IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002955
First-tier Tribunal No: PA/00859/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 28 November 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD

Between

F N (ALBANIA)
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Dr S Conlan, Hope Project
For the Respondent: Ms A Arif, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 12 September 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Background

1. This matter concerns an appeal against the Respondent's decision letter of 19 October 2021, refusing the Appellant's asylum and protection fresh claim made on 11 February 2021.

2. The Appellant claims to be a member of a particular social group, being an Albanian woman who has been trafficked. She says she fears traffickers, her father and her husband and would not be safe on return as a lone woman who has been trafficked and who is returning with her illegitimate children.

3. The Respondent refused the Appellant's claim, saying a previous First-tier Tribunal decision, that of Judge Aziz dated 14 December 2018 ("the First Decision"), had rejected her account, which decision had been upheld by the Upper Tribunal and formed the starting point for assessment of her further submissions. The Respondent accepted that the Appellant was an Albanian national, that Albanian women who have been trafficked formed a particular social group in Albania, and that the Appellant had two children both born in the UK. However, the Respondent considered the Appellant had not provided any new evidence in support of her claim which was made on substantially the same basis, other than the UK birth certificates for her two children. Whilst it was accepted that these certificates did not name the father of either child, this in itself did not demonstrate that they did not have the same father. The First Decision had not accepted any material aspect of her claim, including that she was trafficked (which was also the conclusion of the competent authority) and did not know who the father of her first child was. It had found she could safely return home with one child. The Respondent did not accept that a second child changed that conclusion. She also did not accept that the Appellant did not know the whereabouts of her husband or who the father of her first child is and said the Appellant had failed to demonstrate that both children did not have the same father.

4. The Appellant appealed the refusal decision.

5. Her appeal was heard by First-tier Tribunal Judge Fenoughty ("the Judge") at Birmingham on 28 April 2023, who later dismissed the appeal in a decision promulgated on 16 May 2023. I note the Appellant was represented at the hearing by Dr Conlan, who also attended the hearing before me, and the Respondent was represented by Home Office Presenting Officer, Mr Loughrey.

6. The Appellant applied for permission to appeal to this Tribunal on grounds lettered 1 (a-k) and 2 (a-c) which can be summarised as follows (the numbers in square brackets refer to paragraphs of the Judge's decision and the indented paragraph numbering is my own):

   (a) The Judge erred in finding there was no reason to depart from the findings of the First Decision [60].
   (b) Since the First Decision, the Appellant had adduced new evidence in the form of a country expert report. The Judge did not properly engage with the contents of this report except to find it did not provide good reason to depart from country guidance [65]. This was despite the Respondent agreeing that the report's author was an expert and ignored the fact that the country guidance related only to trafficked women and not to children.
   (c) The Judge erred in failing to make findings as to whether the Appellant would be at risk on return by reason of returning with two children who would be perceived as illegitimate; this was a separate issue to that of

whether the Appellant had been trafficked and so warranted consideration even if the Appellant was found not to have been trafficked.

(d) The Judge erred in failing to make a finding concerning alleged unfairness arising from the appeal leading to the First Decision which had allowed the Respondent to adduce evidence on the day of the hearing before Judge Aziz, being a letter from the British Embassy in Tirana and an untranslated Albanian family certificate) [39] [57]; this evidence was central to the First Decision's findings on credibility and the Appellant was denied the opportunity to respond to it.

(e) The Judge erred in her findings regarding the best interests of the Appellant's children [69] [76]; the expert report confirmed there would be no support for the Appellant and her children on return, even if there were no risk from her family, and the private life of the children was not properly considered.

7. Permission to appeal was granted by First-tier Tribunal Judge Pickering on 14 June 2023, stating:

> "1. It is arguable that the Judge did not give sufficient reasons for rejecting the expert evidence [§65]. Whilst the other grounds advanced may be less meritorious I have nevertheless not restricted my grant of permission.
>
> 2. Permission is granted".

