at paragraph 11) that, "it did not appear from the evidence however that the Respondent had taken steps to remove the Appellant from the jurisdiction during the lengthy time ...", what he is referring to is the fact that between 2004 and 2014 the Appellant was in this country unlawfully. The government was aware of his unlawful stay during this time. They were aware that the Appellant was working unlawfully. Had there been the joined up thinking that the judge refers to here, the Appellant would have been removed.
16. Second, there is longstanding case law in **EB (Kosovo)** where the court had held that, "it does not ... follow that delay in the decision-making process is necessarily irrelevant to the decision" (paragraph 14), because "delay may be relevant ... in reducing the weight otherwise to be accorded to the requirements of firm and fair immigration control, if the delay is shown to be the result of a dysfunctional system which yields unpredictable, inconsistent and unfair outcomes" (paragraph 16). In the circumstances, submitted Mr Dhanjal, the decision by the judge cannot be said to be a perverse decision.
17. Third, it was equally wrong to suggest that the judge did not take into account the deception of the Appellant (see paragraph 11), and the judge was clear that the Appellant "does not meet the suitability requirements" (paragraph 12) so that regard had to be given to the "*Razgar* guidelines giving due deference to the view of the Respondent" (paragraph 12). What the judge had done was to reduce the public interest in immigration control in the light of the very lengthy period of time that the Appellant had spent here (see paragraph 14). Indeed, the judge goes on to explain (at paragraphs 17 to 18) why he had given more weight to private life of the Appellant over the public interest in immigration control.
18. In reply, Mr Wain submitted that when the judge first begins to look at the Appellant's position (at paragraph 11) there is no mention of the fact that the Appellant had come to this country on a false identity. It was this which then led to a period of lawful residence during which the Appellant could not be removed.

The judge does not factor this in. The reference to **EB (Kosovo)** is misconceived because there is no delay in the Respondent processing the Appellant's outstanding application.

No Error of Law

19. I am satisfied that the making of the decision by the judge below did not involve the making of an error of law. My reasons are as follows. Whereas Mr Wain is quite correct in his astute submission that there was no delay by the Respondent in processing the Appellant's application, so that the delay in the Appellant's removal cannot be placed at the door of the Respondent Secretary of State, this is not where the substantial part of the delay took place. The Appellant has been in this country for 25 years. As the judge pointed out this is more than half his life. Between 2004 and 2014 he was known to the authorities and was in the UK unlawfully. He was working and at one time paying tax and he had corresponding P60s. It is this aspect of the Appellant's claim that the judge focuses upon because this is a time when had there been the kind of joined up thinking that the judge refers to (at paragraph 14) the Appellant could and should have been removed.
20. Second, that aside, the decision of the judge below can only be regarded as irrational if he failed to have regard to all relevant circumstances. In the passages cited above, it is clear that he does do so. The judge even holds that, "it would be possible and not unduly harsh" for the Appellant to reintegrate into Albanian society although that "would be challenging", but that "there is in my judgment more in this case to place in the balance ..." (at paragraph 17).
21. Ultimately the decision of the judge was based on what was proportionate to the Appellant's private life rights and the judge here observed how the Appellant "has made a life for himself in the United Kingdom to which he speaks in his witness statement and most importantly has been in the United Kingdom, not just 20 but 25 years", so that "I attach considerable weight to that" (at paragraph 18) which the judge was entitled to do. Another judge may have come to a different conclusion but it cannot be said that the decision by this particular judge was perverse or irrational under traditional public law grounds.

Notice of Decision

22. There is no material error of law in the judge's decision. The determination shall stand.

Satvinder S. Juss

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

30th July 2024