



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002371

First-tier Tribunal No: HU/00133/2024

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 05 November 2024**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

BASHKIM HAFUZI
(no anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy, instructed through Direct Access

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on 4 November 2024

DECISION AND REASONS

1. This is the re-making of the decision in the appellant's appeal, following the setting aside of the decision of First-tier Tribunal Judge Howard in which he allowed the appellant's appeal against the refusal of his application for leave to remain in the UK/ his human rights claim.

2. The appellant is a citizen of Albania, born on 1 September 1978. He entered the UK illegally on 10 November 2001 and claimed asylum on 19 November 2001. He made his claim in the name of Bashkim Hasani, born on 10 August 1984, of Kosovan nationality, claiming to be at risk of persecution on the basis of his mixed heritage, from an ethnic Albanian father and a Serbian mother, and that his father had been murdered owing to his mixed marriage and that he, the appellant, had fled in fear for his life. The appellant's asylum claim was refused on 24 January 2022, but he

successfully appealed the refusal decision and was granted refugee status on 20 January 2003.

3. The appellant applied for British citizenship on 5 July 2010 in the same identity, having previously been refused naturalisation in October 2007. He was issued with a certificate of naturalisation as a British citizen on 14 August 2010. The respondent subsequently became aware that the appellant was Bashkim Hafuzi, born on 1 September 1978 in Albania. An investigation letter was sent to him on 9 November 2021 requesting documents confirming his claimed Kosovan nationality, but also advising him that the Albanian authorities had confirmed his identity as Bashkim Hafuzi, born on 1 September 1978 in Albania. He did not respond. Further investigation letters were sent to him on 3 and 17 December 2021, but he failed to provide the required information and documentary evidence. His solicitors at the time subsequently made representations in a letter dated 25 April 2022 in which his use of a false identity was accepted and an application was made to correct his naturalisation certificate with his correct details.

4. The respondent made a decision to deprive the appellant of his British citizenship under Section 40(3) of the British Nationality Act 1981 on 13 January 2022 or 17 June 2022. It is not clear which as there is reference to both dates. The appellant appealed against that decision. His appeal was dismissed by First-tier Tribunal Judge Sweet on 11 January 2023 and he became appeal rights exhausted on 26 January 2023.

5. On 26 January 2023 the appellant made an application for leave to remain in the UK on the basis of his private life. His application was refused on 23 February 2023. In the refusal decision the respondent noted that the appellant had not mentioned a partner, parent or child and stated that his application had therefore not been considered under the family life rules in Appendix FM. With regard to his private life, the respondent considered that the appellant's application fell for refusal under the suitability provisions in section S-LTR of Appendix FM as he had previously provided false representations. As for the eligibility requirements the respondent noted that the appellant had not provided any evidence in support of his claim to have lived in the UK for more than 20 years. It was not accepted that there would be very significant obstacles to his integration into Albania as he had his parents, wife and children in Albania who would be able to support him on his return to Albania. The respondent considered that the appellant therefore failed to meet the requirements for an adult under Appendix Private Life of the immigration rules and considered that there were no exceptional circumstances justifying a grant of leave outside the immigration rules on wider Article 8 grounds.

6. The appellant appealed against that decision. His appeal was heard by First-tier Tribunal Judge Howard on 12 February 2024. The appellant gave evidence before the judge, stating that he had been employed in the construction industry for over 20 years, the last seven of which were as the owner of a business, BH Steel Fixing Limited, a successful business which at peak productivity had 50 agency workers on its books and currently had three employees who were project managers who would oversee the specific contracts for which the agency workers were engaged. The appellant's evidence was that the business was expanding due to a number of contracts in the pipeline and due to him diversifying into steel framed structures. The judge noted that the appellant had included in his hearing bundle company accounts and tax returns. The appellant's evidence was, further, that his wife and minor daughter resided in Albania and that his adult son was living in the UK.

