IAC-BH-PMP-V2

**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/16212/2019

**THE IMMIGRATION ACTS**

| **Heard at Bradford by Skype for business** | **Decision & Reasons Promulgated** |
|---|---|
| **On the 4 September 2020** | **On the 10 September 2020** |

**Before**

**UPPER TRIBUNAL JUDGE REEDS**

**Between**

**AK**
**(ANONYMITY DIRECTION MADE)**

Appellant

**AND**

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

Respondent

**Representation:**
For the Appellant: Mr Rashid, Counsel instructed on behalf of the appellant
For the Respondent: Ms. R. Petterson, Senior Presenting Officer

**DECISION AND REASONS**

Introduction:

1. The appellant, a citizen of Kosovo, appeals with permission against the decision of the First-tier Tribunal (hereinafter referred to as the "FtTJ") who dismissed his human rights claim in a decision promulgated on the 24 April 2020.

2. I make a direction regarding anonymity under Rule 14 of the Tribunal Procedure (Upper Tribunal Rules) Rules 2008 as the proceedings relate to the circumstances of a protection claim. Unless and until a Tribunal or court directs otherwise the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

3. The hearing took place on 4 September 2020, by means of *Skype for Business*. which has been consented to and not objected to by the parties. A face to face hearing was not held because it was not practicable, and both parties agreed that all issues could be determined in a remote hearing. I conducted the hearing from court at Bradford IAC. The advocates attended remotely via video. There were no issues regarding sound, and no substantial technical problems were encountered during the hearing and I am satisfied both advocates were able to make their respective cases by the chosen means.

4. I am grateful to Mr Rashid and Ms Petterson for their clear oral submissions.

Background:

5. The appellant's claim is summarised in the decision of the FtTJ at paragraphs 4-13. The appellant is a national of Kosovo. He entered the United Kingdom in September 1999 at the age of 7 as a dependent child with his parents and siblings. Following unsuccessful asylum applications, the family was granted discretionary leave until May 2008 with indefinite leave to remain in November 2013.

6. The appellant's offending history began in August 2011 and he accumulated three convictions for four offences including one offence of public disorder (2011), one offence relating to the police (2011) and one offence involving an offensive weapon in 2011.

7. On 9 August 2018 in the Crown Court, the appellant was convicted of producing class B drug cannabis. The sentencing remarks (F1 – F3) set out the circumstances of the crime. The appellant was involved in growing cannabis in a flat that belong to a family member which was described as a "full-scale growing cannabis factory" with plants with the possibility to create a range between £6080-£25,000 and another room between £4322-£17,820. The judge considered it was a "significant enterprise" which the appellant embarked upon knowing the risks plainly more than personal use. He was sentenced to 18 months imprisonment.

8. On 25 January 2019 respondent made a decision to deport the appellant and on 12 July 2019 made a deportation order. On 20 August 2019, the respondent refused the appellant's human rights claim.

9. The appellant appealed against this decision and it was dismissed by the First-tier Tribunal in a decision promulgated on the 24 April 2020.

10. In that decision the FtTJ considered the appellant's claimed family life with his current partner and 4 children from his two previous relationships. The appellant had two children from his first relationship aged five and six and two further children aged four and two with another partner. The evidence before the judge was that he had maintained contact with the younger children and was working with social services for increased contact. As to the elder children, they also lived with their mother, but that contact had continued until January 2020 when their mother had stopped contact. At the time of the hearing he was in a relationship with a new partner who was born in Kosovo, who he had met on social media in December 2018, but met in person in June 2019. During his detention in custody they spoke daily. At the time of the hearing she was pregnant with their child. It was stated that he was part of a close family with his siblings and parents and that his father who had been injured in the war suffered post-dramatic stress disorder and depression.