8. The Respondent did not file a response to the appeal.

The Hearing

9. The matter came before me for hearing on 12 September 2023.

10. It serves no purpose to recite the submissions in full here as they are a matter of record. I shall only set out the main points as follows.

11. Dr Conlan said all grounds were maintained and took me through them. Her additional points of note were as follows:

12. She said, referring to the description of the Respondent's submissions in [25], that the Judge confused the CPIN with country guidance cases and did not therefore properly review the expert report; that report deals with the Appellant having two children by different fathers and the issues they would face accordingly; the Judge had been taken to the parts of the expert report dealing with this, which was separate to the issue of trafficking. She submitted that the expert report was enough in itself to enable a departure from the First Decision's conclusions even if there was no other new evidence to support the Appellant's account.

13. She confirmed that, aside from the expert report, the only new evidence was the Appellant's GP records and the fact of the second child. She said there was also now a translated copy of the family certificate which had been before Judge Aziz who had relied on the untranslated document. She said this made a difference because once translated, it could be seen that it was based on civil status in 2010 and yet listed family members who had not yet been born; this raised questions concerning its validity which in turn infected the First Decision's findings that the Appellant was married to her husband.

14. I confirmed my reading of the First Decision was that the British Embassy letter and family certificate raised questions to which the Appellant had no answer, which was found to have affected her credibility. I queried whether it was not the case that the Judge's subsequent finding, following the First Decision, was that the Appellant has since had ample opportunity to respond to those documents but had still not done so, which again affected her credibility? Dr Conlan was unable to elucidate further in this respect and was also unable to provide the legal or other basis on which I could revisit the First Decision given it had been upheld by the Upper Tribunal and there had been no further onward appeal.

15. As regards the related allegation that Judge Aziz had made assumptions about the Appellant's ability/willingness to make enquiries in Albania, Dr Conlan appeared to confirm that the Appellant herself had not raised any such unwillingness before Judge Aziz or the Judge, but had simply confirmed she had not made any enquiries.

16. I asked Dr Conlan to take me to any part of the expert report that addressed the position of the Appellant returning as a lone woman with *legitimate* children, given the Appellant's account that they were illegitimate appeared to have been rejected. Dr Conlan confirmed the report did not address this point.

17. Dr Conlan said the Appellant's 7 year old son had now received a residence permit granting him leave on the basis of his private life but she only had a poor photocopy. However Dr Conlan accepted that this was new evidence in respect of which no application had been made to adduce it; she took it no further.

18. Ms Arif responded to submit that the Judge's decision was properly reasoned and the Judge properly directed herself; the grounds amount to mere disagreement with the decision. She said the Judge made findings that were open to her; the Judge clearly applied Devaseelan correctly and found the only basis on which the First Decision could be departed from was if there was new evidence available; from [62] the Judge clarified the point about the Embassy Letter and it was put to the Appellant in oral evidence but she had nothing to say; as a consequence the Judge was entitled to find there was no reason to depart from the credibility findings of the First Decision.

19. Ms Arif said, as regards the expert report, the Judge has clearly referred to, and come to reasoned conclusions on, it in [65]. She said the children's best interests were properly considered, which followed from the rejection of the expert report. She submitted the Judge's decision disclosed no errors and should be upheld.

20. In reply, Dr Conlan clarified that the evidence before the Judge concerning the children's private life consisted of photos of both children, letters from friends talking about the relationship, and a copy of the son's application for leave.

21. Dr Conlan repeated again her submissions that the expert report, in describing the impact of a woman returning with two illegitimate children, had not properly been considered. I pressed her to refer me to any part of the report that referred to what the position on return would be if the children were legitimate in case of no error being found as to the Appellant's account being rejected. She confirmed the report did not address this point but questioned how two children conceived in different countries could possibly have the same father. I asked whether it had been argued before the Judge that there was still a risk on return if either of the children were legitimate; she said it was raised in para 23 of the skeleton argument, on the day of the hearing before the Judge and in the

Appellant's witness statement at paras 12 and 17 (which all say the children are not legitimate). She appeared to accept that a description of a submission on the basis that return even with legitimate children was a risk was not in the Judge's decision.

