



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/02191/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 27<sup>th</sup> July 2018

Decision & Reasons Promulgated  
On 14<sup>th</sup> September 2018

**Before**

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

**Between**

Mr. ALBAN [B]  
(NO ANONYMITY DIRECTION MADE)

Appellant

**And**

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the appellant: Mr Lowright, Counsel, instructed by Malik and Malik, Solicitors  
For the respondent: Ms Kiss, Home Office Presenting Officer

**DETERMINATION AND REASONS**

**Introduction**

1. The appellant is a national of Albania born on 3 November 1975. He claimed protection in May 1998. This was refused in May 2005 and his appeal was dismissed in October 2005. He was removed on 20 December 2007.
2. He re-entered the United Kingdom illegally, on his claim, on 15 June 2008. He did not make contact with the respondent until he made an application for leave to

remain on 15 March 2011. This was refused on 24 April 2011 and the refusal was maintained on reconsideration on 4 November 2011.

3. His appeal against that decision was heard on 20th December 2011 and was allowed to the extent that it was remitted back to the respondent for reconsideration. At that stage he indicated he was cohabiting with Ms [M G] whom he said he met in 1998. She is from Kosovo and had been granted discretionary leave to remain from 2009 until 2012. She suffers from mental health issues and the appellant said he was involved in her care. It was argued on behalf of the appellant that the legacy provisions applied and there had been delay on the part of the respondent. The same points had been argued in his original appeal against the refusal of protection.
4. The judge concluded that the respondent had not applied the terms of the legacy programme. The judge decided not to make any findings in respect of the family and private life claim made beyond stating there was evidence to support the claim that they were living together in an intimate relationship, which may constitute family life.
5. The matter was reconsidered on 4 November 2011 by the respondent and again he was unsuccessful. His appeal against the decision was heard on 26 July 2012 before First-tier Judge Boyes. In a decision promulgated on 5 September 2012 the appeal was again allowed to the extent that it was referred back for further consideration under the legacy policy.
6. Reconsideration by the respondent did not occur until 4 March 2016. It was then deferred following a pre-action letter and a further reconsideration took place. This eventually resulted in the decision of 11 January 2017, refusing the application.
7. The appellant had claimed he still was in a relationship with Ms [G] though they no longer lived together. The respondent had regard to appendix FM and found the eligibility requirements were not met because she was not present and settled but had discretionary leave. In any event, the respondent did not accept they were in a genuine subsisting relationship and referred to the absence of updated information requested. The respondent found EX 1 did not apply. In any event, the respondent did not see any reason why, if family life existed, it could not be enjoyed outside the United Kingdom, either in Albania or Kosovo. The appellant had not lived in the United Kingdom the necessary 20 years continuously for paragraph 276 ADE to apply in respect of his private life and the respondent did not see very significant obstacles to his integration into his own country.
8. In that decision, the respondent had regard to the legacy programme. It was pointed out it was never designed to be an amnesty and the issue was whether there were compassionate circumstances. Some delay in the reconsideration of his

claim was accepted but in itself this did not justify the grant of leave. Issues were raised about the appellant's compliance.

### The First tier

9. His appeal was heard by First-tier Tribunal Judge Telford at Hatton Cross on 6 April 2018. In a decision promulgated on 16 May 2018 it was dismissed. The judge considered whether family life existed and if there were very significant obstacles to the appellant's return to Albania. Reference was made to the delay. The judge made the point that the appellant is not a British citizen nor is his claimed partner and there are no children involved. The judge heard from the appellant and Ms [G] and did not find aspects of their evidence credible. The judge did not find the immigration rules would have been met and that family life was not engaged for a freestanding assessment. In the alternative, the judge found the appellant's removal would be proportionate and Ms [G] could join him in Albania if she so wanted. The judge finally referred to section 117 B and the economic interests of the United Kingdom and the maintenance of the rule of law.

