



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

Case No: UI-2024-001881

First-tier Tribunal No:  
HU/60181/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 19<sup>th</sup> of September 2024

**Before**

**UPPER TRIBUNAL JUDGE MAHMOOD**

**Between**

**Mikel Vogli**  
**(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms N, Bustani, counsel instructed by TMC Solicitors  
For the Respondent: Ms McKenzie, Senior Home Office Presenting Officer

**Heard at Field House on 4 September 2024**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**

## **DECISION AND REASONS**

1. The Appellant, a national of Albania, appeals with permission against the decision of First-tier Tribunal Judge Parkes promulgated on 8 December 2023, against the decision of the Respondent to refuse his human rights claim based on marriage to a British spouse with reference to Appendix FM of the Immigration Rules.
2. Permission to appeal was refused by the First-tier Tribunal. Permission to appeal was granted thereafter by Upper Tribunal Judge Perkins by way of a decision dated 21 May 2024.
3. The grounds of appeal are well drafted by Mr Holt of counsel. They contend in summary that:
  - (a) The Judge conflated the correct test of insurmountable obstacles with the unduly harsh test; and
  - (b) There was insufficient reasoning in relation the insurmountable obstacles and EX.1
4. There was no response from the Respondent to the grounds of appeal pursuant to rule 24 of the Tribunals Procedure (Upper Tribunal) Rules 2008.
5. At the hearing before me, Ms Bustani referred to a bundle, but that had been served late those instructing her the day before the hearing. Ms McKenzie was therefore provided time to read the new bundle and so the case had to be put back.
6. On resuming the hearing, Ms Bustani submitted in summary that she relied on the grounds of appeal. She took me to various paragraphs of the decision, including to paragraphs 16 to 18. She referred to the Appellants' wife and her daughter. It was said that the decision of the Judge was remarkably short. She told me that the Appellant's wife did not speak Albanian and that she is a nurse. Paragraphs 12 and 13 of the decision were also referred to.
7. Ms McKenzie said in summary that she opposed the appeal and said that the grounds were a mere disagreement with the Judge's decision. The Judge had not considered the wrong tests. The Judge had provided a reasoned decision. Ms McKenzie said that in respect of paragraphs 17 and 18 of the decision, there was no conflation. She said she agreed with the First-tier Tribunal Judge who had observed when refusing permission, that the unduly harsh reference was badly worded. It was also submitted that the Judge had taken into account the Appellant's wife's and her daughter's circumstances. There was no inability or impossibility for them to go to Albania and there was no sufficient evidence about relevant support.

8. Ms Bustani said in reply that an application from abroad by the Appellant would not be part of the insurmountable obstacles test.
9. In respect of disposal, if I was to find that there was a material error of law, Ms Bustani said it was difficult because new witness statements had been provided, albeit there had not been compliance with Rule 15 (2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. I was further told that the Appellant's wife does not now earn the requisite income for entry clearance purposes.
10. Having considered the rival submissions I conclude that the Judge conflated the insurmountable obstacles test with the unduly harsh test at several places in his determination. Whilst it is reasonable to submit that the experienced Judge must have known the differences between the two tests, the Appellant is entitled to know that the correct test was in fact applied before his appeal was dismissed. The Judge at paragraphs 17 and 18 clearly referred to the unduly harsh test. Whilst the Judge also referred to the insurmountable obstacles test in other parts of his decision, it is not sufficiently clear if he applied the correct test to his reasoning. This ground of appeal, coupled with the relatively brief findings in respect of the situation of the Appellant's wife and daughter cause me, albeit reluctantly, to conclude that the decision of the Judge contains material errors of law.
11. In the premises, I conclude that Judge's decision must be set aside for a re-hearing.
12. I canvassed with the parties the appropriate disposal of this case in terms of future steps. I note the difficulties caused by the late filing of a bundle from the Appellant's solicitor and the Appellant's solicitors non-compliance with Rule 15 (2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008, despite the clear directions.
13. I have applied *AEB* [2022] EWCA Civ 1512 and *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC) and have carefully considered whether to retain the matter for remaking in the Upper Tribunal in line with the general principle set out in Paragraph 7 of the Senior President's Practice Statement. I take into account the history of this case, the nature and extent of the findings to be made. In considering paragraph 7.1 and 7.2 of the Senior President's Practice Statement and given the scope of the issues and findings to be made, I consider that it is appropriate that the First-tier Tribunal remake the decision.

### **Notice of Decision**

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside. None of the current findings shall stand.
2. I remit the matter to the First-tier Tribunal for re-hearing.

Signed  
Abid Mahmood  
Judge of the Upper Tribunal

Date: 4 September 2024