22. Dr Conlan asked me to find there were material errors in the Judge's decision and that it should be set aside and remitted to the First-tier Tribunal for hearing afresh.

Discussion and Findings

23. No challenge has been made to the Judge's decision concerning the law, or burden or standard of proof referred to or applied. Rather it is made against certain of her findings, or alleged lack of findings on certain topics.

24. I shall deal first with the submission that the Judge erred by failing to make a finding as to whether there was procedural unfairness leading to the First Decision. I find no such error.

25. The time for taking issue with any perceived procedural or other unfairness by Judge Aziz was either during or shortly after the hearing before him or during the timeframe for appeal immediately following his decision.

26. Dr Conlan accepts that no challenge was made before Judge Aziz. It is not in dispute that an appeal was brought against the First Decision, which appeal was heard and dismissed by the Upper Tribunal. The Judge sets this out at [7]-[8]. Should the Appellant have wished to take the matter further, the only route available to her was a further appeal to the Court of Appeal, overcoming the high threshold for permission that such an application would have entailed. This route was not taken. I am not aware of any other route by which the Appellant could now seek to have the First Decision reviewed.

27. Therefore, Judge Fenoughty had no jurisdiction to conduct any such review and for her to have done so would likely have led her to err by considering irrelevant matters and going beyond the scope of the appeal before her. The First Decision therefore stands and whether or not there was any procedural unfairness leading to it is not a matter which can be litigated now. This deals with paragraphs 1e, 1f, 1g, 1h, 1i, 1j and 1k of the grounds of appeal, save for the question of the production of a translated family certificate with which I shall now deal.

28. In doing so, I draw attention to, and bear in mind, the guidance given in the headnotes of the recent reported case of Lata (FtT: principal controversial issues) [2023] UKUT 00163 (IAC) which I consider worth setting out in full:

> "1. The parties are under a duty to provide the First-tier Tribunal with relevant information as to the circumstances of the case, and this necessitates constructive engagement with the First-tier Tribunal to permit it to lawfully and properly exercise its role. The parties are therefore required to engage in the process of defining and narrowing the issues in dispute, being mindful of their obligations to the First-tier Tribunal.
>
> 2. Upon the parties engaging in filing and serving a focused Appeal Skeleton Argument and review, a judge sitting in the First-tier Tribunal can properly expect clarity as to the remaining issues between the parties by the date of the substantive hearing.

> 3. The reformed appeal procedures are specifically designed to ensure that the parties identify the issues, and they are comprehensively addressed before the First-tier Tribunal, not that proceedings before the IAC are some form of rolling reconsideration by either party of its position.
>
> 4. It is a misconception that it is sufficient for a party to be silent upon, or not make an express consideration as to, an issue for a burden to then be placed upon a judge to consider all potential issues that may favourably arise, even if not expressly relied upon. The reformed appeal procedures that now operate in the First-tier Tribunal have been established to ensure that a judge is not required to trawl though the papers to identify what issues are to be addressed. The task of a judge is to deal with the issues that the parties have identified.
>
> 6. The application of anxious scrutiny is not an excuse for the failure of a party to identify those issues which are the principal controversial issues in the case.
>
> 7. Unless a point was one which was Robinson obvious, a judge's decision cannot be alleged to contain an error of law on the basis that a judge failed to take account of a point that was never raised for their consideration as an issue in an appeal. Such an approach would undermine the principles clearly laid out in the Procedure Rules.
>
> 8. A party that fails to identify an issue before the First-tier Tribunal is unlikely to have a good ground of appeal before the Upper Tribunal."

29. Dr Conlan submitted that the Judge had sight of a translated version of a family certificate, which translation was not before Judge Aziz, albeit the untranslated certificate was. The grounds do not explain clearly why the translation should have been considered as 'new' evidence; Dr Conlan expanded on the grounds at the hearing to essentially say that the date of the certificate when viewed against its content made it unreliable.

