



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

Case No: UI-2024-004516

First-tier Tribunal No: DA/00006/2024

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On 19<sup>th</sup> of December 2024**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**  
**DEPUTY UPPER TRIBUNAL JUDGE KUDHAIL**

**Between**

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

Appellant

**and**

**KRISTJAN AGOLLI**  
**(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Ms Amrika Nolan, Senior Home Office Presenting Officer

For the Respondent: Mr Jay Gajjar, Counsel instructed by SMA Law

**Heard at Field House on 2 December 2024**

**DECISION AND REASONS**

**Introduction**

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal allowing the claimant's appeal against her decision on 19 December 2023 to deport him to Albania, of which he is a citizen.
2. The claimant is a foreign criminal, having been convicted on 25 May 2023 at Snaresbrook Crown Court of people smuggling offences and sentenced to three years and three months imprisonment.
3. The claimant can be deported only pursuant to Regulation 27 of the Immigration (European Economic Area) Regulations 2016 (as saved). Section 117C of the Nationality, Immigration and Asylum Act 2002 (as

amended) and section 33 of the 2007 Act apply to him and provide Exceptions with which he must bring himself if he wishes to resist deportation.

## **Background**

4. The appellant is 36 years old. His parents and brother live in the UK. He lived in Albania until he was 18, then moved to Greece, where he met his now wife, a Romanian citizen, in 2017. They married in Greece in 2018.
5. In 2018, aged 30, the claimant and his wife moved to the UK. She is an EEA citizen and has settled status. In 2019, the claimant was granted first an EEA residence card and then EUSS pre-settled status to expire on 24 December 2024. The claimant's partner is pregnant with their first child, which will be born in December 2024, but that pregnancy was not mentioned to the First-tier Judge at the hearing on 2 May 2024.
6. On 26 May 2023, the claimant was convicted at Snaresbrook Crown Court of people smuggling offences. There were five defendants, three of whom (not this claimant) had pleaded guilty immediately. The claimant had been part of a conspiracy to bring into to the UK people who were then assigned to work on cannabis farms. There were no charges in relation to the cannabis farming.
7. The offences of which the claimant was convicted related to the people smuggling, not the cannabis farming. The people smuggling was voluntary and profitable, each person paying between £22,000 and £26,000 for the journey. The sentencing judge found the claimant to have had  

“...an organisational role in the conspiracy scheme as the person coordinating the employment of people smuggled in...close to the heart of the conspiracy, and not simply a one-off customer.”

The starting point for his sentence was four years, and the reduction to three years three months relatively modest. Credit was given for a period of qualifying curfew, and for time spent on remand.
8. On 29 July 2023, the claimant was served with a Stage 1 deportation letter, to which he did not respond. On 19 December 2023, the Secretary of State made a decision to make a Deportation Order against him by virtue of Regulations 23 and 27 of the Immigration (EEA) Regulations 2016, as saved) and served a Stage 2 deportation decision.
9. The claimant appealed to the First-tier Tribunal.

## **First-tier Tribunal decision**

10. The appeal was heard on 2 May 2024. The First-tier Judge heard oral evidence from the claimant and his wife, who was in the first year of a Business Management course, needing three more years to complete that course. She was working part time as a sales assistant at IKEA. There was no mention of her pregnancy, although she must by then have been in the first trimester.

11. The First-tier Judge noted that there was no OASys report. Contrary to the sentencing judge's remarks, at [32] he found the claimant's offending behaviour was 'very much out of character and a one off that he will not repeat in the future'. He noted that the claimant's wife and family were here in the UK and were a protective factor for rehabilitation in the future. The claimant had not re-offended since his release (which was relatively recent).
12. At [36] the Judge considered the 'go' scenario, finding that it would be unduly harsh to expect the claimant's wife to go with him to Albania. He did not consider whether the 'stay' scenario would be unduly harsh. He accepted the claimant's evidence that he would not re-offend.
13. The First-tier Judge's core findings were at [35]-[37]:

"35. In respect of Article 8 of the ECHR, I note that the appellant has resided outside of Albania since the age of 18 in the UK since the age of 13 years old. He is now 36-years-old. The appellant has a family life with his partner and close family members in the UK. The appellant has lived and worked in the UK. I accept that the appellant has a family and private life in the UK. His removal will cause interference with his rights to the same.

36. The appellant's partner has no links or connections with Albania. She does not speak the language of that country. The appellant has been a relationship with his partner for in excess of 7 years. The appellant has an active role in their relationship. The appellant's partner cannot be expected to move to Albania and reside with the appellant there. If the appellant is removed to Albania it will cause interference with his right to a private life together with that of his wife and close family members. In all the circumstances which I have identified above, and in which I find that the appellant poses a low risk of reoffending in the UK, I find that the appellant's removal from the UK would cause disproportionate interference with his right to a family and private life and to the family life of his partner and child.

