Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2022-000256
[IA/02251/2021]

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 22 July 2022	**On 7 September 2022**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR
DEPUTY UPPER TRIBUNAL JUDGE MANUELL

Between

LEONARD DIBRA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellant: Mr J Collins, Counsel, instructed by Marsh and Partners
For the respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Monson ("the judge"), promulgated on 12 January 2022 following a hearing on 5 January. By that decision, the judge dismissed the appellant's appeal against the respondent's decision, dated 1 December 2020, refusing his human rights claim.

2. The appellant is a citizen of Albania, born in July 1994. He arrived in United Kingdom in December 2008 at the age of 14 and has resided in this country ever since. An initial asylum claim was refused, but the appellant was granted discretionary leave on the basis of his status as an unaccompanied minor. An application was made to extend that leave. That application was based on protection and Article 8 grounds. Following its refusal, in 2014 the appellant appealed, unsuccessfully, to the First-tier Tribunal. That judge rejected the appellant's evidence in respect of a claimed blood feud and concluded that there was no risk in Albania. He also concluded that it was proportionate to return the appellant to that country.

3. In February 2020, the appellant made a further application, relying on family and private life under Article 8. He had formed a relationship with an Albanian national and had fathered a child in 2018. He had obtained employment as what was described as a construction engineer.

4. The application was refused on the basis that the appellant could not meet any of the Article 8-related Immigration Rules, nor were there any exceptional circumstances in his case.

The decision of the First-tier Tribunal

5. Before the judge, Mr Collins confirmed that the appellant was no longer pursuing any "serious harm" claim in respect of his partner's family in Albania. He had separated from his partner, but had regular contact with their son. The core of the appellant's case on appeal related to the claimed existence of very significant obstacles under paragraph 276ADE(1)(vi) of the Immigration Rules. Mr Collins quite properly directed the judge's attention to the leading authority of Kamara [2016] EWCA Civ 813, [2016] 4 WLR 152, the well-known paragraph 14 of which is quoted at [31]:

6. The relevant paragraphs of relevance to our consideration of the error of law issue are [34] and [35]:

> "34. The difficulties in re-integration discussed in [the appellant's skeleton argument] are entirely predicated on the proposition that the appellant would need to relocate because it is inherently unreasonable to expect him to return to his home area, as it is the same area as his child's mother's family. Although these internal relocation difficulties fall away in light of the abandonment protection-based element of the appellant's claim, Mr Collins put forward another obstacle, which is a lack of familial support. However, the appellant has not discharged the burden of proving on the balance of probabilities that he has lost contact with his family in Albania and/or that contact with them cannot be re-established in the event of his return to Albania so that they can provide him with accommodation or other practical support while he re-establishes himself there.

> 35. For the above reasons, the appellant has not shown that there would be very significant obstacles to his re-integration into life and society in Albania. He was born, brought up and educated in Albania until the age of 14. He speaks Albanian, and the fact that he has a child by a fellow Albanian national indicates that he has operated within an Albanian diaspora in the UK. So, he is likely to remain familiar with Albanian customs and culture. Not only is there no reason to suppose that he will have any difficulty in finding accommodation and remunerative employment, having regard to his skills and work experience as a Construction Engineer, but the appellant has not made out a credible case that he will not be enough of an insider so as to have a reasonable opportunity to be accepted in Albania, and to be able to build up an adequate private life within a reasonable period of time."

7. Those conclusions dealt with the paragraph 276ADE(1)(vi) issue. The judge then went on to consider Article 8 on a wider basis, concluding that, in all the circumstances, the respondent's decision was proportionate.

8. The appeal was accordingly dismissed.

The grounds of appeal and grant of permission

9. The grounds of appeal, drafted by Mr Collins in his customary concise manner (for which he is to be commended), put forward a focused challenge. It was said that the judge failed to provide any, or any adequate, reasons for the conclusion that there were no very significant obstacles in the case. In particular, the judge failed to give any reasons as to why the appellant had failed to show that he had lost contact with his family in Albania and/or contact with them could not be re-established. In respect of the reliance on the relationship with the partner and the employment in United Kingdom, the judge had impermissibly speculated, resulting in an irrational conclusion.

The hearing

10. Mr Collins relied on the grounds of appeal and reiterated the points contained therein. The appellant's case was not so weak as to be bound to fail and it was incumbent on the judge to have provided proper and cogent reasons for the core elements of the claim. Although the relevant passage in Kamara had been quoted, the judge had failed to in fact carry out the required broad evaluative judgment. Mr Collins accepted that certain aspects of the appellant's evidence in respect of the absence of familial contact had been somewhat brief, but some more had been said at the hearing. This had not been tested because there had been no Presenting Officer.

11. The errors of law were, it was submitted, material. It would have been rationally open to a different judge to have concluded in the appellant's favour.

12. Mr Avery submitted that there were no errors, or if there were, these were not material. There was a lack of underlying evidence to indicate that the appellant had either lost contact with his parents, or, if he had, that such contact could not have been readily re-established.