30. I cannot see that this was a point made before the Judge, or that the Judge had any reason to consider the translation to be new evidence.

31. It is not in dispute that the certificate before Judge Aziz was in Albanian, the mother tongue of the Appellant. As such, it is unclear why she would not have been able to raise any points of contention in relation to it before Judge Aziz. Whether she did or not, and what Judge Aziz made of that are, as set out above, matters which can no longer be considered.

32. There is no mention in the Judge's decision of the translated certificate being new evidence, including no specific mention of the translated certificate in the Judge's description of the evidence at [27]-[37], although the British Embassy letter is mentioned at [31] in the context of the Appellant's witness statement discussing it. At [13] the Judge says the Respondent submitted that "Other than her statement and the birth certificates of her two children, the appellant provided no new evidence".

33. The Judge says at [35] that in oral evidence:

> "The Appellant maintained that she married [her husband] in July 2014 in Albania, and she left around two months later. She had nothing to say about the letter which showed that he left the country in October 2013. She had no documentary evidence of the marriage. She said there may be evidence in Albania, but she was unable to collect it".

34. It is not clear to me that the Appellant did in fact rely on the translated certificate as 'new evidence' before the Judge. Para 14 of the Appellant's skeleton argument states (with my emphasis in bold):

> "A relies upon the information that she has given in her statement of evidence for this appeal in which she has given additional details about her marriage which have not previously been requested. The fact of her marriage to [her husband] has not been doubted although **it is only her word that she is married to him; the family certificate does not provide that information**. **It is the date of her marriage and the information in the British Embassy letter about [her husband's] departure from Albania on 9 October 2013 that led to the conclusion that the marriage could not have been on the date claimed**".

35. It is not said that the British Embassy letter mentioned in this paragraph is not in the same language and format as was before Judge Aziz; this document was therefore definitely not new evidence. It appears from the above paragraph that it was the British Embassy letter that was considered even by the Appellant to be the pivotal document, and actually the family certificate did not provide information which went to the marriage. The skeleton states as much in clear terms by saying "the family certificate does not provide that information".

36. I note the Appellant's most recent witness statement refers to the family certificate but does not make any assertion that the English translation provides any information which was not previously available. As to its content, the Appellant simply states at para [9] that "As I have said above, I am listed as a member of their family on their family certificate which the Home Office obtained in December 2016". The point as to the contents of the translated certificate revealing something that the untranslated certificate did not therefore appears to be in the nature of submissions made by Dr Conlan, and not something the Appellant herself has said.

37. I accept there is no section headed 'Appellant's Submissions' but the Judge does describe the Appellant's submissions in detail at [45]-[54], the relevant parts of which, as regards the family certificate and question of new evidence, are as follows:

> "[46] At the previous hearing there had been significant procedural unfairness. The most significant document relied on by the judge was the letter from the Embassy, with the attached, untranslated, family certificate It is not known whether this point was raised in the appeal to the Upper Tribunal.
>
> [52] the GP records were not before the previous judge….
>
> [53] Dr Conlan was asked if she wished to make any submissions regarding the absence of any attempt by the appellant to obtain evidence of the date of her marriage. She said she had asked, and the appellant maintained that she was married in 2014.
>
> [54] Dr Conlan was asked if the issue of procedural unfairness had been raised in the appeal against the first decision. She presumed it had not, as the appellant's representatives had allowed the appeal to proceed at the time. She said no weight should be placed on the British Embassy letter, as the appellant did not have the opportunity to answer it. She accepted that the appellant had now had that opportunity, but said the issue is the reliance on the document and how it was used."

38. As can be seen, there is nothing to indicate any submission was made to the Judge that the presence of a translation of the same family certificate that was before Judge Aziz constituted 'new' evidence, nor what its translation revealed that the Appellant now sought to rely on.