7. Judge Howard was satisfied that the appellant owned and ran the business as claimed and that the business was responsible for gainfully employing both employees and agency staff, and he accepted that the appellant's family relationships existed as he had claimed. The judge concluded that there were no very significant obstacles to the appellant's integration in Albania as his wife and daughter lived there and there was no reason why he could not join them on a permanent basis should his circumstances demand that. He considered that, whilst the appellant had been away from Albania for many years and had fully integrated into UK society, he had not turned his back on Albania and its culture as evidenced by his marriage to an Albanian woman and their decision to retain a household there. He was satisfied that the appellant had been in the UK since 2001, albeit that that had been punctuated by family visits to Albania, and he noted that, since both children were born in Albania before the appellant acquired leave to remain, he must have made return visits both before and after the grant of leave. The judge noted that paragraph PL.7.3 provided a formula for calculating whether such a period (both with and without leave) constituted continuous residence, but he considered that in any event the appellant's circumstances fell foul of the restrictions imposed by Paragraph PL.12.4 which referred to the suitability provisions in S-LTR of Appendix FM, and that the requirements of Appendix PL were accordingly not met.

8. Judge Howard went on to consider Article 8 outside the immigration rules, noting that there were no additional factors relied upon by the appellant other than those already considered. He found at [30(4)] that:

"Against the fact of a deception first perpetrated in 2001 and persisted with until it was unearthed by the respondent, I must weigh that the appellant has achieved, not only for himself, but importantly for society more generally.

While his actions in perpetrating the fraud that afforded him status to which he was not entitled can be characterised as a selfish act, putting his own desires above those of the wider society, since gaining status his industry has been such that he has been of real and significant benefit to both individuals and society more generally. It is that very positive contribution upon which the appellant ultimately relies in this assessment."

9. He went on to find that:

"In the context of paragraph 117B emphasis is placed on being able to integrate and in not being a financial burden to the taxpayer.

With regard to both of these the appellant is not in a neutral position. Factually he is significantly on the positive side of both requirements. It is these positive elements that weigh in his favour; and given that I am here considering a discretion as articulated by the Rules, do so determinatively."

10. The judge concluded as a result that the interference arising from the refusal of leave to the appellant was disproportionate. He accordingly allowed the appeal on human rights grounds.

11. The respondent sought permission to appeal to the Upper Tribunal on two grounds, namely the judge's failure to consider whether the period of continuous residence was broken in line with PL 7.3 which in turn affected the proportionality assessment outside the rules, and secondly that the judge had accorded weight to the appellant's financial independence, rather than treating it as a neutral factor, and did not properly factor the appellant's past deception and circumstances around deprivation into the proportionality balance sheet exercise under s.117B.

12. Permission was granted in the First-tier Tribunal.

13. Following a hearing on 9 July 2024, I set aside Judge Howard's decision on the following basis:

“Analysis

15. In relation to the first ground, Mr Melvin pointed out that, according to the Home Office notes, the appellant's first naturalisation application had been refused partly due to the fact he had been absent for 279 days in the 5-year qualifying period. That, he said, was relevant to the point made in the grounds that Judge Howard had given no consideration to the breaks in the appellant's continuous leave. Mr Paramjorthy's submission in response was that that was not a matter which the judge had been required to resolve since it was not raised at the hearing before him. He submitted that the appellant had given evidence before the First-tier Tribunal about his length of residence in the UK and the respondent had not pursued a challenge in that regard, so it was not now open to the respondent to make arguments about the appellant's visits outside the UK.

16. I agree with Mr Paramjorthy that it was not appropriate for Mr Melvin, in challenging the judge's decision, to refer to, and rely upon, Home Office notes relating to breaks in the appellant's continuous residence, when that was not evidence produced and relied upon in the First-tier Tribunal. However, the length of the appellant's residence in the UK in more general terms was a matter which the respondent had raised in the refusal decision, both in relation to the requirements of the immigration rules and as a matter of relevance when considering the weight to be given to the appellant's private life in the UK as part of the assessment outside the rules. It clearly was a matter which the judge ought to have addressed, particularly given his observation at [24] that the appellant's children were born outside the UK and that he must have made return visits to Albania. The appellant's own evidence was that his wife and children lived in Albania, that his children were born in Albania, and that he had made many trips from the UK to Albania. He provided some evidence of those trips by way of the stamps in his passport. Yet none of that was specifically considered by the judge in his decision. The judge appeared simply to accept the period of over 20 years from the appellant's entry to the UK as weighty evidence of a private life established in the UK without considering the extent of his absence from the UK and, by extension, the extent of his private life in Albania. Those were matters which were clearly relevant both to a consideration of the requirements of the immigration rules and to the Article 8 proportionality assessment as a whole. I therefore find merit in the first ground of challenge and consider that the judge's decision is materially flawed in that respect.