11. The appellant believed that there were very significant obstacles to his integration to Kosovo; he had not been back there since 1999. He had no family support there and it was claimed that he would be destitute. The appellant confirmed that he spoke Albanian, Kosovan and English and that whilst he had not returned to Kosovo, both his father and sister had visited there three years ago. His father went in connection with his residence permit, but the purpose of his sister's visit was not known. The judge heard evidence from the appellant's partner, sister and mother and also from a friend. Their evidence is set out and summarised in the decision at paragraphs 8 – 12.

12. The FtTJ set out her assessment of the evidence and her analysis under the rules at paragraphs 23 – 38. As the appellant had been sentenced to a term in excess of 12 months, the judge noted that the public interest required his deportation unless one of the statutory exceptions in paragraph 399 or 399A applied.

13. When dealing with the exceptions relating to family life, the judge found that there was no evidence to show that the appellant had a genuine subsisting parental relationship with the two eldest children M and H (at [26)]. However, the judge was satisfied that the appellant had a genuine subsisting parental relationship with the two younger children E and for the reasons set out at [27].

14. At [28] the judge took into account that the children were British citizens and entitled to the benefits of their nationality. The judge found that we would be unduly harsh with them to leave the UK to live without their mother and be with the appellant in Kosovo. The judge considered that the issue was whether it was unduly harsh for the children to remain in the UK without the appellant. The judge undertook a "best interests" assessment under section 55 of the BCIA

2009 stating that "it is well established that children fare better in the care of both parents wherever possible". The position of the children was that they lived with their mother and their parents were not in a relationship. The judge found it was "clearly in the children's best interests" remain with their mother who was their primary carer and provided for their protection, welfare safety and development. It had been raised in the evidence that the child E had ill health but the judge observed there had been no medical evidence to confirm that position and no evidence that the appellant had any particular importance role in the child's life, nor that the child had any particular emotional dependence on the appellant. The judge concluded that whilst the appellant's deportation may be harsh for both children, there was no evidence the level of harshness went beyond that which would be inevitably suffered by any child whose father was deported. The judge therefore concluded it would not be unduly harsh for the children to remain in the UK without the appellant.

15. In respect of his relationship with his current partner, he accepted that she was a British citizen and that they were in a genuine subsisting relationship and were expecting a child (at [29]). The judge considered the evidence in relation to her circumstances at [30] noting that his partner was born in Kosovo and spoke Albanian; she had revisited the country in 2015 and whilst she may not have family in Kosovo, she was an adult who had knowledge of the country, its culture and societal norms. The judge concluded that in the light of that evidence, it would not be unduly harsh for his partner to leave the UK and live the appellant in Kosovo (at [30]). The judge also found that whilst it may be difficult for her to remain in the UK without the appellant, given that they did not live together and she had her parents and siblings in the UK who would support her, it would not be unduly harsh for her to remain in the UK without him (at[31]).

16. In relation to his private life, the judge accepted that he had been lawfully resident in the UK for more than half his life. At [33] the judge concluded that he had lived in the UK for 20 years, had studied and worked in the UK and spoke English and thus those matters indicated "social and cultural integration". At [34] the judge considered whether there were very significant obstacles to his integration to Kosovo but on the evidence concluded that he would have no cultural or linguistic difficulties there where he was born and lived until he was 7. Whilst there were no close family members, he was an adult in good health and would return to Kosovo with educational qualifications and work experience gained the UK to assist him to secure employment in accommodation which would enable him to avoid destitution and forge a meaningful private life.

17. At paragraphs 35 – 38 the judge dealt with paragraph 398 ( c) (S117C(6)) and considered whether there were any other "very compelling circumstances" over above those described in the exceptions to deportation to outweigh the public interest. Having considered his offending history and the seriousness of the

offence, his conduct whilst in prison, the low risk of reoffending, his ties in the UK the length of residence in the United Kingdom and the nature of his relationship with partner who had engaged in a relationship in the full knowledge of his offending and the possibility of deportation, the judge found that there were no very compelling circumstances that would outweigh the public interest in his deportation. The judge therefore dismissed his appeal.