39. The Judge addresses the point at [58] – [63], correctly stating at [59] that the starting point is the First Decision pursuant to the case of Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka * [2002] UKIAT 00702, which the Judge cites via the case of SSHD v BK (Afghanistan) [2019] EWCA Civ 1358. This much has not been challenged. She goes on to correctly state:

> [60] … "there would only be a basis to argue departure from [Judge Aziz's] findings if there were evidence now available which had not been before him.
>
> [61] In the five years since the first hearing, the appellant has had every opportunity to present new evidence. She has made fresh submissions three times since then, in November 2018, March 2020 and February 2021, challenging the 2020 refusal by initiating proceedings for Judicial Review.
>
> [62] Despite making repeated challenges to the decisions made in her case, the appellant presented nothing to the tribunal in the way of new evidence which would indicate that Judge Aziz should have placed less weight on the Embassy letter. When asked about it in oral evidence, she had nothing to say.
>
> [63] I find that there is no reason to depart from the credibility findings of Judge Aziz.

40. Overall, I find the Judge committed no error concerning the presence before her of a translated version of the untranslated family certificate that had been before Judge Aziz.

41. Paragraph 1j of the grounds of appeal submits that the Judge's finding at [61] is erroneous in concluding that the Appellant has had every opportunity to present new evidence, specifically in relation to her marriage, and it is erroneous because this assumes the Appellant is willing/able to communicate with her estranged in-laws who hold that information. I cannot see any evidence that the Judge made any such assumption. The Judge does not indicate what evidence she expected to see or that she considered the Appellant should have produced. Rather the Judge is simply making a statement of fact that no new evidence had been produced despite the Appellant making repeated challenges.

42. Dr Conlan confirmed before me that the new evidence comprised of the country expert report, GP records and translated family certificate. I have dealt with the family certificate above. The GP records are not said to have provided any new evidence supporting the Appellant's account of events prior to making her protection claim. Nevertheless, the Judge reviewed the GP records and made a finding at [67] that "the information revealed by medical records does not indicate that her health condition has changed" and at [68] that "There is no evidence of any health condition that was not present when Judge Aziz made his decision in February 2018, nor evidence that her mental health has deteriorated since then". This has not been challenged.

43. This leaves the country expert report of Vebi Kosumi dated 18 August 2022. The Appellant submits that the Judge did not properly engage with the contents of this report.

44. As is not disputed, the starting point for the Judge's decision was the First Decision (contained in the Respondent's bundle), in accordance with the well-established principles arising from the starred decision of Devaseelan cited above. The Judge confirms as much in [10] and describes the findings of the First Decision in [15] when detailing the contents of the refusal letter, being that:

> "The immigration judge did not accept that the appellant had been a victim of trafficking, or that she did not know the whereabouts of her husband".

45. Having found at [60] – [62] that there was no new evidence of the Appellant's account of events in Albania, the Judge's finding that there was no reason to depart from the findings of the First Decision as to credibility in relation to that account was open to her and was reasonable. It is unclear to me how she could have reached any other conclusion. As Devaseelan says, the first Adjudicator's determination is "the authoritative assessment of the Appellant's status at the time it was made". That assessment in the First Decision was that the Appellant had not been candid in her account, including with regard to the whereabouts of her husband and who the father of her child was; as such, no material aspect of her claim was accepted and she was found not to be a victim of trafficking. If nothing new had been brought to support the account previously assessed then it remained as it was, and it had been rejected. By finding no basis on which to depart from Judge Aziz's finding as to credibility, the Judge was effectively repeating his finding of rejecting the historical account herself. Whilst she could have set this out expressly in an additional sentence, I do not consider failing to do so to be an error as it is clear from her decision as a whole, and her several times repeating that there is no reason to depart from the First Decision's findings, that she too found the Appellant's account not to be credible because there was no new evidence in relation to it.

46. It then fell to the Judge to assess whether anything had occurred since the date of the First Decision which could impact on the Appellant's claim. This the Judge does from [64] onwards. In [64] she states:

> "…the new circumstances are that the Appellant now has a second child, and the children are now 4 and 7 years old. I accept the respondent's position that the existence of a second child would not change the overall conclusion regarding the risks that they face in Albania".

