Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/15367/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 29 November 2021	**On 22 March 2022**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

TAULANT GASHI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms. J Theilgaard, Counsel, instructed by S.B. Immigration
For the Respondent: Mr. T Lindsay, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant appeals a decision of the respondent to refuse to grant him leave to remain on human rights grounds. The decision is dated 27 August 2019.

2. The appellant previously enjoyed discretionary leave to remain in this country from 28 September 2009 to 4 March 2018. He applied for settlement by an application dated 16 March 2018.

3. His appeal was initially allowed by a decision of the First-tier Tribunal (Judge Lucas) dated 5 February 2021. I set aside the decision in its entirety on 27 September 2021 and directed that the resumed hearing would be undertaken by the Upper Tribunal. No findings of fact were preserved.

Background

4. The appellant is a national of Kosovo and is presently aged 36.

5. Whilst living in Kosovo he resided with his parents and sister. His father was a member of the Kosovan Liberation Front who was targeted by the Serbian authorities.

6. In February 1999, the appellant's sister was killed after being hit by a stray bullet fired by a Serbian soldier. Consequent to her death, the appellant's father arranged for the appellant to leave Kosovo.

7. The appellant entered the United Kingdom on 17 August 1999 and claimed asylum. He was aged 13. The respondent refused the asylum claim on 9 March 2001 but granted the appellant exceptional leave to remain until his 18th birthday in May 2003. Further leave to remain was granted, expiring on 8 February 2008.

8. The appellant submitted an out-of-time human rights (article 8) application which was refused by the respondent. On 4 June 2009, the appellant was successful on appeal before the Asylum and Immigration Tribunal (AA/01392/2009). Immigration Judge Keane noted that the respondent had not expressly challenged the appellant's stated history of his experiences whilst residing in Kosovo and confirmed that he found the appellant to have been truthful as to such history, at [18].

9. The respondent granted the appellant discretionary leave on 28 September 2009 which was subsequently varied to expire on 4 March 2018.

10. The appellant applied, out-of-time, for settlement on 16 March 2018. By a decision dated 27 August 2019 the respondent concluded that the appellant was a persistent offender and decided that in respect of his application he could not succeed in his settlement application on suitability grounds. The appellant was also refused leave on article 8 grounds under and outside the Immigration Rules ('the Rules').

Education and employment

11. Having been at school for one-and-a-half years, and arriving in this country not speaking English, the appellant secured four GCSEs. Subsequently he was employed as a labourer and as a gardener, before working as a warehouse supervisor until 2018. He has been unable to work in recent times having made an out-of-time application, which was refused by the respondent, and so not enjoying the benefit of 'section 3C' leave.

Relationship

12. The appellant and his partner confirm that they have been in a relationship since 2008, having initially met and become friends in 2004.

13. The appellant's partner is a British citizen and is employed as a nurse. As to their respective living arrangements, the appellant's partner detailed in her supplementary witness statement:

> 'We cannot live together because I live with my parents, who hold traditional values. We live in a four-bedroom house – my parents have one room, my sister, my brother and I have one room each. My room is a small single room and we could not have anyone else living there. My parents are both retired and when they retired they realised that they were not financially prepared for it – they rely on the rent I bring to the house. If I were to move out I would not be in any position to give them any financial support. My parents are very traditional …. and they would never allow a partner to live with us unless we are married.
>
> Having said that, my parents know Taulant well and he has been round for dinner many times over the years. They have known Taulant since 2010 and are happy for us to be in a relationship, although they want him to have a good job and certainly so he and I can support each other.'

Health

14. The appellant detailed by his witness statement dated 14 November 2021, *inter alia*:

> '… I have suffered from depression and anxiety for most of my life, since leaving Kosovo when I was a child, whilst in foster care in the UK and throughout my adult life. I have always tried to ignore my periods of depression and never spoken about it. I have always needed to fend for myself and be strong and I was worried my depression would be perceived as a weakness.'