17. As for the second ground, that was expanded by Mr Melvin at the hearing who wished to introduce a further strand, namely that the weight given by the judge to the appellant's business and to his contribution to society in the UK as a result of his business, was contrary to established caselaw. He relied upon the case of Thakrar (Cart JR, Art 8, Value to Community) [2018] UKUT 336 in that respect, in particular paragraphs (2) to (4) of the headnote. At a stretch that challenge can be said to fall within the general assertion in the second ground of the judge "placing weight upon immaterial matters", albeit that it was not the way in which the ground was originally put. Mr Paramjorthy submitted that the ground was weak, being a challenge based on weight, which was a matter for the judge. However, whichever way the ground is viewed, I have to agree that the judge's proportionality assessment at [30(4)] is materially flawed in its sole reliance upon the appellant's positive contribution to society through his business. As the grounds assert, and as Mr Melvin submitted, the judge did not appear to factor in the appellant's past deception and the relevance of that to the business and in general. Indeed the judge's observation at [29] suggests that he simply employed Article 8 as a means of getting around the impact of the suitability provisions of the immigration rules. Ground two is therefore also made out.

18. For all these reasons it seems to me that Judge Howard's decision on the Article 8 proportionality assessment cannot stand and has to be set aside.

19. I do not agree with Mr Paramjorthy that the appropriate course is for a remittal to the First-tier Tribunal. The general findings of fact have not been challenged and neither have the judge's findings in relation to the immigration rules, albeit that they were not complete. The decision needs to be re-made in regard to the Article 8 proportionality assessment, with a full consideration of the extent and quality of the appellant's residence and private life in the UK, as discussed in relation to the first ground, and a proper balancing of all relevant factors. That is a matter which can properly be dealt with in the Upper Tribunal."

14. The appeal was listed for a resumed hearing before me on 18 September 2024 but was adjourned on the grounds that the Home Office had not been aware that the case was in the list and Mr Melvin, who appeared for the respondent, had therefore not prepared the case. Mr Paramjorthy did not object to the adjournment but raised an issue as to a request having been made by the Home Office to the appellant to provide evidence in relation to a 'restricted passport', the basis of which was unclear to the parties. Mr Melvin agreed to make enquiries and address that issue in his written submissions for the resumed hearing.

15. The matter then came before me again today for a resumed hearing. On this occasion Mr Tufan appeared for the respondent. There was a skeleton argument prepared by Mr Melvin in which he explained at [15], that the Status Review Unit (SRU) had sent the appellant two letters, on 24 July 2024 and 20 August 2024, requesting evidence demonstrating his close connections to the UK, and that the Specialist Appeals Team (SAT) had since contacted the SRU to inform them of the current appeal in the system to avoid any duplication. There was otherwise no reference to a 'restricted passport' and Mr Tufan was unable to explain what it was. However he explained that what usually happened after a deprivation order had been made was that the SRU would request and retain the applicant's fraudulently obtained British passport and would then consider, during what had become known as the 'limbo period', whether to grant leave to remain in the UK to the applicant, whereas in this case the appellant had acted first by making an application for leave to remain of his volition. Mr Paramjorthy explained that the SRU had requested the appellant's British passport which had been sent to them but which they had then returned to his chambers together with a request for the appellant's birth certificate and identity documents, and that the SRU had invited the appellant to apply for a restricted passport in his genuine identity which would enable him to travel.