18. Permission to appeal was issued and on 11 June 2020 permission was granted by FtTJ Keane.

The hearing before the Upper Tribunal:

19. In the light of the COVID-19 pandemic the Upper Tribunal issued directions, inter alia, indicating that it was provisionally of the view that the error of law issue could be determined without a face to face hearing and that this could take place via Skype. Both parties have indicated that they were content for the hearing to proceed by this method. Therefore, the Tribunal listed the hearing to enable oral submissions to be given by each of the parties.

20. Mr Rashid, Counsel on behalf of the appellant, who appeared before the FtTJ relied upon the written grounds of appeal. There were no further written submissions.

21. There were also written submission filed on behalf of the respondent in the form of a Rule 24 response.

22. I also heard oral submission from the advocates, and I am grateful for their assistance and their clear oral submissions.

23. Mr Rashid began his submissions by relying on the written grounds. In respect of ground one, he submitted that the judge failed to adequately take into account the appellant's private life established in the United Kingdom having entered at the age of 7 and had resided in the UK since that date and had not returned to Kosovo.

24. Furthermore, in relation to paragraph 2, the judge had failed to take into account material facts in reaching her decision. The material fact relied upon was that the appellant was a primary carer for his two younger children and played a significant role in their lives. This was set out in the witness statement of the appellant at paragraph 23. However, the judge made a mistake of fact at paragraph 27 where he confused the elder children with the younger children. Mr Rashid referred the tribunal to the letter from the social services page 60 which demonstrated that he was having contact with the children. In support of his submission that the appellant was a primary carer with a significant relationship with the children he referred the tribunal to the photographs of the appellant with the children at page 75 and a telephone call log pages 23 to 31 which he stated showed telephone calls between the appellant and the mother

of the younger children organising contact. Whilst he referred to the telephone log, there was no reference to that in the witness statement filed on behalf of the appellant. Mr Rashid also pointed to the photographs. He submitted that the error was material because it would have affected the consideration of whether it was unduly harsh for the children to remain in the UK without the appellant and in particular the child E who had "a mental health condition".

25. As to the issue of family life with his adult family members, Mr Rashid submitted that the appellant's father was suffering from ill health and there were photographs of his father and also medical evidence (a list of medication at pages 76 – 86 of the bundle). He submitted that the judge had failed to make findings on these facts and the effect upon removal of the other family members.

26. Mr Rashid submitted that the judge did not take into account his relationship with his current partner and had mis-stated the facts in relation to contact with the children.

27. Ms Petterson relied upon her Rule 24 response. In summary, the respondent submits that the judge of the First-tier Tribunal directed himself appropriately.

28. Ms Petterson pointed out that in general terms, FTT Judge Keane who granted permission did not consider it arguable that FTT Judge Thomas erred in finding that the appellant could not meet the Exceptions to deportation relying upon his children and his current partner. The respondent submitted that if this ground is still relied upon at the hearing that FTT Judge Thomas made clear findings of fact on these issues and it cannot be said that these were unreasoned or not open to the Judge.

29. It was submitted that in granting permission FTT Judge Keane considered there may be merit in the argument that the FTT did not properly consider the position of the appellant's relationship with his parents in the United Kingdom, and that the appellant's father has serious health issues. However, the respondent pointed out that the evidence before the FTT (from one of the appellant's sisters) was that the father had travelled to Kosovo in 2015. In any event, at the age of 28, there would need to be significant elements of dependency for the appellant to claim a protected family life with his parents, particularly since he has already formed relationships and had children with at least two partners, even if he has resided with his parents for some or all of that time. In addition, it is not clear how close relatives in the United Kingdom would prevent the appellant reintegrating into life in Kosovo.

30. In her oral submissions Ms Petterson submitted that there was no material error in the decision of the FtTJ as it was clear on the evidence of the appellant was not a "primary caregiver "as submitted on behalf of the appellant. The judge accepted that contact had ceased and it restarted but the fact that he had contact did not make him a primary caregiver in relation to any of the children nor did it shed light on whether it be unduly harsh for the children to remain in the UK without the appellant.