> 'I have attempted suicide several times because the uncertainty over my immigration status means I cannot get a job and I cannot move on with my life. I cannot marry my girlfriend. I want to be able to work and pay taxes like everyone else. One time I took 20 pills and drank a bottle of vodka as I thought I would rather die than go to Kosovo. I feel so hopeless all the time and I have scars on my arms where I cut myself.'

15. The appellant has reported feeling depressed nearly every day, feeling bad about himself and not being able to manage his mental health.

16. He is presently receiving care from the Maudsley Charity following a referral from his GP.

Criminal convictions

17. The appellant has several convictions dating from 2012 to 2019. He has been mainly dealt with by way of fines and conditional discharge in relation to possession of cannabis, and shoplifting offences.

Date of Sentence/Order	**Offence**	**Sentence/Order**
31/8/2006	(1) Possessing offensive weapon in a public place (2) Theft – Shoplifting (3) Theft – Shoplifting (4) Failing to surrender to bail	(1) Community Order – 12 months (2) Community Order – 12 months (3) Community Order – 12 months (4) Community Order – 12 months
22/11/2006	(1) Theft – Shoplifting (2) Failing to surrender to custody	(1) Conditional discharge – 12 months (2) Fine - £50
27/2/2008	(1) Theft – Shoplifting (2) Theft – Shoplifting (3) Failure to surrender to custody (4) Breach of conditional discharge	(1) Fine - £34 (2) Fine - £34 (3) Fine - £20 - or serve one day in custody (4) No action on breach

12/6/2008	(1) Possessing forging equipment (2) Failing to surrender to custody (3) Possessing listed false instrument	(1) Community order (2) Fine - £50 - or serve one day in custody (3) Community order
16/1/2009	Possession of a class C drug (cannabis)	Fine - £66 - or serve one day in custody
21/9/12	Possession of a class B drug (cannabis)	Fine - £100
21/1/13	(1) Theft – Shoplifting (2) Possession of a class B drug (cannabis)	(1) Conditional discharge – 12 months (2) Conditional discharge – 12 months
5/2/14	(1) Possession of a class B drug (cannabis) (2) Breach of conditional discharge	(1) Fine - £85 (2) No action on breach
9/6/2016	Possession of a class B drug (cannabis)	Fine - £120
21/3/2019	(1) Possession of a knife in a public place (2) Possession of a knife in a public place	(1) 20 weeks imprisonment – wholly suspended for 12 months (2) 20 weeks imprisonment – wholly suspended for 12 months [concurrent]

Secretary of State's decision

18. The respondent confirmed, at para. 14 of her decision letter, that she had previously accepted the appellant as qualifying for discretionary leave under the transitional arrangements consequent to the appellant having been granted discretionary leave to remain prior to 9 July 2012.

19. She further accepted that the starting point for considering the appellant's case was the transitional arrangements, particularly para. 10.1:

> '10.1 Applicants granted DL before 9 July 2012
>
> Those granted leave under the DL policy in force before 9 July 2012 will normally continue to be dealt with under that policy through to settlement if they continue to qualify for further leave on the same basis as their original DL was granted (normally they will be eligible

> to apply for settlement after accruing 6 years' continuous DL (or where appropriate a combination of DL and LOTR, …), unless at the date of decision they fall within the restricted leave policy.
>
> Caseworkers must consider whether the circumstances prevailing at the time of the original grant of leave continue at the date of the decision. If the circumstances remain the same, the individual does not fall within the restricted leave policy and the criminality thresholds do not apply, a further period of 3 years' DL should normally be granted. Caseworkers must consider whether there are any circumstances that may warrant departure from the standard period of leave …
>
> If there have been significant changes that mean the applicant no longer qualifies for leave under the DL policy or the applicants falls for refusal on the basis of criminality …, the further leave application should be refused.'

