IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006295
First-tier Tribunal No: HU/00831/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 30 April 2023

Before

UPPER TRIBUNAL JUDGE PITT

Between

Secretary of State for the Home Department

Appellant

and

Gazmend Jaupaj
(NO ANONYIMITY DIRECTION MADE)

Respondent

Representation:
For the appellant: Mr Melvin, Senior Home Office Presenting Officer
For the respondent: Mr Blackwood, Counsel instructed by Qualified Legal Solicitors

Heard at Field House on 17 April 2023

DECISION AND REASONS

1. This is an appeal against the decision issued on 15 December 2022 of First-tier Tribunal Judge Rea which allowed Mr Jaupaj's human rights claim which was brought in the context of deportation.

2. For the purposes of this decision, I refer to the Secretary of State for the Home Department as the respondent and to Mr Jaupaj as the appellant, reflecting their positions before the First-tier Tribunal.

3. The appellant is a national of Albania and was born on 30 August 1985.

4. The appellant maintains that he entered the UK illegally on 1 September 2012. He met his wife in February 2018 and they married on 17 April 2021.

5. On 19 May 2021 the appellant was arrested on suspicion of drugs offences. On 28 June 2021 he was convicted of producing a controlled drug (Class B – Cannabis) and sentenced to 2 years imprisonment. A deportation order was made on 13 September 2021.

6. The appellant made representations opposing deportation on human rights grounds on 16 September 2021. The respondent refused a human rights application on 12 May 2022. The appeal against that decision came before First-tier Tribunal Judge Rea on 1 December 2022.

7. The core issue in the appeal was whether it would be unduly harsh for the appellant's British wife to go to Albania with him or for her to remain in the UK in the event that he was deported. This is the exception (Exception 2) to deportation set out in s.117C(5) of the Nationality, Immigration and Asylum Act 2002.

8. The First-tier Tribunal provided reasons for finding that the requirements of Exception 2 were met in paragraph 10 of the decision:

> "10. The Appellant argues that the effect of deportation would be unduly harsh on his wife and that he comes within Exception 2 in section 117C on this basis. In considering whether this high threshold is met, I take account of the following relevant considerations:
>
> (i) The Appellant's wife is originally from the Philippines and has no family in the UK. While she is an active member of her church, her primary source of support is her husband.
>
> (ii) The Appellant's wife claims that she suffers from mental ill-health for which she has been on medication. There is evidence supporting this including sick notes and letters regarding a phased return to work following engagement with Occupational Health.
>
> (iii) There is evidence from an independent social worker, Angeline Seymour. In her report Ms Seymour expresses the opinion that the removal of the Appellant would cause a possible relapse in his wife's mental health.
>
> (iv) The Appellant's wife does not speak Albanian. It is claimed that it would be difficult for her to integrate in Albanian society. She is settled in the UK where she has a well-paid job."

9. The First-tier Tribunal concluded in paragraph 11:

> "11. Having regard to these factors I find that the effect of the Appellant's deportation upon his wife would be unduly harsh. It is not a realistic option to expect her to relocate to Albania and separation from her husband is likely to cause real harm to her mental health. Exception 2 therefore applies."

10. The respondent maintained that the First-tier Tribunal had erred in law as these paragraphs did not provide adequate reasoning as to why the appellant's deportation would be unduly harsh for his wife.

11. This was the extent of the reasoning on undue harshness and it was my conclusion that the respondent's challenge had merit. It is well understood that the threshold for a finding of undue harshness is an elevated one. The reasons given in paragraph 10 of the decision do not explain to the respondent what it was in the evidence that led the First-tier Tribunal to find that this threshold was met. The social work report does state in paragraph 21 that the appellant's deportation might lead to "a possible relapse in [his wife's] mental health". The decision does not indicate how serious the judge found the wife's mental health difficulties had been in the past. Neither the social work report or the First-tier Tribunal decision set out the how likely it was that there would be a relapse or what the extent of the anticipated relapse would be, however. No reasoning is provided as to the extent to which the wife could be supported by specialist mental health services again if the appellant were to be deported or whether the ongoing medication she had been prescribed might alleviate a more serious relapse. A letter dated 19 November 2021 from Croydon Talking Therapies stated that the appellant's wife had responded well in the past as "you felt that you know (sic) had more knowledge and experience in how to manage your mood effectively using the coping skills and technique learned during our sessions" and had "experienced significant improvement in symptoms during treatment".