31. She submitted that contrary to the submissions made on behalf of the appellant, there was no evidence to demonstrate that the child E had any significant ill-health. There was no medical evidence as the judge had recorded and importantly there was no evidence of any particular dependence or otherwise upon the appellant. The relationship between the appellant and his children was not properly evidenced and the medical condition of E was not the subject of any medical evidence. The judge was correct in reaching the conclusion that the children lived with their respective mothers and would continue to do so in the event of the appellant's deportation.

32. As to the claim family life with the adult family members, whilst the appellant lived with his parents there was no evidence to suggest that the appellant's father was dependent upon the appellant and it was clear that the appellant's mother gave evidence that she was there and supported her husband. Ms Petterson accepted that his father would be saddened at his departure, but the evidence did not demonstrate any additional ties other than normal emotional ties between the family members living in the same household. Therefore she submitted whilst the judge did not refer to his family life with his parents, the judge was aware of it but it was not advanced on the appellant's behalf that he was required to remain in the UK to care for him.

33. As to his length of residence, it was plain that the judge was aware of that length of residence a clear findings that there were no very significant obstacles to his reintegration taking into account that he was in good health, that it studied in the UK, and would be able to obtain employment and avoid destitution.

34. Consequently, it was submitted that there is no material error in the determination.

35. By way of reply Mr Rashid submitted that in relation to the issue of dependency the judge had not referred to the appellant's relationship with his parents and that there was evidence in the papers before the judge from the appellant's mother and sister and therefore the judge should have referred to that evidence. He further submitted that even if the issue of dependency had not been raised before the judge it had been evidenced in the witness statements and was therefore unchallenged because the presenting officer did not cross examine as to the level of dependency. As the issue was therefore unchallenged it can be taken that the issue was therefore raised on the evidence.

36. In conclusion he invited the Tribunal to set aside the decision and as this was a fact sensitive appeal, it should be remitted to the FtT for a further hearing.

37. At the conclusion of the hearing I reserved my decision which I now give.

Discussion:

38. I have carefully considered the written grounds and the oral submissions of Mr Rashid, who was counsel before the FtTJ but was not the author of the grounds. Having considered the submissions I agree with Judge Keane's assessment that the majority of the written grounds amount to no more than a disagreement with the findings of fact made by the judge and her assessment of the evidence. In Durueke (PTA: AZ applied, proper approach) [2019] UKUT 00197 (IAC), this

tribunal held that: "(ii) Permission should only be granted on the basis that the judge who decided the appeal gave insufficient weight to a particular aspect of the case if it can properly be said that as a consequence the judge who decided the appeal has arguably made an irrational decision. As the Court of Appeal said at para 18 of Herrera v SSHD [2018] EWCA Civ 412, it is necessary to guard against the temptation to characterise as errors of law what are in truth no more than disagreements about the weight to be given to different factors, particularly if the judge who decided the appeal had the advantage of hearing oral evidence.

39. Paragraph 1 of the written grounds states that the judge erred in "failing to attach proper weight to the appellant's residence of 20 years in the UK" and then refers to the appellant having "no ties" and" lacking in support". The grounds assert that the findings made by the judge in relation to paragraph 399A (c ) are "inadequate and lack sufficient reasoning".

40. However, the grounds fail to consider the factual findings made by the FtTJ at paragraph [34] which deal with paragraph 399A (c). The judge had earlier accepted that the appellant had lived in the UK for 20 years and therefore had been lawfully resident for more than half of his life (see paragraph [32]. At [33] the judge also accepted that as he had studied and worked in the United Kingdom and spoke English, those matters indicated social and cultural integration. The judge did not however consider his criminality.

