



Neutral Citation Number: [2021] EWHC 1080 (Admin)

Case No: CO/4772/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27th April 2021

Before :

MR JUSTICE FORDHAM

Between :

AFRIM BARDHOSHI
- and -
GOVERNMENT OF ALBANIA

Appellant

Respondent

Catherine Brown (instructed by Gordon Shine & Co) for the **appellant**
The **Respondent** did not appear and was not represented

Hearing date: 27.4.21

Judgment as delivered in open court at the hearing

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

Introduction

1. This is a renewed application for permission to appeal in an extradition case. The Appellant is aged 44 and is wanted for extradition to Albania. That is in conjunction with a Extradition Request issued on 22 October 2019 and certified by the Home Secretary on 6 November 2019. The Extradition Request is a conviction Request which relates to a conviction and sentence in June 2015, the sentence being upheld on appeal in May 2016. The Appellant is recorded as having pleaded guilty (what in Albania is called ‘requesting summary judgment’), which led to what would have been a 5 year custodial sentence being reduced to one of 3 years 4 months (or 40 months) custody. He is also said by the Respondent to have been recognised as currently having an extant appeal against conviction to the Albanian Supreme Court, which has served to extend the limitation period: that is not accepted, but Ms Brown recognises that nothing at today’s hearing turns on it. The position had been that the Respondent was seeking special expedition in this case, because of what was understood to be a risk of a limitation period expiring, which request has been withdrawn.
2. In these extradition proceedings, DJ Ikram sent the case to the Secretary of State, handing down a judgment dated 6 November 2020 rejecting Article 3 and Article 8 ECHR claims. That was after an oral hearing on 14 October 2020 at which the Appellant and his partner gave evidence. The Secretary of State ordered extradition on 15 December 2020. Permission to appeal was refused by Johnson J on the papers on 26 February 2021. Only the Article 8 ground is renewed. There are applications before this Court to adduce fresh evidence relating to the position of the Appellant’s family members in the United Kingdom and his conduct in prison where he has been on remand since his arrest on 2 January 2020, now 16 months.

Mode of hearing

3. The mode of hearing was by BT conference call. Ms Brown was satisfied, as am I, that that mode of hearing involved no prejudice to the interests of the Appellant or any person. In the context of the pandemic – and continuing concerns, restrictions and precautionary advice – a remote hearing eliminated any risk to any person from having to travel to a court room or be present in one. The open justice principle was secured: the case and its start time were published in the cause list; also published was an email address usable by any member of the press or public who wished to observe this public hearing; the hearing was recorded; and this judgment will be released in the public domain.

Fresh evidence

4. So far as concerns the fresh evidence, the Respondent properly did not resist updating evidence relating to the family members, and the Appellant’s sister in particular, which could not have been adduced earlier. Johnson J gave permission to rely on updating materials before him as fresh evidence. I am going to extend that permission to the latest updating material. That includes materials from the Prison, which the Respondent says could have been adduced at the hearing before DJ Ikram, but which I am satisfied it is right to consider since it covers the full and updated position, and not simply what the position would have been, if described 6 months ago.

