



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number: HU/00664/2020  
(V)**

**THE IMMIGRATION ACTS**

**Heard at : Field House  
On : 26 November 2020**

**Decision & Reasons Promulgated  
On 03 December 2020**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**ARJAN MUJA**

Respondent

**Representation:**

For the Appellant: Mr D Clarke, Senior Home Office Presenting Officer

For the Respondent: No appearance

**DECISION AND REASONS**

1. This has been a remote hearing to which there has been no objection from the parties. The form of remote hearing was skype for business.
2. For the purposes of this decision, I shall hereinafter refer to the Secretary of State as the respondent and Mr Muja as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.
3. The appellant is a national of Albania born on 15 December 1977. He arrived in the United Kingdom on 18 October 1998 and claimed asylum in a

false name and nationality. On 6 January 1999 he made another asylum claim in his own name, but also in a false nationality, claiming to be from Kosovo and to be at risk on return to Kosovo. Both claims were refused but the appellant successfully appealed the second decision and was granted refugee status and indefinite leave to remain on 14 June 2001. On 6 April 2006 the appellant was naturalised as a British citizen, also under his correct name but false nationality. On 19 June 2019 the appellant was served with a Deprivation Order when his true identity was discovered by the respondent.

4. The respondent then considered whether it was appropriate to grant the appellant leave to remain in the UK on the basis of his family and private life, but decided that it was not and refused his human rights claim in a decision dated 16 December 2019.

5. The appellant appealed against that decision and his appeal was heard by First-tier Tribunal Judge Abebese on 9 September 2020. Judge Abebese allowed the appeal on Article 8 human rights grounds in a decision promulgated on 18 September 2020.

6. The respondent sought, and was granted, permission to appeal to the Upper Tribunal on 22 October 2020. In a Rule 24 response filed by the appellant's solicitors, on 19 October 2020, it was conceded that Judge Abebese had made material errors of law in his decision for the reasons set out in the grounds and, further, on the basis that he had failed to engage with the discretionary nature of the suitability provisions in Appendix FM. The Tribunal was requested to set aside his decision and remit the matter to the First-tier Tribunal.

7. The following notice and directions were then sent to the parties (erroneously referring to the appeal having been dismissed in the First-tier Tribunal):

**"1.** This case has come before me for a hearing on 26 November 2020, following the grant of permission to the Secretary of State on 22 October 2020, with respect to a decision of First-tier Tribunal Judge Abebese dismissing [allowing] the appellant's appeal against the respondent's refusal of his human rights claim.

2. I note that a Rule 24 response has been filed on behalf of the appellant, following the grant of permission, in which it is accepted that Judge Abebese made material errors of law in his decision and in which a request is made for this Tribunal to set aside Judge Abebese's decision and to remit the matter to the First-tier Tribunal.

3. In the circumstances, having had regard to the judge's decision and the grounds of challenge from the Secretary of State, and given that both parties agree that the judge's decision should be set aside, it seems to me that there is no need for a hearing on 26 November 2020 and that the matter can simply be disposed of, on the papers, in the manner proposed in the Rule 24 response.

4. Both parties are to respond to the proposal at [3] above, before 5pm on Monday 23 November 2020. In the absence of any response to the above, this case will remain listed for hearing on 26 November 2020."

8. The directions were unfortunately sent out late and neither party responded in time for the hearing, but only Mr Clarke, for the respondent, appeared before me. He agreed to the matter being remitted to the First-tier Tribunal to be heard *de novo*.

9. In light of the fact that the Secretary of State's grounds of appeal are not challenged by the appellant, and for the reasons given by both parties, I find there to be material errors of law in the judge's decision and I set it aside in its entirety. The appropriate course, as both parties agree, is for the case to be remitted to the First-tier Tribunal to be heard *de novo* before a different judge.

## **DECISION**

10. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law and the decision is set aside. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard afresh before any judge aside from Judge Abebese.

### **Anonymity**

Judge Abebese made an anonymity order, but I see no reason for such an order and I therefore discharge it.

Signed S Kebede  
Upper Tribunal Judge Kebede

Date: 26 November 2020