41. At [34] the judge went on to consider the issue of whether there were very significant obstacles to his reintegration and on the evidence was entitled to take into account that the appellant would have no cultural or linguistic difficulties on reintegration to Kosovo where he was born and lived until he was seven. The judge was plainly aware that he had no close family members in Kosovo but considered the appellant's personal circumstances and characteristics. The judge took into account that he was an adult in good health who would be returning to Kosovo with educational qualifications and work experience gained in the UK to help him secure employment and accommodation which would mean that he would not be destitute as the grounds assert**.** The assessment of the FtTJ was consistent with paragraph 14 of the decision in The Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813 where it was held that "The idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

42. Nor do the submissions advanced on behalf of the appellant demonstrate that the judge's assessment of paragraph 399A (c) were "inadequate". Mr Rashid's

oral submissions relied upon the written grounds that I have just summarised and did not raise any new point. At its highest, Mr Rashid submitted the judge did not place "adequate weight" on his residence of 20 years. However it is plain that the judge gave express consideration to his length of residence both at paragraph 33 when considering the requirements of paragraph 399A and also at paragraph 38 when considering whether there were "very compelling circumstances" stating that the appellants length of stay in the UK on its own did not carry such force to satisfy the "very compelling" test.

43. Therefore, so far as paragraph 1 of the grounds are concerned, the challenge to the judge's assessment of paragraph 399A (c) does not demonstrate any error of law in the FtTJ's assessment.

44. I now turn to paragraph 2 of the grounds. In this paragraph a number of assertions are made under "very compelling circumstances" and the grounds set out a number of factors which it is asserted that the judge failed to have regard to in the overall balance.

45. When assessing very compelling circumstances in the context of Section 117C(6) the Court of Appeal in the case of NA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 662 Jackson LJ gave significant guidance. This Appellant is what is described as a "medium offender". The following paragraphs of NA are of assistance:-

> "29. In our view, the reasoning of the Court of Appeal in *JZ (Zambia)* applies to those provisions. The phrase used in section 117C(6), in para. 398 of the 2014 rules and which we have held is to be read into section 117C(3) does not mean that a foreign criminal facing deportation is altogether disentitled from seeking to rely on matters falling within the scope of the circumstances described in Exceptions 1 and 2 when seeking to contend that 'there are very compelling circumstances, over and above those described in Exceptions 1 and 2'. As we have indicated above, a foreign criminal is entitled to rely upon such matters, but he would need to be able to point to features of his case of a kind mentioned in Exceptions 1 and 2 (and in paras. 399 or 399A of the 2014 rules), or features falling outside the circumstances described in those Exceptions and those paragraphs, which made his claim based on Article 8 especially strong.
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> 32. Similarly, in the case of a medium offender, if all he could advance in support of his Article 8 claim was a 'near miss' case in which he fell short of bringing himself within either Exception 1 or Exception 2, it would not be possible to say that he had shown that there were 'very compelling circumstances, over and above those described in Exceptions 1 and 2'. He would need to have a far stronger case than that by reference to the interests protected by Article 8 to bring himself within that fall back protection. But again, in principle there may be cases in which such an offender can say that features of his case of a kind described in Exceptions 1 and 2 have such great force for Article 8 purposes that they do constitute such very compelling circumstances, whether taken by themselves or in conjunction with other factors relevant to Article 8 but not falling within

> the factors described in Exceptions 1 and 2. The decision maker, be it the Secretary of State or a tribunal, must look at all the matters relied upon collectively, in order to determine whether they are sufficiently compelling to outweigh the high public interest in deportation.
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> 33. Although there is no 'exceptionality' requirement, it inexorably follows from the statutory scheme that the cases in which circumstances are sufficiently compelling to outweigh the high public interest in deportation will be rare. The commonplace incidents of family life, such as ageing parents in poor health or the natural love between parents and children, will not be sufficient.
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> 36. In relation to a medium offender, first see whether he falls within Exception 1 or Exception 2. If he does, then the Article 8 claim succeeds. If he does not, then the next stage is to consider whether there are 'sufficiently compelling circumstances, over and above those described in Exceptions 1 and 2'. If there are, then the Article 8 claim succeeds. If there are not, then the Article 8 claim fails. As was the case under the 2012 rules (as explained in *MF (Nigeria)*), there is no room for a general Article 8 evaluation outside the 2014 rules, read with sections 117A-117D of the 2002 Act."