20. The respondent noted the convictions of 9 June 2016 and 21 March 2019, post-dating the last grant of discretionary leave, and observed at paras. 19 - 20 of her decision:

> '19. This finding [of the Judge in 2009] has been changed by your continuing offending. You now have a longer span of criminality, the most recent of which falls within a few months of this consideration and occurred after submitting your application. I consider now that your criminality in the United Kingdom has become persistent. You have repeatedly been convicted for possession of class B drugs. I have also considered that you have now been convicted of having a knife in public and thus attracted a stronger conviction.
>
> 20. It is determined that your criminality is no longer conducive to the public good. You have shown an evident disregard from [sic] the law and your past convictions do not appear to have been a deterrent to committing further criminality. Carefully considering the Judge's determination findings, the discretion applied previously, your current circumstances and residency alongside this criminality, I cannot accept that you continue to qualify under the Transitional Arrangements and it is determined that your case falls for refusal under the Transitional Arrangements for criminality even in light of your accepted establishment of a private life in the UK.'

21. On this basis the respondent refused the appellant's application for settlement.

Evidence

22. Both the appellant and his partner attended the hearing and gave oral evidence. Additionally, they relied upon their witness statements.

23. In respect of his mental health, the appellant confirmed in his oral evidence that he had been referred to see a specialist. He accepted that he continues to drink alcohol but detailed that he has reduced his consumption. He stated that previously he was drinking as a means of coping with his depression. He explained that he saw his sister shot in front of him and she died. He has depressive feelings flowing from him believing himself lucky to be alive. On occasion he has felt suicidal. He drinks alcohol as it makes him feel better about himself, but he has insight as to it not being the best response to his problems. He has realised that he does not want to drink alcohol every day, and that medical treatment would be better in addressing his depression. He confirmed a willingness to take medication to aid his mental health.

24. As to the 2019 offence, he explained he was present in the back garden of a premises and was intoxicated. He possessed a knife for self-defence but it was not carried to be used for aggressive purposes. Mr. Lindsay addressed a concern that the appellant would arm himself in the future. The appellant replied that if there were concerns as to his safety, he would rather request that the police be involved than use a weapon.

25. The appellant explained that he has changed as a person, and wants to move on so that he can enjoy his life with his partner. He has stopped being involved with the wrong crowd.

26. He confirmed that he has sought over a number of years to contact his parents, including seeking the aid of international organisations, but has not heard from them. He believes that his parents are dead.

27. The appellant confirmed that at the time of the hearing he was primarily living in a tent or a car. He could not afford to rent a property as he was unable to work pending this appeal, and there was insufficient space to live with his partner. He detailed that they saw each other between two and five times a week.

28. The appellant’s partner confirmed that the appellant is a ‘big part’ of her life, and that she sees him when she is able to, but her employment impacts upon how often they can meet during the week. They meet more regularly when she is on leave. She detailed that the appellant is her support, and that they support each other.

29. She confirmed that the relationship broke up for a period in 2016, though it resumed, and that they saw less of each other during the Covid-19 pandemic. However, she confirmed the relationship was ongoing, and that the respondent was wrong in asserting that they were simply friends.

30. She addressed her work as a nurse and confirmed that she was able to identify when the appellant's mood was low and when he was anxious. She confirmed that he has previously tried to take his life. When asked why the appellant had not previously attended his GP in respect of his depression, she observed that he was worried about opening up about his feelings. He tries to be hopeful as to the future but is worried about whether medical intervention would aid him. She noted that it had taken a long time for him to secure mental health support after he first sought it.

31. After the hearing, the appellant's legal representatives wrote to the Tribunal on 3 December 2021 and sought permission to file and serve additional evidence, primarily concerned with a recent holiday enjoyed together by the appellant and his partner. By email correspondence dated 9 December 2021, Mr. Lindsay confirmed that the respondent raised no objections to the documents being admitted in evidence.

Decision and reasons

Article 3

32. The appellant now relies upon article 3 ECHR. The respondent considers it to be a new matter, not having been raised prior to the decision in 2019, but consented to the Tribunal considering it.