16. Both parties agreed that the appeal should proceed today, since the above concerned a different department of the Home Office, and that there remained a valid appeal before the Tribunal which had to be determined. Mr Tufan had no objection to the appellant's rule 15(2A) application in which he relied upon a more recent appeal statement and documents relating to his business (tax returns, accounts and bank statements).

17. The appellant gave his evidence through an Albanian interpreter. He adopted his recent statement as his evidence in chief and was then cross-examined by Mr Tufan. He said that he arrived in the UK in 2001 and travelled to Albania frequently during the initial years he was in the UK, staying for a week, two weeks or a month, and then travelled there more frequently after obtaining his British passport. He confirmed that his wife and daughter were in Albania and that the only family member in the UK was his son who was now an adult. He explained the amount of tax he paid, both corporation tax for the business and income tax for his own income from the business.

He said that he had 19 people working for him, of whom two or three were subcontractors and the rest were self-employed.

18. Both parties made submissions. Mr Tufan submitted that the appellant could not meet the requirements of the immigration rules because of the suitability provisions as a result of his deception, but also because it was unclear from his evidence how long he was outside the UK and thus whether he had spent 20 years continuously in the UK. He submitted that Article 8 was engaged only in relation to the appellant's private life. Whilst the appellant had a business and employed people and paid taxes, his contribution to society had to be considered as part of the overall assessment of proportionality. It was clear from the cases of Thakrar and UE (Nigeria) & Ors v Secretary of state for the Home department [2010] EWCA Civ 975, which in turn relied upon the case of Singh v. Immigration Appeal Tribunal [1986] UKHL 11, that the appellant's business did not fall within the kind of jobs that would tip the scales in his favour as against the other public interest considerations. His contribution to society was not at a level envisaged by the Court of Appeal in UE (Nigeria). Mr Tufan submitted that in such circumstances, and considering that the appellant's financial independence was a neutral factor for the purposes of s117B factors and that his stay in the UK had been based on illegal grounds, the proportionality assessment should go against him and the appeal should be dismissed.

19. Mr Paramjorthy submitted that it was not in the public interest to remove the appellant from the UK given his contribution to society by way of payment of taxes and employment of staff and his length of residence in the country. He submitted that the SRU was established to consider such matters and to establish if a person should be granted restricted leave or other leave despite the previous deception, and that the appellant's value to the community outweighed the public interest in his removal.

Analysis

20. It is not in dispute that the appellant cannot meet the requirements of the immigration rules, as found by Judge Howard at [25] of his decision, with reference to the suitability provisions in PL 12.4, which in turn reflected the provisions relied upon in the refusal decision in S-LTR of Appendix FM. Judge Howard's decision was challenged by the respondent partly on the basis of an absence of findings on the continuity of residence in PL.7.3 which, as found in the error of law decision at [16], was a material omission given its relevance to the proportionality assessment. Although invited to do so, Mr Paramjorthy did not make submissions on paragraph PL.7.3, and neither did he provide any response to Mr Tufan's submission that 20 years of continuous residence had not been demonstrated by the appellant. I agree with Mr Tufan that the appellant's oral evidence in regard to his absences from the UK was unclear. I note that he provided a copy of his passport for the appeal before Judge Howard with relevant entry and exit stamps, but no schedule was provided and it is difficult to ascertain from the stamps alone how much time was spent travelling outside the UK. In any event the appellant did not dispute the reference in Mr Melvin's first skeleton argument for the error of law hearing to his first application for a British passport being refused on the grounds of his absence from the UK for 279 days absence in the five year qualifying period. In addition, his oral evidence was that he travelled outside the UK more frequently once he obtained his British passport. In the circumstances, and considering that the appellant's wife and daughter remain in Albania and that he frequently visits them, I do not accept that the appellant has demonstrated 20 years of continuous residence in the UK since 2001 for the purposes of the definition of "continuous" in PL.7.3 or 276A(a) of the immigration rules.