12. The decision also does not indicate whether or what weight was placed on the evidence of the appellant and his wife on undue harshness, for example their accounts of what her mental health difficulties would be if the appellant were to be deported. Paragraph 10(iv) of the decision states that "It is claimed that it would be difficult for her to integrate in Albanian society". Was this claim accepted? If so, what was the extent of the difficulty and what was it about it that amounted to undue harshness? The decision does not provide reasoning on these matters. There is also no indication of whether the judge accepted the appellant's evidence that he would find it difficult to function in Albania having been away for an extended period and would find it hard to support his wife there as a result or what the judge's view was of the respondent's opposing submission that the appellant would be able to integrate and assist his wife if she went with him.

13. It was pointed out for the appellant that at the hearing before the First-tier Tribunal the appellant's wife had become very upset when listening to the respondent's submissions arguing that the appellant should be deported. This was recorded in the notes of hearing of the representatives. This provided a basis for the First-tier Tribunal to find that the appellant's deportation would cause his undue hardship. The First-tier Tribunal decision does not give any indication that the wife's oral evidence or her presentation at the hearing were reasons for finding that deportation would be unduly harsh for her, however.

14. It was also argued for the appellant that the indication at the end of the respondent's note of hearing that the expected outcome was that the appeal would be allowed under s.117C(5) showed that the respondent understood that there were legitimate reasons for the appeal to be allowed. It did not appear to me that this endorsement could be read in that way. It is an informal prediction of what the outcome would be not a formal indication that the respondent accepted that there was merit in the appeal and understood why it would be allowed. As above, the limited reasoning in paragraphs 10 and 11 of the decision do not explain adequately why it was allowed.

15. It was also submitted for the appellant that there was no need for the First-tier Tribunal to provide reasons on whether the appellant's wife would face undue hardship if she joined him in Albania as the respondent had conceded that this was not reasonable. This concession was referred to in Mr Blackwood's note of hearing which recorded at the top of page 7 that the respondent's representative had said that she was "not arguing that [the wife] could or should relocate to Albania". There is nothing on the face of the decision concerning this alleged concession, however. The judge appears to refer to the "go" scenario in paragraphs 10(iv) and 11 of the decision which suggests that he was not proceeding on the basis of a concession having been made. The note of hearing from the respondent's representative said nothing about a concession, clearly an important matter, having been made. On balance, it appeared to me that there was insufficient evidence showing that a clear concession had been made by the respondent and accepted by the First-tier Tribunal. For the reasons set out above, the decision does not provide adequate reasons on whether it would be unduly harsh for the appellant's wife to go to Albania.

16. For these reasons, it was my conclusion that inadequate reasons were given for finding that there would be undue hardship for the appellant's wife if he were to be deported and she remained in the UK or if she accompanied him to Albania. This is an error of law and requires the decision to be set aside to be remade.

17. Both parties indicated that in the event of an error of law being found, the correct disposal was for the appeal to be remitted to the First-tier Tribunal for the findings under s.117C to be remade afresh. It appeared to me that this had to be the appropriate course where there are no extant findings and, additionally, there is new evidence on which the appellant wishes to rely, in particular details of the wife's pregnancy and new witness statements. Mr Melvin did not object to that new material being admitted.

Notice of Decision

18. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade afresh in the First-tier Tribunal.

Signed: S Pitt Date: 18 April 2023

Upper Tribunal Judge Pitt