Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers:**
HU/11509/2018

HU/11515/2018
HU/12702/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 August 2019	**On 19 August 2019**

Before

Deputy Upper Tribunal Judge MANUELL

Between

(1) Mrs FERIDE ASLLANI
(2) Miss ARSILDA ASLLANI
(3) Mr ARGJEND ASLLANI
(NO ANONYMITY DIRECTION)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr B Hawkin, Counsel
(instructed by Arora Lodhi Solicitors)
For the Respondent: Ms S Jones, Home Office Presenting Officer

DETERMINATION AND REASONS

1. In a determination promulgated on 4 June 2019, Deputy Upper Tribunal Judge Norton-Taylor (as he then was) set aside the decision and reasons of First-tier Tribunal T Jones, promulgated on 4 March 2018, having found material errors of law. By that decision, Judge T Jones had allowed the Appellants' linked appeals against the decision of the Secretary of State for the Home Department to refuse their Article 8 ECHR human rights claims, based on their family life with their father, Mr Sahit Asllani, who is a British Citizen by naturalisation. The full details of the appeals and of the error of law findings are set out in Judge Norton-Taylor's decision and need not be repeated here.

2. The Appellants are nationals of Albania, wife/mother and adult children, respectively born on 6 June 1972, 15 May 1997 and 8 October 1999. The Appellants had applied for entry clearance to the United Kingdom from Albania in 2012. That was refused and their appeals to the First-tier Tribunal were dismissed by First-tier Tribunal Herlihy in a determination promulgated on 29 November 2013. Thereafter the Appellants contrived to enter the United Kingdom illegally, and made a series of applications to the Home Office.

3. When setting aside Judge T Jones's decision, Judge Norton-Taylor preserved the following findings of fact (see [28] and [29] of his determination):

   a. The Appellants entered the United Kingdom illegally;

   b. Their sponsor is currently healthy and running his own business;

   c. The family have a house in Albania;

   d. The family have "very significant" cash savings;

   e. There are family members living in Albania who would be in a position to offer some assistance;

   f. The Appellants speak English;

   g. The sponsor has returned to Albania on a number of occasions;

   h. The Second Appellant's partner has dual British/Albanian nationality and has assets in both countries; and

   i. The Appellants cannot meet any relevant Immigration Rule.

4. Judge Norton-Taylor directed that the appeal should remain in the Upper Tribunal. The resumed hearing was to

be concerned with whether the Appellants are on the facts of their cases able to show a sufficiently strong Article 8 ECHR claim to succeed outside the Immigration Rules, i.e., whether there were exceptional circumstances. At [27] Judge Norton-Taylor indicated that the appeal hearing would be on submissions only, doubtless whether the judge had intended that further evidence would be called, particularly as voluminous evidence had already been served for the First-tier Tribunal hearing. In the event, further evidence was served, in an inconveniently unnumbered and unindexed bundle which exceeded 100 pages. A copy of that bundle had not reached the Home Office Presenting Officers Unit and time was given to Ms Jones to prepare. An Albanian interpreter had not been requested but was requested on the morning of the hearing. The appeals were put back to enable an interpreter to be obtained, after which the hearing commenced.

5. All of the Appellants gave evidence, as did their sponsor, where necessary through the tribunal's Albanian-speaking interpreter. The tribunal has kept a full note. Part of the new evidence sought to challenge the preserved findings, and so is inadmissible. In reality, none of the additional evidence was new, and consisted mainly of reiteration of the strength of the family relationships, and emphasis of their desire to remain in the United Kingdom.

6. Ms Jones for the Respondent relied on the reasons for refusal letter dated 15 May 2018, the preserved findings of fact and the determination dated 28 November 2013. The only issue was whether there were exceptional circumstances outside the Immigration Rules. Plainly there were not. The sponsor was from Albania but had pretended to be Macedonian and had obtained his British Citizenship by deception. It was not accepted that he suffered from depression or that his existing medical conditions could not be treated in Albania, where he visited regularly. There were no insurmountable obstacles for the whole family to live in Albania. The children were now adults having received free education in the United Kingdom. The whole situation had been caused by the sponsor's deception. The appeals should be dismissed.

7. Mr Hawkin for the Appellants relied his skeleton argument. It would be wrong for the Appellants to have to leave the United Kingdom where they had now lived for five and a half years. They had been refused entry clearance and had felt compelled to be with their father who was very ill,

so had entered illegally. The Secretary of State for the Home Department had decided not to revoke the unlawfully obtained British Citizenship, so the sponsor could not be removed. Thanks to the presence of his family, especially his wife who looked after him, he was well enough to run his own profitable business. His medical problems would require life long surveillance as well as a large cocktail of drugs. Agyarko [2017] UKSC 11 applied: there was no useful purpose in requiring the Appellants to return to Albania merely to obtain entry clearance, when the financial requirements were met. There had been delay by Secretary of State for the Home Department. The circumstances were exceptional and the chapter should now be closed.