### The Upper Tribunal

10. Permission to appeal was granted on the basis it was arguable the judge failed to make clear findings about the relationship between the appellant and his claimed partner and whether he could benefit from EX1 given that his claimed partner was not settled. It was also arguable that the judge erred in consideration of the question of delay and the proportionality of the decision outside the immigration rules.
11. At hearing, the appellant's representative said the judge acknowledged delay at paragraph 10 of the decision but did not then go on to deal with it. It was also submitted that the judge was wrong at paragraph 16 in stating Ms [G] had not produced evidence of her immigration status. He submitted that in fact there was evidence she had discretionary leave to remain. Furthermore, the judge went on to say there was no evidence about the risk of self-harm whereas there was medical evidence in the bundle. I was referred to diagnoses of anxiety and depression. It was contended the judge was unduly influenced by Ms [G]'s presentation. It was submitted the judge failed to consider the difficulties in her going to Albania, bearing in mind her health and that she was from Kosovo. It was pointed out there was a third witness at the hearing who is not referred to in the decision.
12. In response, Ms Kiss made the point that EX1 never applied in relation to his relationship with Ms [G] as she does not have settled status. The appellant's own status was always precarious. The judge had set out the appellant's immigration history. He had not been here the necessary 20 years to establish a private life within the meaning of paragraph 276 ADE. The appellant claims he returned to the United Kingdom having been removed once in 2008. However he did not

approach the respondent until 2011 and so delay was of his own making. Ms Kiss submitted that the judge did have regard to the appellant's immigration history. Paragraph 7 refers to the fact that the decision being appealed is a reconsideration of an earlier application made in 2011 following additional submissions. Consequently, the judge was conscious of the passage of time and addressed this. Paragraphs 22 to 24 reflect the judge's consideration of the public interest involved.

13. Ms Kiss accepted that the judge failed to take into account the evidence about Ms [G]'s health and did not comment on her immigration status. She submitted if an error of law were found the matter should be relisted in the Upper Tribunal to avoid further delay.
14. In response, the appellant's representative submitted that the appeal should be heard de novo in the First Tier Tribunal. He submitted that the entire factual matrix needed to be looked at again including the relationship between the appellant and Ms [G]. He advised that discretionary leave had been granted to her on an article 3 basis.

### Consideration

15. The decision under appeal was taken on the 11th January 2017. That decision in effect was a reconsideration of the one taken back in 2011. In the December 2011 hearing the judge acknowledged the appellant and Ms [G] were living together and in an intimate relationship, which may constitute family life. By the time of the appeal before First-tier Tribunal Judge Telford they were no longer living together but claimed to be mutual carers. EX 1 did not apply because she is not settled. However she has been granted discretionary leave, apparently on the basis of article 3. Mental health issues have been raised.
16. Whilst she was not a British citizen it was still necessary for the judge to analyse their current relationship to determine whether there was family life engaged and the proportionality of the decision. The judge recognises these issues but I find they have not been adequately analysed. There is no evaluation of the state of her health. Paragraph 16 incorrectly refers to an absence of evidence about her status and the risk of self-harm. The judge indicates that if there were family life then she could join him in Albania. However there is no analysis of how she would cope in relation to her medical issues and the fact she is from Kosovo. It is my conclusion that the decision is unsafe because the judge has not adequately set out and analysed the evidence. Consequently, the decision will have to be set aside and remade.

### Disposal

17. I acknowledge and have sympathy for the point made by Ms Kiss in relation to the slow resolution of the appellant's status. A considerable amount of time

passed before he presented himself to the respondent. Nevertheless there has been considerable delay in reconsideration of the decision. Whilst retaining the matter in the Upper Tribunal may have some advantages on balance I believe given the fact-finding exercise necessary it would more properly be heard in the First tier Tribunal .

Decision.

The decision of First-tier Tribunal Judge Telford materially errs in law and is set aside. The matter is remitted to the First-tier Tribunal for a de novo hearing

Francis J Farrelly  
Deputy Upper Tribunal Judge

Directions.

1. Relisting in the First-tier Tribunal for a de novo hearing at Hatton Cross excluding First-tier Tribunal judge Telford.
2. The appellant's representatives are to advise the Tribunal of the need for an interpreter.
3. The appellant's representative should prepare an up-to-date bundle for the hearing. This should provide a chronology indicating periods of delay and the reason given. Information should also be provided about the appellant's relationship with Ms [G]. This should be properly evidence to show periods when they lived together, evidence about her mental health and immigration status. Evidence of any mutual dependency should also be documented. The appellant's representative should also seek to provide country information on likely economic opportunities for the appellant if returned to Albania and the reasonableness of Ms [G], a Kosovan, joining him.
4. The respondent should provide details about the basis upon which Ms [G] was granted discretionary leave.
5. It is anticipated the hearing should take no longer than two hours.

Francis J Farrelly  
Deputy Upper Tribunal Judge