13. At the conclusion of the hearing we reserved our decision.

Conclusions on error of law

14. Before turning to our analysis of this case we remind ourselves of the need to show appropriate restraint before interfering with a decision of the First-tier Tribunal, having regard to numerous exhortations to this effect emanating from the Court of Appeal in recent years: see, for example, Lowe [2021] EWCA Civ 62, at paragraphs 29-31, AA (Nigeria) [2020] EWCA Civ 1296; [2020] 4 WLR 145, at paragraph 41, and UT (Sri Lanka) [2019] EWCA Civ 1095, paragraph 19 of which states as follows:

> "19. I start with two preliminary observations about the nature of, and approach to, an appeal to the UT. First, the right of appeal to the UT is "on any point of law arising from a decision made by the [FTT] other than an excluded decision": Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act"), section 11(1) and (2). If the UT finds an error of law, the UT may set aside the decision of the FTT and remake the decision: section 12(1) and (2) of the 2007 Act. If there is no error of law in the FTT's decision, the decision will stand. Secondly, although "error of law" is widely defined, it is not the case that the UT is entitled to remake the decision of the FTT simply because it does not agree with it, or because it thinks it can produce a better one. Thus, the reasons given for considering there to be an error of law really matter. Baroness Hale put it in this way in AH (Sudan) v Secretary of State for the Home Department at [30]:
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> > "Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently."

15. Following from this, we bear in mind the uncontroversial propositions that the judge's decision must be read sensibly and holistically and that we are neither requiring every aspect of the evidence to have been addressed, nor that there be reasons for reasons. Finally, should the need arise, it may be appropriate to consider the underlying materials before the judge in order to better understand his/her reasoning: see, for example, English v Emery Reimbold and Strick Ltd. [2002] EWCA Civ 605; [2002] 1 WLR 2409, at paragraphs 11 and 89.

16. It has not been suggested that the judge misdirected himself in law as to the appropriate test to be applied when considering very significant obstacles under paragraph 276ADE(1)(vi) of the Immigration Rules. The judge quoted paragraph 14 of Kamara at [31] and in our judgment this was indicative of a correct approach to the question of integration. Although no authorities on the nature of the "very significant" threshold were cited, there is nothing to indicate that the judge had anything other than the applicable high bar in mind.

17. We turn to the reasons challenge. On our reading of the judge's decision as a whole and having been referred to the underlying documentary evidence before him (as it went to the questions of a lack of familial contact and/or re-establishment of contact), it is apparent that there was very little by way of information and explanation from the appellant as to (a) why contact with the parents had apparently been lost and/or (b) why contact could not be re-established on return to Albania. There was nothing of substance to support the appellant's bare assertions, which themselves were only seemingly brought out in in any meaningful sense during oral evidence at the hearing. We are unable to discern any evidential basis on which the judge (indeed, any judge) could have concluded that it was more likely than not that those assertions were credible.

18. It follows from the above that whilst [34] does not disclose specific reasons for the judge's conclusion, there was no material evidential basis to which reasons could have been attached in any event.

19. Even if specific reasons were required, but not provided, for the assertion that there was no contact with the parents, there was plainly no rational basis on which to conclude that re-establishment of any contact (if in fact it had ever been lost) was not sufficiently probable. Thus, an error in respect of the former could not be material when the latter is taken into account.

20. Alternatively, if we were to conclude that there was an absence of adequate reasons in respect of both findings, such an error was immaterial, even bearing in mind the low threshold for materiality (whether an error could have made a difference to the outcome, not whether it would have).

21. It was open to the judge to take account of the fact that the appellant had been brought up and educated in Albania until the age of 14, and that he spoke Albanian. Contrary to Mr Collins' submission, the judge was entitled to place weight on the appellant's employment history in the United Kingdom. It did not involve impermissible speculation, but was rather a factual consideration going to the "broad evaluative judgment" required by Kamara. The appellant's relationship with his partner was arguably only capable of attracting less weight, but nonetheless represented a connection to the Albanian diaspora and, in turn, a connection to that country in a wider sense. Even if it was irrelevant or too speculative, its

excision from the overall assessment could not have made any difference to the outcome. For the sake of completeness, we note that there was no question of any ill-health on the appellant's part or any other factors relied on by the appellant which had not been taken into account.

22. The judge correctly assessed the relevant considerations in the context of whether the appellant would be considered enough of an "insider" and whether he would "have a reasonable opportunity to be accepted in Albania, and to be able to build up an adequate private life within a reasonable period of time." The ultimate conclusion reached was open to the judge. When his decision is read sensibly and holistically, and having regard to the underlying evidence, he committed no errors of law. If he did, they were not material to the outcome.

23. There has been no challenge to the judge's wider proportionality exercise under Article 8.

24. The appeal is accordingly dismissed.

Anonymity

25. The First-tier Tribunal made no anonymity direction. In light of the fact that no protection-related issues have been pursued, we see no reason to make an anonymity direction at this stage of proceedings.

Notice of Decision

26. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that it should be set aside under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.

27. The appeal to the Upper Tribunal is dismissed.

Signed: H Norton-Taylor Date: 25 July 2022

Upper Tribunal Judge Norton-Taylor