21. The relevance of the above in relation to the Article 8 proportionality assessment is that, even aside from the suitability provisions, the appellant could not meet the requirements of the immigration rules on the basis of his private life. Further, that the appellant retains strong ties to Albania to the extent that his family life is based there and his private life is, to an extent, divided between the two countries, albeit conducted mostly in the UK. Accordingly, aside from having resided in the UK since 2001, the sole factor the appellant is able to rely upon in his favour is his contribution to UK society by way of his payment of taxes and his provision of employment through his business. Mr Paramjorthy's submission was that because of those contributions and because of the appellant's value to the community and the loss of such a benefit if he were to be removed, and having regard to the historical nature of the appellant's deception and his otherwise unblemished record in the UK, the public interest does not require his removal. However I agree with the respondent that the caselaw does not assist the appellant in that regard.

22. In UE (Nigeria) the Court of Appeal found at [25] that "*The fact that an immigrant is of value to the community in this country seems to me to be capable in principle of coming within the scope of that approach.*" and, at [35], that "*it is open to this court to find that the loss of such public benefit is capable of being a relevant consideration when assessing the public interest side of proportionality under Article 8 and as a matter of principle I do so find.*" The Court went on to emphasise, however, at [36], "*I would expect it to make a difference to the outcome of immigration cases only in a relatively few instances where the positive contribution to this country is very significant*", and referred to the examples given in Singh v. Immigration Appeal Tribunal [1986] UKHL 11 of such instances. In the case of Thakrar which took into account the decision in UE (Nigeria), the then President of the Upper Tribunal found, at paragraph 3 of the headnote, that "*The fact that a person makes a substantial contribution to the United Kingdom economy cannot, without more, constitute a factor that diminishes the importance to be given to immigration controls, when determining the Article 8 position of that person or a member of his or her family.*"

23. I agree with Mr Tufan that the appellant's business comes nowhere near the types of essential business/work of public importance mentioned in Singh and thus envisaged in UE (Nigeria) when referring to the few instances where the positive contribution to this country was significant. I cannot accept that it reduces the public interest to such an extent that, when taken together with the appellant's length of residence in the UK, it would be sufficient for his private life to outweigh the public interest in maintaining an effective immigration control. Although the appellant's initial deception was several years ago, the fact remains that he has never had any right to reside in the UK on any genuine and lawful basis and that he only admitted to the deception several years later in 2022 after being confronted with the evidence of his fraudulent identity by the respondent and when faced with being deprived of his British citizenship. Indeed, according to the respondent, in the refusal decision (at [33]), the deception was only discovered when the appellant attended court in July 2021 as a witness for a person who was also falsely presenting themselves to be Kosovan and was claiming to be his cousin. The appellant has not disputed that that was the case. Clearly the appellant was content to continue deceiving the UK authorities until he was no longer able to do so and, as such, I find little merit in Mr Paramjorthy's reliance upon the appellant's deception being "historical".

24. Taking all of these matters together and considering those favouring the appellant and those against him, it seems to me that the balance falls firmly on the side of the public interest. Other than the length of time spent in the UK and his business the appellant has produced no further evidence of any significant private life

established in the UK. There is no evidence of any family ties in the UK other than the mere reference to his adult son living here. The appellant's family ties otherwise remain in Albania where his wife and daughter continue to reside. There are no factors in section 117B of the Nationality, Immigration and Asylum Act 2002 which weigh in the appellant's favour. His private life was developed whilst he was in the UK unlawfully, his leave to remain having been granted on a false premise, and as such it attracts little weight. At best there are factors, namely his English language and financial independence, which are neutral. I cannot see how the fact that the SRU have requested further information from the appellant and have mentioned a restricted passport assists the appellant in the proportionality balance or otherwise. There is no suggestion that such enquiries amount to any concession as to the appellant's entitlement to permission to stay in the UK, but rather it seems that that is simply confirmation that an assessment was being made by a different department of the Home Office without knowledge of these parallel proceedings.

25. The respondent's decision to refuse leave to remain in the UK and to remove the appellant to Albania is accordingly, in my view, a proportionate one and is not in breach of Article 8. The appeal must therefore be dismissed.

Notice of Decision

26. The decision of the First-tier Tribunal having been set aside, the decision is re-made by dismissing the appellant's appeal.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 November 2024