



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-004898  
First-tier Tribunal No: HU/53388/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

19<sup>th</sup> January 2024

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHEPHERD**

**Between**

**MR ADMIR VATNIKAJ**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr C Holmes, counsel (instructed by My UK Visas Ltd)  
For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

**Heard at Field House on 19 December 2023**

**DECISION AND REASONS**

**Background**

1. This matter concerns an appeal against the Respondent's decision letter of 21 February 2023, refusing the Appellant's human rights claim made on 20 January 2023.
2. The Appellant's claim is made on the basis of his parental relationship with his child, Henry Vatnikaj, who, along with his mother Xhejlanda Vucaj, has limited leave to be in the UK.

3. The Respondent refused the Appellant's claim on the basis that he did not meet the requirements of the relevant immigration rules under Appendix FM and/or Appendix Private Life nor were there any exceptional circumstances.
4. The Appellant appealed the refusal decision.
5. His appeal was heard by First-tier Tribunal Judge Meah ("the Judge") remotely via CVP in the virtual region on 13 October 2023, who later dismissed the appeal in his decision promulgated on 16 October 2023. At the hearing before the Judge, the Appellant was represented by counsel Mr Holmes and no one attended for the Respondent.
6. The Appellant applied for permission to appeal to this Tribunal on four grounds which may be summarised as follows:
  - (a) a failure to take account of material matters; the Judge appears not to engage with the fact of the Appellant being separated from the mother of his child. The Judge's finding at [35] that family life can continue between the Appellant and his child in Albania because the child and his mother are Albanian nationals assumes that the Appellant and the child's mother remain in a relationship such that they can decide, between themselves, as to in which country family life should continue. The Judge has wrongly considered the position of a family unit when, in fact, he is considering the conflicting positions of two independent adults, one of whom will not follow the other in the face of her own entitlement to remain.
  - (b) a failure to assess facts as at the date of hearing; at [35] the Judge refers to there being no guarantee that the child and mother's leave will be extended when their current leave expires. The Judge had to assess matters as at the date of the hearing and it was not for him to speculate what might happen after that date.
  - (c) taking immaterial matters into account / inadequate reasoning. At [38] the Judge refers to it being a major factor that there are no court orders stipulating contact and/or access the Appellant and his child such that all contact is by way of informal arrangement between the parents. The public interest draws no distinction between the two types of contact and it is unclear why the Judge considered this to be a major factor going against the Appellant.
  - (d) a failing to ask the correct question. The Judge has failed to ask what is required in the best interests of the child. Although he states at [40] that it would not be against the child's best interests for the Appellant to be removed to Albania, this does not sufficiently address the question of best interests. Alternatively if it is, the Judge's conclusion is irrational given it will be a relatively rare case where a child's best interests do not require the maintenance of an ongoing relationship with both parents.
7. Permission to appeal was granted by First-tier Tribunal Judge Roots on 21 November 2023, stating:
  - "1. The application is in time.
  2. The application raises various grounds. The grounds are all arguable, perhaps most strongly those relating to the fact that had separated from the child's mother.

Whilst this is referred to and it is clear the Judge was aware of it, it is arguable that the Judge failed to take proper account of this fact, for example at paragraph 35 as the grounds allege.

3. The grant of permission is not limited.”

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

### **The Hearing**

9. The matter came before me for hearing at Field House on 19 December 2023.

10. Mr Holmes took me through the grounds of appeal, adding little more of substance.

11. I asked how grounds 1 and 2 were material when the Judge appears to consider the position of the child remaining here without the Appellant in any case. Mr Holmes said it depends on my assessment of ground 4, which comes back to the Judge’s conclusion as to the effect of separation on the mother and child. He said it is unclear from [33] as to what the Judge does or does not accept.

12. Mr Parvar responded as follows:

- (a) Ground 1; the Judge has not assumed a relationship between the Appellant and child’s mother; a single sentence from [35] has been isolated without addressing the Judge’s overall logic and reasoning. The Judge is simply making the point that the mother and child are themselves Albanian which is related to the question of whether they could travel to Albania such that separation is not necessarily permanent and family life could be enjoyed; this is a reasonable factor to consider. At [36] the Judge rejects the explanation as to why they cannot travel, which has not been challenged by the Appellant. It was also reasonable to find in [42] that the child and mother’s leave is finite; there is no reasonable expectation that they can remain in the UK permanently. It was open to the Judge to make these findings; he does not find that they are one family unit.
- (b) Ground 2: the Judge did assess matters as at date of hearing. He finds that the child and mother’s limited leave is a fact which existed as at that date, which is something he was entitled to have regard to. The removal of the Appellant will not sever the relationship; the Judge finds contact and visits can continue.
- (c) Ground 3: it was acknowledged that, in the absence of explanation by the Judge as to why a distinction has been made between court ordered access and access by informal arrangement, it was unfair to make this distinction. However, any error is not material given everything else is adequately reasoned and rational. There are comprehensive findings on the circumstances of the mother and child. The issue before the Judge was one of proportionality outside the immigration rules; the Judge had to weigh the balance between the Appellant’s circumstances and the public interest and one flawed reference to court-ordered contact does not detract from the rest of his findings.
- (d) Ground 4: a best interests assessment under section 55 is not a freestanding basis on which an individual can establish an entitlement to