33. Ms. Thielgaard addressed article 3 in brief terms in her skeleton argument, dated 15 November 2021, and did not pursue it with any vigour in oral submissions. Her submissions primarily addressed the appellant's article 8 appeal.

34. The Upper Tribunal confirmed in *MY (Suicide risk after Paposhvili)* [2021] UKUT 00232 (IAC) that the test to be applied in article 3 health cases is that established by the European Court of Human Rights in *Paposhvili v. Belgium* (App. No. 41738/10) [2017] Imm. A.R. 867, at [183], namely whether the appellant would face a real risk, on account of the absence of appropriate treatment in the receiving state or the lack of access to such treatment, or being exposed to (i) a serious, rapid and irreversible decline in the state of his health resulting in intense suffering, or (ii) a significant, meaning substantial, reduction in life expectancy. The Tribunal confirmed that the judgment of the Strasbourg court in *Paposhvili* applies to suicide cases.

35. The modified guidance identified in *J v Secretary of State for the Home Department* [2005] EWCA Civ 629; [2005] Imm AR 409, at [26]-[31], as reformulated in *Y (Sri Lanka) v Secretary of State for the Home Department* [2009] EWCA Civ 362, [2010] I.N.L.R. 178, continues to be

applicable when considering appeals concerned with suicide following removal from this country.

36. I confirmed to the representatives at the hearing that I accepted the appellant has mental health concerns which have, on occasion, led to self-harm through cutting, and at least one serious suicide attempt. In considering whether the appellant has established a *prima facie* case in respect of article 3, I observe the historic nature of these events. The appellant did not identify any concerns as to suicide ideation in his evidence before me. His primary concern related to his depression. I note that the appellant is not taking anti-depressant medication in this country and is not prescribed medication in respect of his general mental health.

37. I conclude, on the evidence presented, that the appellant has not established a *prima facie* case that he is at risk of his article 3 rights being breached upon return to Kosovo in respect of mental health. His human rights (article 3) appeal is dismissed.

Article 8

Family life

38. At the hearing the appellant sought to rely upon a family life said to exist with his partner. The respondent observed that this is a new matter, the relationship not having been identified in written representations prior to the 2019 decision but consented to the Tribunal considering the matter. The appellant asserts that the failure to reference the relationship was the fault of his previous representatives.

39. The respondent's case in simple terms is that that the appellant does not enjoy a family life with his partner.

40. In respect of family life, Ms. Theilgaard identified the height of the appellant's case as being presented by his partner in her supplementary witness statement:

> 'We used to travel away a lot as well, before the pandemic – we have travelled to Bristol, Poole, Torquay and Cornwall. We would go out for three or four days at a time – we would stay in 'Airbnbs' so it would be like having a family home together. Before the pandemic happened we were spending all our time together and just loving life – Taulant had his visa and was looking to finally have visa certainty. Now life is very stressful as we wait for the outcome of Taulant's visa.'

41. I accept that the appellant and his partner have been in a relationship since 2008, with a break in 2016. However, though it is a relationship

founded upon mutual love and support, it has not progressed to one where they reside with each other. I accept that since at least the beginning of the pandemic they have met up with each other on two or three occasions a week when the appellant's partner is working, and up to five times a week when she is on holiday from her employment. I also accept that they have holidayed together on occasion including a recent short holiday. Though the respondent has challenged the genuineness of the relationship, I find it to be genuine and subsisting. I am satisfied that the couple wish to spend the rest of their lives together and marry once the appellant secures further leave to remain. However, the fact that the relationship is genuine and subsisting is not determinative as to the existence of a 'family life'.

42. Whether or not 'family life' exists is a question of fact that depends upon the existence of close family ties: *K and T v. Finland* (No.2) (App. No. 25702/94), (2003) 36 E.H.R.R. 18, at [150]. In determining whether a relationship amounts to a 'family life' several factors may be considered, including whether a couple live together, the length of their relationship, and whether they have demonstrated their commitment to each other by having children together or by other means: *Van der Heijden v. the Netherlands* (App. No. 42857/05) (2013) 57 E.H.R.R. 13, at [50].