46. The first factor identified and relied upon by Mr Rashid relates to the children. Neither the written submissions nor the oral submissions have regard to the evidence that was in fact before the judge and her assessment of that evidence. The first point made by Mr Rashid, although not addressed in the written grounds, is that the FtTJ made an error of fact at paragraph 27 in her decision where it is said she confuses circumstances of the eldest children with those of the younger children.

47. I have considered with care that submission and have done so in the light of the evidence before the judge and her decision. The appellant was the father of four children from two previous relationships. His two elder children are M and H (age 5 and 6 respectively). The evidential position concerning his relationship with them was that he had maintained contact with them until January 2020 when his ex-partner found out about his new relationship (see paragraph 30 of the appellant's witness statement). He claimed that he was currently working with the social worker to initiate contact and had a meeting arranged later in March 2020. The position with the two youngest children, E and A, who were aged four and two respectively) was that the appellant and the children had lived at the family home until September 2019 when the relationship came to an end. Since that date the appellant stated that he had visited the children and that he had maintained contact with them and also that social services had been involved to ensure contact was maintained (as set out in the witness statement at paragraph 23).

48. When looking at the decision of the FtTJ, the judge summarised the position of the children at paragraph 6 in accordance with the summary that I have set out

in the preceding paragraph. There is no error of fact in the summary of the evidence given by the judge at paragraph 6.

49. However, Mr Rashid submits that at paragraph 27 the judge confuses the evidence relating to the children. The judge stated as follows:

> "27. There is evidence to support the appellant's claim he has had contact with his two youngest children E and A until January 2020, whilst they lived with their mother at the appellant's family home. The evidence in (a) a letter of the social worker including a contact plan to December 2019; (b) the judge's sentencing remarks which include references to 2 of the appellant's children; and(c) the evidence of the appellant's mother and sister: lead me to conclude, the appellant has a genuine and subsisting relationship with these two children which engages the exception in paragraph 399 (a) of the rules."

50. There is an error identified at paragraph 27. Where the judge states that the appellant had contact to the two younger children until January 2020 whilst they lived with their mother at the family home, the mistake is that they lived together as a family until September 2019 which was when the relationship with his partner ended and the appellant's evidence is that he maintained contact with them thereafter. Therefore, the judge made a factual error identifying the date of January 2020 instead of September 2019. However, whilst the FtTJ made a mistake of fact (stating January 2020) instead of September 2019) it is wholly immaterial because the FtTJ then went on to correctly identify the evidence in support of the ongoing genuine and subsisting relationship with the two younger children. The judge identified the evidence in support of her conclusion at paragraph 27 which included the letter from the social worker (exhibited at pages 60 – 61 of the appellant's bundle). This stated that the children were known to the social services and that the children lived mainly with their mother and the appellant had regular contact with them, currently weekly, and that there was a plan to increase that. The FtTJ made reference to the schedule of contact set out at page 61. The judge also identified the evidence in the judge's sentencing remarks which referred to his contact with the children but rejecting his claim to have been their primary carer and also the judge identified the evidence from the appellant's sister and mother. The judge therefore concluded that the evidence demonstrated that he had a genuine and subsisting parental relationship with his two youngest children and therefore this engaged the exception of paragraph 399 (a). The factual mistake did not affect the conclusion reached at paragraph 27 and was therefore wholly immaterial.

51. The next point Mr Rashid relied upon is one set out in the written grounds that the judge failed to consider the appellant's role as a children's "primary caregiver" and that he played a significant role in their lives. The grounds go on to say that "in light of the judges acceptance that he had a genuine and subsisting parental relationship with at least two of his children, it was

necessary to consider the impact it would have on them if he was now deported."