47. The Judge's reasons for finding this are set out from [66] –[68] and appear to be that the country expert was not called to give evidence to support their report; the expert's disagreement with other country evidence was not a sufficient reason for departing from country guidance in itself; there was no new evidence that the Appellant's family would subject her to harm as a result of her actions and her health conditions (including mental health) had not changed or deteriorated since the First Decision.

48. The fact that the Respondent may have agreed that the expert was an expert does not mean that the Respondent accepted what was said in the report, particularly if what was said conflicted with the CPINs which are a mixture of country information and the Respondent's own policy.

49. Dr Conlan sought to argue that the Judge did not appreciate that the country guidance related only to trafficked women and not to children but I fail to see how this is relevant. The Judge had rejected the Appellant's historic account of events i.e. that she was trafficked and that her first child was illegitimate. This

finding was sound. This meant the Appellant would be returning as a lone woman who had not been trafficked and with a child that issued from her marriage. Dr Conlan accepted that the expert report does not deal with return on this basis and so it did not assist the Appellant, whether or not it held views counter to country information, country guidance or the applicable CPINs.

50. I accept that there is no discussion of the Appellant's claims that the second child had a different father from the first nor any findings made by the Judge in this respect. I accept that the Appellant refers to this in her witness statement dated 8 February 2021 when she says as follows:

> "12. On 20 July 2018, I gave birth to my second child [L] and no father has been mentioned in the birth certificate as I do not know who the father is. One day I was upset, I went with a friend to a club, I got very drunk and slept with someone I met there, I had a one night stand and as a result I fell pregnant, I do not know who the father is".
>
> 18. …I feel scared for my children as they were born out of wedlock and what could happen to them in Albania.
>
> 21. …I will not be able to get ID for my children because I had children outside marriage I cannot prove they are legitimate children. Their birth certificate does not have any details under the heading Father. I will be regarded as a "whore" and treated badly and my children and I will be subject to discrimination".

51. The Judge refers to this part of the Appellant's statement at [28].

52. The evidence before the Judge of the second child being born of an unknown father appears to have been the Appellant's own word, the birth certificates and the fact that the birth certificates did not name a father for either of the children, having previously said she also did not know the identity of the first child's father.

53. Whilst it may be implied, the Appellant herself does not expressly say in her witness statement that the children have two different fathers nor is there anything in the Judge's decision that indicates the Appellant said it during oral evidence. This is reflected in the submissions made by Dr Conlan detailed in [47] that "It does not go too far to say that the children have different fathers". That was of course a submission, not evidence.

54. The written grounds of appeal do not take issue with the Judge's finding at [64] that the second child did not change things. In this regard, Dr Conlan expanded on the grounds during the hearing before me, submitting not only that the two children had different fathers but that this was highly likely as the children were born in different countries. However, rather than make a clear submission that the Judge failed to properly address the evidence and contention of there being different fathers, Dr Conlan again submitted the Judge had not taken on board the expert report which dealt with the situation of the Appellant returning as a lone woman with two illegitimate children. It was only when I pressed her as to whether the expert report also dealt with the position concerning *legitimate* children that Dr Conlan took me to those parts of the Appellant's witness statement set out above. As also stated above, these concerned the Appellant only having illegitimate children.

55. As above, the finding that the Appellant had not proved the first child to be illegitimate was soundly reasoned and open to the Judge. She would therefore be returning with at least one legitimate child. It appears that this was not properly

appreciated before the Judge, nor is it appreciated still (the same applies to the finding that she had not been trafficked). This explains why there is no evidence of a submission before the Judge that the Appellant would still be at risk if she was returning with at least one legitimate child. My attention has also not been drawn to any evidence that was before the Judge of there being a risk arising from these circumstances. The expert report only dealt with a lone trafficked woman returning with illegitimate children. It ignored the findings of the First Decision completely.