43. The essential ingredient of family life is the right to live together so that family relationships may develop normally: *Marckx v. Belgium*, (A/31) (1979-80) 2 E.H.R.R. 330, at [31]. The notion of 'family' in article 8 concerns marriage-based relationships, and also other de facto 'family ties', including between same-sex couples, where the parties are living together outside marriage or where other factors demonstrated that the relationship had sufficient constancy: *Paradiso and Campanelli v. Italy* (App. No. 25358/12) (2017) 65 E.H.R.R. 2, at [140]. Therefore, though the paradigm of family life as enjoyed by partners, whether married or in civil partnerships, is cohabitation, it is not confined to such status.

44. I have found that the relationship is genuine and subsisting. I am satisfied that the couple have a genuine emotional commitment. However, they are not cohabiting, and have never done so. Whilst reasons have been provided as to why they have lived apart throughout their relationship, I conclude that there are insufficient ties between the couple to establish the relationship as being one that enjoys the protection of article 8. The union is presently of insufficient substance, being limited to meetings during the week, and occasional holidays together. I find that the relationship belongs to the realm of the applicant's private life within the meaning of article 8, given that that concept encompasses the totality of social ties between migrants and the community in which they are living: *Uner v. the Netherlands* (App. No. 46410/99) (2007) 45 E.H.R.R. 14, at [59].

45. The human rights appeal on article 8 family life grounds is dismissed.

Private life – Immigration Rules

46. In respect of private life the respondent submits that the appellant is unable to succeed under paragraph 276ADE(1)(i) of the Rules:

> '(1) The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant:
>
> (i) does not fall for refusal under any of the grounds in Section S-LTR.1.2. to S-LTR.2.3 and S-LTR.3.1 to S-LTR.4.5 in Appendix FM …'

47. This is because his persistent offending results in his being unable to meet relevant suitability requirements: S-LTR.1.5 and/or 1.6 of Appendix FM:

> 'S-LTR.1.5. The presence of the applicant in the UK is not conducive to the public good because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law.
>
> S-LTR.1.6. The presence of the applicant in the UK is not conducive to the public good because their conduct (including convictions which do not fall within paragraphs S-LTR.1.3. to 1.5.), character, associations, or other reasons, make it undesirable to allow them to remain in the UK.'

48. By means of her skeleton argument Ms. Theilgaard identified a challenge to the notion that the appellant is a persistent offender on the ground that he has not been sentenced to any period of imprisonment. Further, it was said that the appellant had reached a turning point in his life.

49. In her oral submissions before me, Ms. Theilgaard did not resist the allegation of persistent offending with vigour. She appropriately observed the decision of the Upper Tribunal in *Chege ("is a persistent offender")* [2016] UKUT 00187 (IAC), [2016] Imm. A.R. 833, which was not addressed in her skeleton argument.

50. Whether an appellant is a 'persistent offender' is a question of fact and law and falls to be determined by this Tribunal as at the date of the hearing.

51. The Upper Tribunal in *Chege* held that a persistent offender is someone who keeps on breaking the law. That does not mean that they are required to keep on offending until the date of the relevant decision or up to a certain time before it, or that the continuity of the offending

cannot be broken. An individual can be regarded as a persistent offender for the purpose of the Rules and the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act') even though they may not have offended for some time. It depends on the overall picture and pattern of the history of the offending. There must be a history of repeated criminal conduct carried out over a sufficiently long period to indicate that a person is someone who keeps reoffending and so, importantly, it is not just a mathematical exercise. The criminal offences need not be the same, or even of the same character as each other. They are to be sequential, not properly regarded as part of the same incident, otherwise the necessary characteristic of repetition will be absent. The period over which they are committed is a relevant factor. Sporadic instances of isolated offending over a course of several years is unlikely to suffice. Factors to be considered include the overall pattern of offending; the frequency of the offences; their nature; their number; the period or periods over which they were committed; and, where relevant, any reasons underlying the offending, such as an alcohol or drug dependency or association with other criminals.