Article 8

5. I have considered all the circumstances of the case and all the evidence in the case. I shall return to some of the features of the case which Ms Brown emphasised in her oral submissions, put alongside all the other points which were drawn to the court's attention in the written submissions which she maintains.
6. The Appellant has lived openly and in stable accommodation in the United Kingdom since 2006 (15 years). He was aware of and participated in the proceedings in Albania in 2015, through a lawyer. The District Judge found that he was not a fugitive. He has a first daughter, from a previous marriage, who lives in the UK (with her mother and her mother's partner). She is now aged 12 and the Appellant was visiting her about once a month prior to his arrest, as well as providing some financial support. His partner, who he had met on a visit to Albania, is aged 40 and came to the United Kingdom from Albania in September 2015. They have a daughter who is 5 next month and, I am told, has started school. The Appellant's 31 year old sister came to the United Kingdom in 2016. In October 2020 the sister was critically ill and in intensive care in hospital. She remained in hospital but was moved from intensive care in early December 2020, being discharged from hospital at the beginning of 2021. While in hospital she was diagnosed with leukaemia, for which she will be receiving treatment. The most up-to-date evidence describes how the Appellant's partner is looking after the sister, as well as looking after the 5 year old daughter. It describes how – living on universal credit and without a proper income – very difficult and desperate that is, added to which the partner has her own diabetes to cope with. The partner describes a desperate need for help and support, and the return of the support of the “man in our lives”. The Appellant and his sister have a brother, to whom reference is made in the evidence. The brother lives in Hampshire. The partner, the 5 year old daughter, and the sister all live together in Staines.
7. Ms Brown submits, by reference to the evidence in the case, that this is a case in which the solution is not that the partner and child could or should be expected to relocate to Albania for a period, during which they would be able to visit the Appellant in custody, there. I accept that submission, particularly in light of the position regarding the partner caring for the sister, with her need for her cancer treatment which she understandably wishes to pursue in the UK where she has been diagnosed. I proceed on the basis that the partner and daughter cannot be expected to relocate to Albania, at least reasonably arguably, whatever is the position as to the partner's expressed fears from the family members who disowned her when she came to the United Kingdom, pregnant, in September 2015 to locate and then cohabit with the Appellant.
8. As the District Judge recorded, under Albanian law qualifying remand counts 1½ times so as to reduce the custodial sentence left to be served. Since his arrest on 2 January 2020 the Appellant has now clocked up 16 months remand which – applying the x1½ approach would represent 24 months qualifying remand towards the sentence of 40 months. Ms Brown submits that that feature, considered with the other evidence, reasonably arguably renders the District Judge's conclusion wrong.
9. Mr Brown points in particular to the impact on the partner, sister, and the 5 year old daughter in particular of extraditing the Appellant to Albania. She points to the “transformation” in the position of the Appellant's sister since being admitted to hospital in October 2020. Ms Brown describes that transformation as one from an

independent adult to one who is now depending on the Appellant's wife for care and support on a daily basis.

10. Ms Brown points to the Appellant's 15 year presence, settled and open within the United Kingdom; to the over 5 years of family life here of the appellant his partner and their daughter. She points also to the evidence from the prison which describes the appellant as having been a model prisoner during the 16 months in which he has been on remand. Ms Brown emphasises what she characterises as the "magnified" impact of the extradition of the appellant, when compared with the current circumstances in which he is on remand in the United Kingdom where there is the opportunity for contact with his wife and their daughter. Ms Brown contrasts that with the situation following extradition, particularly given the feature to which I have referred about relocation to Albania not being a solution in this case. Ms Brown also contrasts the position on extradition with the position were the Appellant to be discharged and released and able to return to the family home, to provide day-to-day and live-in support to his partner, their daughter and his sister, together with the financial support that would follow from his being able to resume work. As Ms Brown emphasises, the period in which the appellant would be in custody in Albania and cut off from his partner their child and his sister, would be a significant period: the 16 months left to serve. Finally, Ms Brown emphasises that the appellant has no convictions whether before or after the index offending in early 2013.
11. I have posited this Court 'stepping back' and re-evaluating the Article 8 balance – which was conscientiously assessed by the District Judge – at the present time and by reference to the updating evidence. However, having done so, there is in my judgment no realistic prospect that this Court at a substantive hearing, posited in that way, would come to the conclusion that the Article 8 'outcome' is 'wrong'. The features of the case which are capable of weighing against extradition, including the qualifying remand and the impact on all family members, and recognising the hardship for the partner, sister and daughter of the Appellant being removed to Albania, and treating the welfare of both daughters as a primary consideration, are all decisively outweighed by the strong public interest considerations in favour of extradition, beyond reasonable argument. The index offending in this case was assisting the illegal crossing of borders, involving 'people smuggling' (but not, as Ms Brown emphasises, 'people trafficking') from Albania – as it happens, to the United Kingdom – the seriousness of which is reflected in the 40 month custodial sentence, 16 months of which remains unserved (applying the x1½ approach to qualifying remand time).
12. Johnson J, having taken the then fresh evidence into account, considered that the Article 8 appeal was not reasonably arguable. Having taken into account the further updating fresh evidence, I have reached the same conclusion. Permission to appeal is refused.