8. The tribunal reserved its decision which now follows. The tribunal finds that no new facts of any significance emerged from the additional evidence, which was mere repetition. That is not surprising given the relatively short period of time which elapsed following the hearing before Judge Norton-Taylor and indeed before Judge T Jones. Any depression which the sponsor has is not sufficiently serious to prevent him working and is related to the uncertainty of the litigation path the family has unwisely followed.

9. The tribunal accepts the submissions of Ms Jones. It is bound to say that these appeals have no merit. In the first place, there has been no relevant delay by Secretary of State for the Home Department. That argument was based on the fallacy that appellants whose applications have been refused by the Secretary of State for the Home Department have an unlimited ability to make fresh applications and/or to purse any legal avenue nominally open to them. The fact that the United Kingdom is not a police state and relies on appellants whose to whom leave to remain has been refused to comply with the law and to depart voluntarily is ignored.

10. The Appellants had and still have the option of making fresh entry clearance applications from Albania (where they have a house, among other matters), taking into account the findings of Judge Herlihy, and taking steps to achieve compliance with the Immigration Rules, but they have chosen not to do so. In or about 2013 they had the further option of making applications to Secretary of State for the Home Department on compassionate grounds if there had been evidence to warrant that, but again they chose not to do so. Instead they placed themselves above the law, entered the United Kingdom illegally resorting to

criminals. They have since refused to return to Albania, pursuing meritless and repetitive applications to the Home Office. The Second Appellant and Third Appellants have received free education and health care. All the Appellants have received the benefit the United Kingdom's public services, from clean streets upwards, without any entitlement and without any contribution. They appear unwilling to pay the fees applicable to settlement applications. Such conduct is plainly contrary to the public interest.This is far from a situation where requiring an entry clearance application to be made is an empty, bureaucratic procedure, as indicated in Agyarko (above) or in MA (Pakistan) [2009] EWCA Civ 953.

11. The Appellants' conduct is all the more difficult to understand given that the sponsor obtained his British Citizenship by deception. The Secretary of State for the Home Department's decision in 2010 not to revoke that grant of citizenship on its face is incomprehensible and was not explained to the tribunal. In any event, that decision was reached before the sponsor connived at the illegal entry to the United Kingdom of his family. The 2010 decision not to revoke must accordingly be susceptible to review because such conduct indicates that there is no loyalty to the state and no recognition of the duties of a British Citizen. The decision not to revoke was certainly not regarded by the Secretary of State for the Home Department as requiring Article 8 ECHR leave to be granted to the Appellants.

12. Plainly the sponsor cannot be removed unless and until his British Citizenship is revoked. Nevertheless the preserved findings of fact show that the sponsor can go to Albania at any time and has done so at will. He has benefitted from United Kingdom healthcare and is now in the best health which can be expected, given his medical history. There is no reason why his various condition(s) cannot be monitored in Albania and treated if necessary. His medical notes can be made available. He has funds and can purchase any medication which is necessary and not supplied by the Albanian state. There is no reason why he cannot start a business in Albania if he wished. His family can provide him with exactly the same level of support and companionship as they have done in the United Kingdom, without the added concern of their illegal presence.

13. As the preserved findings show, the whole family retain extensive and deep links to Albania, where they have spent the majority of their lives. The sponsor chose to

leave his family behind and he is the cause of family separation. There is no good reason why they cannot enjoy their family life there, happily and lawfully in the land of their nationality, where they will be able to work. The tribunal finds that there are no exceptional circumstances.

14. The Second Appellant has developed a close relationship with a dual British/Albanian national, Mr [MB], as the preserved findings record. He too has close ties with Albania, as he readily confirmed. The couple plan to have a wedding celebration there. Plainly their family and private life can be enjoyed in Albania. The tribunal so finds. If their preference is for life together in the United Kingdom, no good reason was identified as to why Mr [B] cannot sponsor the Second Appellant to enter the United Kingdom lawfully under Appendix FM of the Immigration Rules, in the usual way. He agreed that he had known at all times that the Second Appellant had no form of leave to enter or remain in the United Kingdom. Again, the tribunal finds that there are no exceptional circumstances.

DECISION

The appeals are DISMISSED

Signed **Dated** 13 August 2019

Deputy Upper Tribunal Judge Manuell