52. I am satisfied that the meaning of 'persistent offender' for the purposes of section 117D(2)(c)(ii) of the 2002 Act, as considered by the Upper Tribunal in *Chege*, is consistent with its meaning in Appendix FM, as it is a technical term that is well understood in this field of law. The requirement that there be a 'particular disregard' for the law is a protection against *de minimis* criminal behaviour, for example offences resulting in an absolute discharge or a caution.

53. Consequently, the guidance provided by the Tribunal in *Chege* is properly to be applied to the appellant in this matter.

54. I conclude that there is a history of repeated criminal conduct over several years. The appellant has kept on reoffending, being convicted of twenty-two offences on ten occasions over almost thirteen years. Though the sentences imposed generally suggest that the level of criminality was relatively low, the last conviction resulted in a suspended custodial sentence. Whilst it may well be the case that most of the convictions were related to the appellant's poor mental health and his use of alcohol and, on occasion, cannabis to self-medicate, I am satisfied that the appellant's repeated criminal conduct carried out over a period of time establishes persistent offending.

55. In the circumstances, the appellant is unable to satisfy the suitability requirement of paragraph 276ADE(1)(i) of the Rules.

Private life – Outside of the Immigration Rules

56. Article 8 is not an absolute right and can be interfered with by the State in certain circumstances. It is trite law that the State has a right to control immigration and that rules governing the entry and residence of people into the country are 'in accordance with the law' for the purpose of article 8. Any interference with the right to private life must therefore be for a legitimate reason and should be reasonable and proportionate.

57. Part 5A of the 2002 Act applies where a tribunal is required to determine whether a decision made under the Immigration Acts breaches a person's right to private life and as a result is unlawful under the Human Rights Act 1998. In considering the 'public interest question' a tribunal must, in non-deportation cases, have regard to the issues outlined in section 117B. The 'public interest question' means the question of whether interference with a person's right to respect for their private life is justified under article 8(2).

58. It is in the public interest to maintain an effective system of immigration control. The requirements of the Rules and the statutory provisions are said to reflect the respondent's position as to where a fair balance is struck for the purpose of article 8.

59. In circumstances where the appellant does not meet the requirements of the Rules, only in compelling or exceptional circumstances would a person's individual situation outweigh the public interest in maintaining an effective system of immigration control.

60. The respondent accepted before me that the appellant has established a private life but submitted that no exceptional circumstances arise.

61. I found the appellant and his partner to be truthful witnesses. I am satisfied that the root of the appellant's present mental health concerns are the circumstances that led to him fleeing Kosovo and entering this country when aged 13. The shooting and subsequent death of his sister before his eyes was clearly a traumatic experience, and one for which he has not yet secured appropriate mental health care. His efforts to self-medicate over many years through the abusive use of alcohol have led to his accumulating an extensive criminal record. However, I am satisfied that during such time he was able to hold down employment, including having responsibility as a warehouse supervisor.

62. Having observed his partner give evidence, I am satisfied that she relies upon her nursing skills to aid the appellant at the many difficult times of his life.

63. I find that the appellant has struggled without access to employment and has had several years to reevaluate his life. I conclude that he

wishes to turn his life around, to stop self-medicating with alcohol, and that he has sufficient mental discipline to pursue his chosen path. Neither the appellant nor his partner believed there to be a difficulty with him drinking a small amount of alcohol socially at weekends. Whilst this may be initially considered to be of concern, it is appropriate to observe that the appellant's last conviction was three years ago. I am therefore satisfied that the appellant has now struck a healthy balance with his consumption of alcohol.

