



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: HU/02838/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 2 April 2019**

**Decision & Reasons Promulgated  
On 11 April 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**MR SHERIF KOLGJINI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr P Nathan, counsel instructed by Oaks Solicitors

For the Respondent: Ms Everett, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Albania born on 15<sup>th</sup> January 1993. The history of his claim is that he arrived in December 2000 and made an asylum claim on the basis that he was an unaccompanied minor from Kosovo, with the name Sherif Kolegjini and with the date of birth of 15 January 1995. This application for asylum was refused but he was given leave to remain on 27 March 2001 until January 2003 as an unaccompanied minor. A further application for leave to remain was

refused in a decision dated 21 September 2004 and the Appellant was then an overstayer until he made further submissions on 23 April 2010. These were refused in a decision dated 27 November 2012 but following a reconsideration on 10 June 2014, the Appellant was granted limited leave to remain until December 2016. The Appellant also submitted a travel document application, which was approved.

2. On 20 October 2015 the Appellant made a transfer of conditions of leave to remain request to the Respondent, asking for his name to be amended to Sherif Kolgjini with a date of birth of 15 January 1993 and his nationality from Kosovan to Albanian and that he had been born in Albania. The Secretary of State acceded to that request and made the transfer with the effect that his leave continued in his rightful identity.
3. The Appellant then applied to further extend his leave on 15<sup>th</sup> November 2016. In a decision and reasons dated 1<sup>st</sup> February 2017, the Respondent refused that application noting at [8]:

*“8. ....it was considered that the ELR you gained on 27 March 2001 was obtained by deception. Furthermore it is considered that by giving the Home Office a false identity you have also frustrated the removal process in removing you from the UK.*

*9. You were also granted discretionary leave to remain in the UK on 10 June 2014 until 10 December 2016 under paragraph 353B on the basis of a number of factors which included your character, compliance and length of time spent in the UK. However, as it is considered that you obtained this leave by deception, as you entered the UK using a false identification claiming to be Sherif Kolegjini a Kosovan national born in Gjakoye, Kosovo on 15 January 1985, and failed to inform the Home Office of your true identity until 20 October 2015 it is considered that the conditions of the previous grant of leave no longer prevail. It is considered that your length of residence has been accrued due to giving correct person information to the Home Office which has frustrated your removal process and this is considered that obtaining leave by deception weighs heavily against your character, conduct and associations.”*

4. The application was therefore refused with reference to the suitability requirements: S-LTR 2.2 and 4.2. of Appendix FM of the Rules. It was considered that removal of the Appellant would be appropriate in light of the fact he had obtained leave by deception previously. The Appellant appealed against this decision and his appeal came before Judge of the First-tier Tribunal Ian Howard for hearing on 20 November 2018.
5. In a decision and reasons promulgated on 11 January 2019, the judge dismissed the appeal. Having set out the history of the case the judge found that removal of the Appellant would be proportionate.

6. Permission to appeal was sought, in time, on the basis that the judge had erred in failing to engage with the submissions relating to the grant of discretionary leave made by the Respondent on 10 June 2014, that had been based on an internal file minute at Annex H5 of the Respondent's bundle which showed that the grant of leave was made outside the Immigration Rules on the basis of the Appellant's length of residence in the UK and that the Respondent, upon being notified by the Appellant of his true identity and when he sought a transfer of the conditions of his leave, did not seek to curtail that leave. There was no material change in circumstances to warrant a removal and that the Respondent's extant decision was inconsistent with the position he previously took. It was further submitted that the judge erred in his assessment of the *Razgar* questions on the particular facts of this case.
7. Permission to appeal was granted by Deputy Upper Tribunal Judge Woodcraft in a decision dated 7 March 2019 on the basis *inter alia*:

*"The judge dismissed the Appellant's appeal against refusal to grant leave to remain finding no compelling circumstances to allow the appeal outside the Immigration Rules. The Appellant's argument turned on a grant of discretionary leave to him in 2014 outside the Rules, but since there had been no change in circumstances since 2014 the Respondent was bound to renew the Appellant's leave. The Respondent had referred to earlier matters (the use of a false identity) which had occurred several years prior to the 2014 grant to justify why further leave was now being refused. The Appellant's argument is in effect a 'legitimate expectation' one, albeit not expressed as such. That raises issues not necessarily appropriate for appellate proceedings but rather for judicial review.*