remain in the UK; they are primary not paramount. The ground singles out a small part of [40]; the Judge clearly finds it is in the child's best interests to stay with his mother whom he has been with since birth. [41] makes reference to the child's age, the fact that the Appellant only sees him at weekends, and the mother being the primary carer. It is very difficult to see how these reasons are in any way irrational and all of it is supported by the evidence.

13. Mr Holmes replied to the points made by Mr Parvar. Besides further reference to the grounds, he added that:
  - (a) the error in ground 3 is material; the question is whether any rational Tribunal would have come to the same conclusion and it is hard to see how anything cited as a 'major' factor could be characterised as immaterial to the conclusions reached by the Judge;
  - (b) ground 4 - of course it is in the child's best interest to remain with his mother but that is not the end of it; the Judge needed to ask whether it was also in the child's best interests to be separated from his father and he did not do so.
14. At the end of the hearing, I reserved my decision.

### **Discussion and Findings**

15. No issue has been taken with the Judge's summary of the background, applicable law and burden and standard of proof.
16. The Judge's findings are contained in [22] - [44] of his decision, leading to the conclusion in [45]-[46] that the Appellant has failed to make out his case and the appeal is dismissed.
17. Those findings can be summarised as follows:
  - (a) the Appellant is in good health and has family ties and support in the returning country [24] (wrongly stated as Romania but this appears to be a typographical error and no issue is taken with it); there is no reason why he cannot return to Albania [25] and there are no very significant obstacles to integration for the purposes of Appendix Private Life [26]
  - (b) as regards the Appellant's case outside the rules, he is playing some part in his child's life but this is not something capable of tipping the ECHR Article 8 proportionality assessment in his favour because:
    - (i) the child is not a Qualifying Child pursuant to Section 117B (Nationality and Immigration and Asylum Act 2002) [34]
    - (ii) the Appellant is an illegal entrant who admits his motivation for coming illegally was purely for economic reasons. This is major factor that goes against him [34]
    - (iii) both the child and his mother are themselves Albanian nationals so family life can continue between the Appellant and his child in Albania, especially when considering they both have limited leave

to remain in the UK for just over a year, and there is no guarantee that this will be extended [35]

- (iv) there is no evidence to support the claim that the child and his mother could not return to Albania owing to a blood feud there and of her brother having refugee status in the UK; this was stated to create the guise that neither she nor the child can return to Albania for family life to continue there [36]; the evidence supports the proposition that the mother's leave was actually granted in order that she could care for her disabled brother and parents [37]
- (v) it is a major factor that there are no court orders stipulating contact and/or access between the Appellant and child; this is by way of informal arrangement between the Appellant and mother [38]
- (vi) the best interests of the child are a primary consideration [39]; it is in the best interests of the child to stay with his mother and her family here with whom he has been residing since his birth, whilst they have lawful leave to stay in the UK ; it would not be against the child's best interests for the Appellant to be removed to Albania as an illegal entrant towards achieving the aim of proper maintenance of immigration control [40]
- (vii) the child is still very young and is pre-school age; it is therefore unlikely that he will be majorly impacted by the Appellant's departure, especially as he is only seeing the Appellant at weekends and his bond and connection will primarily be with his mother as main carer and guardian [41]
- (viii) contact with the child can be by other alternative means of modern communication and the child can also travel to Albania to physically see the Appellant there given there is no risk on return and the child and mother are Albanian nationals with limited leave to be in the UK [42]
- (ix) the Appellant's ability to speak English and his financial independence are neutral factors; his stay is precarious given that he entered the UK illegally and has never had any lawful leave to remain [44].

18. I now turn to address the grounds of appeal.

19. I do not find grounds 1 or 2 to be made out. There is nothing in the Judge's decision which indicates he considers the Appellant and child's mother to be in an ongoing relationship. The Appellant's claim was made on the premise of his relationship with his child and not also the mother. In [6] and [32] the Judge describes the background that the child lives full-time with his mother but stays with the Appellant at weekends. The child's mother is described throughout the decision as "the mother" and there is no reference to her being the Appellant's partner or to their having a continuing relationship.