64. He has failed to meet the requirements of the Rules: paragraph 276ADE. However, I observe that he fled Kosovo at a time when it was not an independent State and has not returned home in almost 23 years. I accept that the appellant is honest when stating that he has sought to contact his parents for many years, to no avail, and I accept that he has no family members residing in the country. I accept that on return the country would be alien to him, having resided in the United Kingdom since the age of 13. I further accept that he entirely lacks the capacity as an insider to understand how life in Kosovo is carried on and so lacks 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 his private life: *Secretary of State for the Home Department v. Kamara* [2016] EWCA Civ 813, per Sales LJ (as he then was), at [14]. I conclude that he meets the requirements of paragraph 276ADE(1)(vi) and such fact can be placed into the proportionality assessment when considering article 8 outside of the Rules.

65. The fact that the appellant speaks English and is capable of being financially independent without becoming a burden on the taxpayer are neutral factors.

66. Mr. Lindsay candidly accepted that when considering article 8 (private life) outside of the Rules, I could properly consider the appellant's relationship with his partner. In *Znamenskaya v. Russia* (App. No. 77785/01) (2007) 44 E.H.R.R. 15, at [27], the Strasbourg Court confirmed that close relationships short of 'family life' would generally fall within the scope of private life. I conclude that the appellant's relationship with his partner falls into such category, and so Mr. Lindsay was correct to make the concession.

67. I have found the appellant and partner to be a genuine and loving relationship that has existed for approaching fourteen years. Throughout much of his relationship with his partner the appellant has enjoyed lawful, though precarious, leave. In *CL v Secretary of State for the Home Department* [2019] EWCA Civ 1925; [2020] 1 W.L.R. 858, at [50], the

Court of Appeal confirmed that a judge had erred in saying that section 117B of the 2002 Act required him to attach little weight to a couple's relationship when that relationship had been entered into at a time when the applicant's immigration status was precarious. The Court held that there was no rational basis for requiring family life established with a partner who was a British citizen by a person whose immigration status was precarious to be given less weight when there was no such requirement where the partner was not a British citizen. I give some weight to the relationship but it is not great weight as the appellant's leave was always precarious in nature.

68. The appellant has enjoyed lawful leave in this country for almost fifteen years out of the twenty-two years he has resided here. Though the last four years have been spent unlawfully in this country, consequent to failing to make an in-time application, his appeal has been ongoing for two-and-half of those years. I consider it is appropriate to give weight to the length of lawful residence secured after he fled a civil war as a child. His formative years were spent in this country away from his family. Consequently, his integrative roots in British society are deep.

69. This is a finely balanced decision. However, the compassionate circumstances surrounding his childhood history and the consequent subjective fears of returning to Kosovo are compelling and compassionate. His private life in this country, including his relationship with his partner, offers him protection. It is not always perfect, as evidenced by his mental health problems and his convictions, but I am satisfied that it offers him real protection. I have found above that there will be very significant obstacles to his integration upon return to Kosovo, and such difficulties will significantly and adversely impact upon his private life.

70. I accept his partner's evidence that she will have difficulties in relocating to Kosovo, consequent to the adverse impact of leaving her parents and additionally due to her lack of cultural and social ties to the country. The appellant's relocation would be a breach of her protected rights: *Beoku-Betts v. Secretary of State for the Home Department* [2008] UKHL 39, [2009] 1 A.C. 115.

71. I conclude that the decision is unlawful under section 6 of the Human Rights Act 1998.

Notice of decision

72. By means of a decision sent to the parties on 27 September 2021 this Tribunal set aside the decision of the First-tier Tribunal promulgated on

24 March 2021 pursuant to section 12(2)(a) of the Tribunal, Courts and Enforcement Act 2007.

73. The decision is re-made, and the appellant's appeal on human rights (article 8) grounds outside of the Immigration Rules is allowed in accordance with the Human Rights Act 1998.

Signed: D O'Callaghan
Upper Tribunal Judge O'Callaghan

Dated: 22 March 2022