*The issue before the judge was whether the Respondent's decision was proportionate given the length of time the Appellant had been in the United Kingdom and how he had used the leave granted to him. As the judge put it, the Appellant had become 'an industrious member of society. He has acquired other skills and qualifications principal amongst those are his skills in construction.' On that basis it is arguable that a more detailed analysis of Article 8 outside the Rules needed to be carried out. All grounds may be argued".*

### *Hearing*

8. At the hearing before the Upper Tribunal, Mr Nathan submitted that this was not a legitimate expectation case but one concerned with issues of fairness and consistency. He sought to rely on the decision in R v Secretary of State for the Home Department Ex parte Ramanathan [1995] EWHC 8 (Admin) per Mr Justice Collins at page 6 with reference to the concession made in the case of Ex parte Mowla. Mr Nathan submitted that the Home Office had not in their Rule 24 response or otherwise disputed the chronology or the factual matrix in the case. Mr Nathan sought to rely on the fact the finding by the judge at page 7 where he stated "*the*

*Respondent by his actions in not seeking to curtail his leave when he sought to amend the conditions of it has in my judgment precluded himself from arguing it was unlawful."*

9. The judge then went on to find that the Appellant's status has at all times been precarious in light of the fact that his leave had been predicated on the basis of false representations. Mr Nathan relied on the fact that the Secretary of State had not previously curtailed the Appellant's leave but had rather transferred the conditions to his correct identity. The Respondent was fully aware of the circumstances of the case, so that by the time the Appellant sought to extend his leave the decision to refuse that request was unfair and inconsistent. He submitted that neither the Respondent nor the Tribunal properly engaged with the fact that the grant of leave was predicated on extraneous matters that were irrelevant to any past deception on the part of the Appellant and in any event were relevant to the balancing exercise.
10. He submitted that the judge failed to refer to the key document upon which the submissions were founded i.e. the minute at H5 of the Respondent's bundle which gives the reasoning by the Respondent for granting discretionary leave on 10 June 2014. Mr Nathan further submitted that the judge's approach to the questions set out in Razgar [2007] UKHL 11 were odd in that he appears to have carried out the balancing exercise in respect of the fourth question and the judge had made a number of factual errors which undermined the safety of his decision.
11. In her submissions, Ms Everett submitted that the Appellant's claim was distinguishable from that in Ex parte Ramanathan. She accepted the Appellant had been granted discretionary leave outside the Immigration Rules until December 2016 and that he had been granted a travel document and that his conditions of leave had been transferred to his correct identity on 20 October 2015. She submitted that the argument that because the Respondent had previously granted leave and had exceeded to the application to transfer conditions that he was somehow bound by that because nothing substantially had changed is not good as an argument. Whilst it is trite and true that any system requires consistency and that she was unable to shed light on why the Respondent exceeded to the request to transfer conditions of leave, it was leave granted outside the Immigration Rules on an exceptional basis.
12. Ms Everett submitted that this was clearly the case, because any Article 8 consideration is focussed upon the Appellant's private life due to the fact his wife and child live in Albania. She submitted that the judge had given the case adequate consideration and provided adequate reasons for his finding. Ms Everett submitted it is clear from the terms of the refusal decision that the Respondent had given full and sustainable reasons for refusing to grant the Appellant leave these were not vexatious or erroneous and just because the Secretary of State has overlooked the issue of deception in the past previously does not mean that the decision

to refuse further leave is flawed. She submitted there were no particular errors in the decision that would merit setting it aside.

13. In reply Mr Nathan submitted that the Secretary of State had been aware of the Appellant's case for some time. The Respondent by his actions in not seeking to curtail his leave previously cannot now do it. He submitted that even if the grant of leave was a consequence of inertia by the Secretary of State he failed to engage with the facts he had previously seen fit to grant the Appellant leave as part of consideration of the further leave application. Mr Nathan submitted the appropriate course of action would be to set aside the decision and remake it on consideration of the paper. Bearing in mind the critical finding of fact at page 7 it had not been challenged by the Secretary of State i.e. that "the Respondent by his actions in not seeking to curtail his leave when he sought to amend the conditions of it has in my judgment precluded himself from arguing it was unlawful."