56. Therefore, even if it had been argued before me that the Judge erred in her finding that the addition of the second child did not change things (as above, it was not - somewhat surprisingly), I would have found any such error would not have been material. There was simply no evidence before the Judge as to whether a lone, untrafficked woman returning with one legitimate and one illegitimate child would pose a risk. This deals with grounds 1a, 1b, 1c and 1d, 2a and 2c.

57. This leaves ground 2b; that the Judge erred in her findings regarding the best interests of the Appellant's children [69] [76] and that the private lives of the children were not considered. Given Dr Conlan did not pursue any application to adduce evidence of the eldest child having been granted leave, the position remains as before the Judge, that he had only applied for such leave. Dr Conlan confirmed the evidence of the children's private lives consisted of photos of both children, letters from friends talking about the relationship, and a copy of the son's application for leave.

58. It is well established that decision makers must have regard to the need to safeguard and promote the welfare of children who are in the United Kingdom pursuant to section 55 of the Borders, Citizenship and Immigration Act 2009, which the Judge refers to as applicable at [56]. The Judge had earlier referred at [20] to the case of Azimi-Moayed and others (decisions affecting children; onward appeals) [2013] UKUT 00197(IAC) in the context of setting out the respondent's case.

59. The Judge finds at [69] that:

> "In making this decision, I have considered the best interests of the appellant's children. Their interests would be best served if they were to live with their mother, even if the standard of living, education, and opportunities they might have in Albania are less that [sic] they might be in the UK. They are now four and seven years old, they are Albanian citizens, and they understand Albanian, their mother's native language. Whilst they have attended nursery and school in the UK, they are still very young, and there would be facilities to support them and their mother if she returned with them to her home country."

60. And later that:

> "[76] The children's bests interests would be served by remaining with their mother. Although the appellant's son is now seven years old, and is at school in the UK, there is no evidence of any particular ties to the UK which, if broken, would result in harm. He is very young, and primarily relies on his mother for all his needs.
>
> [77] In this case, insofar as there would be any interference with the private and family life of the appellant and her children, I find there is no reason to depart from the previous decisions in this case, and I find that the decision is proportionate, on the basis of the public importance in maintaining immigration controls."

61. I see no error in these findings. The Judge has clearly had regard to the evidence before her, referring as she does to the children's ages, language, nationality and educational settings. It is trite that a judge need not set out each and every piece of evidence before them when reading their decisions. It is correct that there is no evidence indicating that the son would suffer harm should his ties to the UK be broken. The son has not been granted leave to remain in the UK. Making an application does not mean that leave will be granted in accordance with it. Whilst the case of Azimi-Moayed did indeed say some policies, past and present, have identified seven years as a relevant period indicating lengthy residence, and that lengthy residence can lead to the development of ties that it would be inappropriately to disrupt, that is caveated by it being "in the absence of compelling evidence to the contrary". It is also caveated by saying "seven years from the age of four is likely to be more significant to a child than the first seven years of life".

62. The Judge had already found that the Appellant had not made out her protection claim, nor were there any significant obstacles to her integration [71] such that she did not meet the immigration rules and had no basis of stay unless she could prove refusal would result in a disproportionate breach of article 8. In this regard, the Judge finds at [73] that:

> "…There was very little evidence of the appellant's private life. Apart from her children she has no family in the UK."

63. Overall, the Appellant was found to have no basis for remaining in the UK. I cannot see that it was either argued or evidenced that either or both of the children had such strong private lives or ties to the UK in their own right that this would mean it was in their bests interests to remain in the UK without their mother. Such a finding would have been unusual given their respective ages. The Judge's conclusions are sound and disclose no error.

64. To conclude, I find the decision is not infected by any material errors of law. The decision therefore stands.

Notice of Decision

1. The appeal to the Upper Tribunal is dismissed. The decision of First-tier Tribunal Judge Fenoughty promulgated on 16 May 2023 is maintained.

2. An anonymity direction is made due to the nature of the issues underlying the appeal.

L.Shepherd
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
15 September 2023