52. In support of his submission, Mr Rashid pointed the Tribunal to the evidence in the form of photographs (pages 75 – 86) and a telephone call log (supplement bundle pages 23 – 31).

53. Whilst the appellant's evidence in his witness statement (paragraph 24 dated16/3/20) refers to his relationship with the two younger children as playing a "significant role in their lives" and paragraph 25 referring to having "full custody" the children, there was no reference to being the primary caregiver as both the grounds assert or the oral submissions. In fact, the independent evidence from the social services set out at page 60 was that the two youngest children lived mainly with their mother but that their father, the appellant, had contact with them. Furthermore the judge's sentencing remarks, (which were referred to by the judge at paragraph 27) recorded the evidence from the pre-sentence report and expressly stated "you are not the principal carer for them and have not been in reality for any significant period of time. The pre-sentence report indicates that your former partner is the carer of them." The evidence of the social services and the judge's sentencing remarks were referred to by the judge at paragraph 27 and properly read did not support the claim made in the grounds that the appellant was the principal carer or the "primary carer" of the children. The photographs do not provide any assistance evidentially as supportive of being their primary carer. The photographs are not dated and show the appellant with the children. It is not disputed that they have ongoing genuine and subsisting relationship with him. The telephone log also does not have any evidential weight. There is no description in the evidence which addresses those telephone calls. Whilst Mr Rashid made reference to the front sheet making reference to the telephone log as "arranging contact with children from father's mobile phone to ex-partner" that does not by itself demonstrate the nature and strength of the relationship.

54. That being the case, the submission made on behalf of the appellant that there was a failure to address that factor under the "very compelling circumstances" test under section 117C(6) is misplaced.

55. Mr Rashid relied upon the written grounds where it was stated that the judge should have made a finding on whether she accepted that the child E suffered from ill health and if so" given the appellant's role as primary caregiver are there compelling reasons for the appellant's continued presence to care for the child?" (See written grounds of paragraph 2).

56. In my judgement the grounds mis-state the evidence and the decision of the FtTJ. At [28] the FtTJ addressed the issue of E's ill health but noted that there was no medical evidence to confirm his ill-health but importantly there was no evidence that the appellant had any particular important role in E's life nor that

he had any particular dependency on the appellant (either in the context of his ill-health or otherwise). There was little evidence in support of his relationship with the children and I do not accept that photographs and a phone log can properly evidence the strength and nature of their relationship. Whilst the judge referred to no contact since January her assessment of the position of the child with the appellant's partner as the primary carer was consistent with the more reliable evidence set out in the social work letter (pages 60 – 61) and the judge's sentencing remarks (at F3).

57. None of those issues raised in the written grounds and the oral submissions demonstrate any material error of law in the approach to the judge's assessment of either undue harshness which the judge considered substantively at paragraph 28 or the Exceptions to deportation relevant to the appellant's private and family life.

58. The final issue relates to the position of the family members and the issue of dependency. In particular it is said the relationship between the appellant and his father. It appears to be common ground that the appellant continued to live at the family home. As part of the evidence put to the Secretary of State it was asserted that the appellant had close relationships with his family members. The respondent and the decision letter addressed the issue by stating that the appellant had not provided evidence of dependency beyond normal emotional ties and that the family members could maintain their relationships either by modern means of communication or family members either visiting or accompanying him to Kosovo.

59. The grounds assert that the judge failed to take any account of the dependency that the appellant's father had upon the appellant. Mr Rashid submitted that there was evidence before the Tribunal that family members such as the appellant's father had a relationship of dependency upon his son but that the judge had made no reference to it.