#### *Findings and Reasons*

14. I find no material errors of law in the decision of the First-tier Tribunal Judge. As a matter of public policy, the fact that the Respondent previously granted the Appellant leave to remain was made before he was aware of the Appellant's true identity. This is apparent from the terms of the decision of 10 June 2014, at H5 of the Respondent's bundle, which is clearly predicated on the Appellant's former status as an unaccompanied asylum seeking child from Kosovo, who was 15 on arrival, whereas he was, in fact 17 in his true identity. Whilst it is the case that upon applying to transfer the conditions of leave to his correct identity the Secretary of State did not curtail his leave at that point, presumably on the basis he did not apprehend that the basis underlying the request was as a result of deception, the Appellant cannot reasonably expect that as a consequence of his deception that he be permitted to remain in the United Kingdom.
15. Upon making an application to extend his leave as he did on 15 November 2016, the Respondent was, I find, entitled to fully take account of the Appellant's past use of deception and to rely on that, as indeed he is obliged to do by virtue of the suitability requirements of the Immigration Rules and the public interest statutory considerations and to refuse to extend his leave. I do not find, contrary to Mr Nathan's submission, that the Respondent was in any way bound by his previous inertia in failing to identify when the Appellant applied to transfer the conditions of his leave that in fact he had entered the United Kingdom and been granted leave on a false premise.
16. Mr Nathan sought to rely on the finding by the judge at page 7 where he held as follows:

*“In considering Part 117B I must first consider whether any of his time in the UK has been while his immigration status was either unlawful or precarious. The respondent by his actions in not seeking to curtail his leave when he sought to amend the conditions of it has, in my judgment, precluded himself from arguing it was unlawful... There was no(t) decision to declare it unlawful by virtue of the deception effected by the appellant.*

*However the fact of the deception necessarily rendered his status precarious.”*

17. However it is clear from that passage, that that finding is made in the context of applying the section 117B considerations. The judge found that it could not be argued the Appellant was here unlawfully i.e. section 117B(4) but went on to find that section 117B(5) applied i.e. little weight should be given to a private life established by a person at a time when a person’s immigration status is precarious. Thus I find Mr Nathan is attempting to read far too much into that finding.
18. Having found the Appellant’s leave was precarious, which was a finding that was clearly open to the judge and indeed incumbent upon him to make in light of the terms of section 117B(5) of the NIAA 2002 and having cited from the decision in Nasim and Others (Article 8) [2014] UKUT 00025 (IAC) the judge held as follows at page 8 of the decision and reasons:

*“With that reasoning in mind I return to the wider public interest as identified in Part 117B and ask myself against maintaining a firm and coherent system of immigration control where does the wider public interest lay in this case. In terms of integration, economic wellbeing of the UK, the tax payer generally it lays with the Appellant. However the opportunity to establish himself in that way was born of a deception.*

*There can be no doubt that he held himself out as an unaccompanied Kosovo minor in order to secure status. In that he was successful. Further he maintained that pretence for fifteen years and it was during those fifteen years all that he now relies upon was established. The consequence of that in the context of his Article 8 claim is that he has rendered his status precarious for the whole of that time and as a consequence the weight I can attach to it is reduced. The case of Nasim also informs me that the matters relied upon by the Appellant in establishing the fact of his private life are themselves of limited traction.”*

19. The judge then went on to apply what he refers to as “the balance sheet methodology” and found that the matters relied upon by the Appellant do not outweigh the public interest invested in the Respondent of maintaining effective immigration control and that the removal of the Appellant would be a proportionate interference. Whilst I accept the submission on behalf of Mr Nathan that the manner in which the judge applied the questions set out in Razgar [2007] UKHL 11 was slightly odd, ultimately the material ingredients are, I find, clearly present in [21] of the judge’s decision. That being the case there is I find no arguable basis to find the judge made material errors of law and I uphold his decision. Contrary to the terms of

the grant of permission to appeal, the Judge's analysis of Article 8 outside the Rules was sufficiently detailed, balanced and sustainable.

20. No anonymity order need be made.

*Decision*

21. I find no error of law in the decision of First tier Tribunal Judge Howard, whose decision and reasons is upheld.

Signed Rebecca Chapman

Date 9 April 2019

Deputy Upper Tribunal Judge Chapman