37. In all the circumstances, I do not find that the appellant's removal is justified on the appropriate rounds. I find that the respondent has not had due regard to all of the evidence before her, particularly noting that the appellant poses a low risk of reoffending and has not reoffended since his release from prison and has become a valuable member of society and I find that the decision is not in accordance with the evidence, law or the Regulations applicable. I therefore allow the appeal under the Regulations."

14. The Secretary of State appealed to the Upper Tribunal.

### **Permission to appeal**

15. Permission to appeal was granted by the First-tier Tribunal in the following terms:

"2. The grounds assert that the Judge erred in failing to give adequate reasons for findings, particularly in relation to the findings and conclusions on the [claimant's] claimed rehabilitation and thus the level of risk to public safety and security.

3. The [Secretary of State] notes that the [First-tier Judge] reaches the conclusion that the [claimant] has rehabilitated based on his own testimony and in the absence of any objective or external evidence. I note paragraph 30 of the determination which states that the [claimant] has ‘undertaken significant rehabilitative work in the UK’ without substantiating this finding. Reliance is also placed on the lack of re-offending since the [claimant’s] release from custody without addressing the fact that the [claimant] had been notified of the decision to deport him, a factor which may have at least temporarily deterred him from such activity. As per the [Secretary of State’s] further observations, the determination also fails to address the fact that the [claimant’s] social support remains the same as at the time of the offending which did not deter him from his criminal activities.

4. Overall, the determination fails to give proper consideration of the evidence and fails to give clear reasons for the decision. As such, the [Secretary of State] has identified an arguable error of law. Permission to appeal is granted.”

16. That is the basis on which this appeal comes before us today.

### **Upper Tribunal hearing**

17. The oral and written submissions at the hearing before us are a matter of record and need not be set out in full here. We had access to all of the documents before the First-tier Tribunal. The following summary of the parties’ positions is helpful.

18. For the Secretary of State, Ms Nolan argued that the Judge’s reasoning was plainly inadequate and contrary to the evidence before him. This had infected his entire assessment of the risk presented by the claimant and whether he presented a threat to the public.

19. Mr Gajjar contended that the Judge’s reference to *significant* rehabilitative work could be read in two ways. Firstly very narrowly, where one would expect to see evidence of rehabilitation such as attendance at courses. Secondly, as an adjective to describe the overall position of rehabilitation which would include time spent in prison and reflection upon one’s actions. He argued that Judge Cohen was entitled to reach the findings he did, for the reasons given.

20. Ms Nolan responded on one point, arguing that the First-tier Judge’s finding that matters had *significantly* changed due to this relationship now being long-term was at odds with the chronology of the relationship. The evidence before the First-tier Tribunal was that the claimant and his partner met in 2017, started to live together that summer, were married by 2018 and came to the UK in November 2018. There was no *significant* change in the claimant’s circumstances following his conviction and release on licence.

### **Discussion**

21. We find that the First-tier Judge erred in relying exclusively upon the claimant’s personal evidence and that of his wife, when finding as a fact

that he has been rehabilitated. The Judge noted the absence of an OASys report or probation report. However, there was no evidence of rehabilitative work undertaken by the claimant, either in his own evidence or in additional documents. Reliance on the protective factors of his family and wife was also over-optimistic: these same factors were available to the claimant at the time of the commission of his offending, and one of those whose clandestine entry he sought to facilitate was a family member.

22. We are guided by the Court of Appeal's approach to challenging a finding of fact: see *Volpi & Anor v Volpi* [2022] EWCA Civ 464 (05 April 2022) at [2]-[5] in the judgment of Lord Justice Lewison, with whom Lord Justices Males and Snowden agreed. The Court emphasised that the Upper Tribunal may interfere with findings of fact and credibility only where such a finding is 'plainly wrong' or 'rationally insupportable'.
23. We have also had regard to the guidance on judicial restraint in such interference given by the Court of Appeal in *Ullah v Secretary of State for the Home Department* [2024] EWCA Civ 201 at [26(i)] and [26](ii)] in the judgment of Lord Justice Green, with whom Lord Justices Lewison and Andrews agreed.
24. We have concluded that the reasoning in this extremely brief decision is unsupported by the evidence before the First-tier Judge, which consisted simply of the claimant's assertion that he is rehabilitated. The First-tier Judge's reasons are inadequate and circular: they take no account of the public interest in deportation of foreign criminals, nor of the absence of any evidence of rehabilitation beyond the assertion by the claimant and his wife.
25. The First-tier Judge's reasoning is contrary to the weight of the evidence before him and is both plainly wrong and rationally unsustainable. There is no alternative but to set the decision aside for remaking in the First-tier Tribunal with no findings of fact or credibility preserved.
26. **The Secretary of State's appeal is allowed.**

### **Notice of Decision**

27. For the foregoing reasons, our decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

We set aside the previous decision. The decision in this appeal will be remade in the First-tier Tribunal.

**Sandi Kudhail**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**Dated: 13 December 2024**