60. There was no reference to any submissions made on the issue of family life or any dependency between the adult family members in the judge's summary of the submissions of the parties and in particular those on behalf of the appellant at paragraph 21. I asked Mr Rashid as to whether the issue of dependency was raised before the FtTJ, as he was Counsel before the First-tier Tribunal. He could not remember whether he had raised the issue in his submissions. I could not read all of the ROP (record of proceedings) and Ms Petterson did not have access to the ROP of the presenting officer. I am therefore left in the position that it is not clear whether in fact this was raised or argued as part of the "very compelling circumstances" relied upon.

61. There was evidence before the judge which could give rise potentially to such a submission. The evidence of the appellant referred to his father having "serious health issues". Whilst the grounds refer to medical evidence in support, there

was no medical report. Mr Rashid has pointed out there were copies of prescriptions at page 76 of the bundle. However, there is no indication from the lists of medication there what they were prescribed for or for what conditions. A list of prescriptions without more does not give weight to the argument of there being "serious health concerns". The evidence of the family members as identified by Mr Rashid makes reference to the past family history and Kosovo and in particular that the appellant's father had been injured and had suffered burns to his body and his experiences resulted in PTSD and depression. There are photos of the appellant's father which appear to show burns to his body. However, the evidence of the family members as to the level of dependency either between them and the appellant or in particular, the appellant's father upon the appellant, was lacking in any detail to satisfy the test of dependency. I do not accept the submission made by Mr Rashid that because the witnesses referred to their close relationship with each other that this could be taken as the judge having tacitly accepted the evidence or that such evidence could be taken as unchallenged. Here the evidence did not go beyond showing the family members had lived together even when the appellant was an adult and that they were a close family. The test for the establishment of Article 8 family life in the *Kugathas* sense is one of effective, real or committed support and whilst there is no requirement to prove exceptional dependency the evidence did not demonstrate any dependency upon the appellant by his father beyond normal emotional ties. As Ms Petterson submitted, the evidence before the judge from the appellant's sister was that notwithstanding the circumstances in which the family had left Kosovo, the appellant's father felt able to return there and travel to Kosovo in or about 2015 (as recorded at paragraph 9 of the judge's decision). Furthermore, the appellant's father had a number of other close relatives including his wife for support.

62. In my judgement whilst there is no "bright line" for when family life ceases to exist, the appellant is now 28 years of age and there would need to be factual elements of dependency to support a claimed protected family life with his parents particularly as he has founded two previous relationships with partners and has had four children, has formed his own family units and independent life even if he resided with his parents for all or most of that time.

63. As set out above, it has not been properly demonstrated that such an argument had been advanced before the FtTJ and in my judgment it is not sufficient to say that as there was some evidence, it was incumbent on the FtTJ to embark on such an analysis. The proceedings are adversarial and the arguments before the FtTJ are those raised by the parties. However, the evidence even taken at its highest does not demonstrate factual elements of dependency and does not go beyond showing the normal emotional ties between adult family members. I am therefore not satisfied that it has been demonstrated that the FtTJ fell into any material error of law in addressing the "very compelling circumstances" test under S117C(6).

64. The question whether the decision contains a material error of law is not whether another Judge could have reached the opposite conclusion but whether this Judge reached a conclusion by appropriately directing himself as to the relevant law and assessing the evidence on a rational and lawful basis.

65. The judge had the advantage of considering all the evidence in the case. As the Supreme Court stated in Henderson v Foxworth Investments Ltd [2014] UKSC 41; [2014] 1 WLR 2600 at [62]:

> "It does not matter, with whatever degree of certainty, that the appellate court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.

66. For those reasons, I am satisfied that it has not been demonstrated that the decision of the FtTJ did involve the making of an error on a point of law. The decision of the FTT shall stand.

**Notice of Decision**

The decision of the First-tier Tribunal did not involve the making of an error on a point of law and therefore the decision of the FtTJ shall stand.

**Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or his family members. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Upper Tribunal Judge Reeds*
Dated 7 September 2020

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NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent.

2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days, if the notice of decision is sent electronically).

3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days if the notice of decision is sent electronically).

4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days, if the notice of decision is sent electronically).

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday, or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email