



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-004831

First-tier Tribunal No:
HU/57029/2022
LH/03332/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 28 December 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE BLACK

Between

**MRS FATBARDHA LUSHI
(NO ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr L Youssefian (Counsel instructed by Oaks solicitors)

For the Respondent: Ms S LeCointe (Senior Home Office Presenting Officer)

Heard at Field House on 13 December 2023

DECISION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge Mailer dated 21 September 2023 ("the Decision") dismissing her appeal against the respondent's decision dated 17 September 2022 refusing entry clearance under Appendix FM on the grounds of family life with her partner.

2. The facts are not in issue. The appellant, a citizen of Albania, married her sponsor on 15.10.2021 and they had a child L, born on 6.9.2022. The sponsor has a daughter V, born on 29.8.2012 in the UK from a previous relationship. The sponsor shares parental responsibility for V with his former partner and sees V on a weekly basis. He was first granted leave under the 10 year parent route on 7.2.2019 and which was extended until 1.3.2024 (access rights to a child). As such his limited status does not permit any spousal application for entry clearance, but it was accepted that otherwise the requirements of Appendix FM were met. The sponsor visited the appellant and his son when he was able to do so. The appellant relied on an independent social worker's report which concluded that the best interests of the two children lay in the sponsor remaining in the UK (and the appellant and their son joining him in the UK).
3. In the Decision the Judge found that there were no exceptional circumstances as the refusal maintained the status quo [79]. It was not reasonable for V to relocate to Albania and she could make visits to see the sponsor [67]. There was no evidence of difficulties that the sponsor may have in securing employment in Albania [69]. The Judge placed little weight on the family life with the appellant given that it was established when his status was precarious [84]. The Judge acknowledged that it was in the best interests of the two children to have the opportunity to develop a bond as siblings [75]. The Judge focused on the fact that the sponsor had made a number of visits to Albania and that V had travelled with him on a number of occasions and found that she could continue visiting him in Albania [78]. In dismissing the appeal the Judge found there were no exceptional circumstances and concluded that there was no reason why the relationships between the appellant and the sponsor and the children could not be maintained through visits and telephone and other means of communication [86].

Grounds of appeal

4. Ground 1 - the Decision was unclear as to what suitable arrangements were to be made for the children and family members in the event that the appellant remained in Albania receiving visits from the sponsor. The Judge's findings were contradictory given that the status quo was the sponsor living in the UK and visiting the appellant.
5. Ground 2 - the Judge failed to consider where the best interests of the two children lie save for the finding at [75].
6. Ground 3 - the Judge failed to take into account the findings and conclusions made in the social worker's report.
7. Ground 4 - the Judge failed to take into account the Home Office's own guidance as to exceptional circumstances as a partner or parent dated August 2022.
8. Ground 5 - the Judge erred in wrongly considering the English language requirements when the respondent had accepted that they were met. The

Judge erred by limiting consideration of family life to that between the appellant and sponsor.

Permission to appeal

9. Permission to appeal was granted by FTJ Dainty who found it was arguable that there was a failure to meaningfully consider the best interests of the children, in particular the implicit conclusion that V's best interests were served by going from a weekend and holiday relationship with the sponsor to a visit to a foreign country relationship. Further the Judge failed to give reasoned consideration to the expert report.
10. The matter comes before me to determine whether the Decision contains an error of law.
11. Mr Youssefian indicated that he proposed to rely on the first 3 grounds of appeal.

Discussion

12. I intend to focus on grounds 1-3. Grounds 4 and 5 are in my view of less significance. Ground 5 is made out as the Judge factually erred in failing to conclude that the IELTS requirements had been met. Ground 4 was a little vague and was not made out to the extent that the Guidance does not claim to cover all circumstances considered to be exceptional.
13. This was an appeal in which the best interests of the two children ought have been a primary consideration and that what was required of the Judge was to make a meaningful assessment of the impact of the decision on the children and family members involved. Ms LeCointe conceded that there was merit in the first 3 grounds of appeal and the failure to make clear findings as to the best interests of the children amounted to material errors in law.
14. In essence there were two scenarios for the Judge to consider - for V to remain in the UK without her father or for the sponsor to remain in the UK and for his son L to be deprived of the opportunity to develop a bond with his father during the early years of his life. Thereafter the issue was proportionality. I am satisfied that the Judge failed to give these scenarios proper consideration and in so doing failed to adequately assess the evidence relevant to where the best interests of the children lie. There was no clear or meaningful consideration of the impact on either child of the sponsor remaining in the UK or returning to Albania which was material to the appeal. The Decision appears to suggest that the sponsor can move to Albania and receive visits from V and then refers to the refusal maintaining the status quo. There was little reference to the independent expert report which was key to the best interests assessment [60]. The Judge failed to make any findings as to what weight was attached to the report and what was accepted or not accepted in terms of the conclusions

made. Significantly the Judge in reaching a decision gave no real consideration to the impact on L a young baby or how it was envisaged that he could develop a relationship with the sponsor by means of modern communication and occasional visits.

Notice of Decision

15. The Decision involved the making of material errors in law and shall be set aside. The appeal is allowed. Given the contradictory findings and the failure to take into account expert evidence it is necessary for the matter to be remitted to the First-tier Tribunal for a hearing de novo.

G.A. Black

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

19.12.2023