20. In looking at a particular sentence of [35], the grounds ignore the Judge's reasoning as a whole and the context in which the finding is made that family life

could continue in Albania. The Judge finds that family life can continue in Albania due to all of those reasons given in [35], [36] and [42] i.e. that (having found in [24]-[26] that the Appellant is able to return to Albania and would be supported there) the child and his mother are themselves Albanian nationals, they have only limited leave to remain in the UK, there is no reason besides the leave why they could not return to Albania, and contact could be had by remote means and visits. The Judge is not envisaging the Appellant, mother and child returning as a single family unit, but is saying that, because they all come from Albania and are able to return there (whether temporarily for visits or more permanently), there is no real reason why they could not enjoy family life. Even if the mother and child did not have only limited leave to remain, but something more permanent, it is difficult to see with all the reasons given that the Judge would have reached any other conclusion. Even setting aside the question of leave in the UK, there was still no impediment to the mother and child returning to Albania, a country of which they are nationals. Saying that there was no guarantee their leave would be extended was simply stating a fact. The Judge does not speculate as to what may happen once their current leave expires, but simply notes that it will expire. He finds that whilst leave is continuing, family life can continue between the Appellant and his child by remote means of contact and visits [42].

21. In any case, the Judge in [41]-42] considers the alternative scenario that the child remains in the UK whilst the Appellant returns, and finds that this would not be against the child's best interests. As such, even if the Judge had erroneously addressed the position of the Appellant, mother and child returning as a single family unit (which, as above, he does not), it would not have been material in any event.
22. As regards ground 3, the Judge states the following at [38]:
 

"Another major factor is that there are no court orders or anything of this nature from any UK court stipulating contact and/or access under prescribed terms hence the contact currently claimed to be in place by the appellant is all by way of informal arrangement between the parents of the child."
23. I agree that whether or not contact between the Appellant and his child was by court order or informal arrangement was an irrelevant consideration; the point was that there was ongoing contact. I also agree that the Judge does not give any of adequate reasons as to why he considers the lack of court-ordered contact to be a 'major factor'. This is an error.
24. However, I do not consider this error to be material to the outcome of the decision. I note in particular, the Judge says this is '*another* major factor'. As can be seen from my description of the findings above, the first 'major factor' referred to by the Judge was that the child is not a Qualifying Child under s.117B and the Appellant is an illegal entrant who came to the UK purely for economic reasons. This other major factor is not infected by any error. Several other reasons were also given as to why the Appellant's claim did not succeed. Even discounting the Judge's erroneous finding concerning court-ordered contact, I consider it is likely he would still have reached the same overall conclusion.
25. It follows that I do not find ground 3 to be made out.
26. As regards ground 4, under section 55 of the Borders, Citizenship and Immigration Act 2009, the Judge was obliged to have regard to the need to safeguard and promote the welfare of children who are in the United Kingdom; in

this case, the Appellant's child. At [31] the Judge notes relevant case law in relation to the question of the child's best interests.

27. At [39] the Judge states:

"In relation to the best interests of the child, this is of course a primary consideration and it is unnecessary for me to rehearse here the wealth of trite established case law and authorities in addition to those mentioned in paragraph 31 above, which govern the best interests of the child and how this must be approached and assessed in immigration appeals such as this".

28. In [32]-[38] the Judge considers the circumstances of the Appellant's child, including his age, with whom he lives, what part the Appellant plays in his life, the circumstances of each of his parents in terms of leave to be in the UK and nationality; the circumstances in Albania facing all of them; and the contact that could be had if the Appellant were to return to Albania leaving the child in the UK with his mother.

29. I fail to see what aspect of the best interests assessment the Judge has not addressed adequately. As per Baroness Hale's dicta in AH (Sudan) v Secretary of State for the Home Department [2007] UKHL 49; [2008] 1 A.C. 678, at [30]," it is probable that in understanding and applying the law in their specialised field the tribunal will have got it right". Whilst the Judge does not specifically say that the starting point is that it is in the child's best interest to remain with both of his parents, he does refer in [31] to cases which set this out. He also specifically says in [39] that it is unnecessary for him to rehearse the wealth of established case law and authorities in relation to best interests. I find it clear that the Judge was aware of the starting point and the questions that he had ask i.e. what are the child's best interests and how are they served. Having done so, he arrives at his conclusion in [40] that:

"it is in the best interests of the child in this matter to stay with his mother and the mother's family here with whom he has been residing since his birth, whilst they have lawful leave to stay in the UK. In other words, I do not find that it would be to his detriment or that it would go against his best interests for the appellant to be removed to Albania as an illegal entrant towards achieving the aim of proper maintenance of immigration control which must take precedence in this matter."

30. It is clear from this paragraph that the Judge has considered whether it is in the child's best interests to be separated from his father by the Appellant being removed to Albania, and finds that the child's best interests do not require the Appellant to stay. He further explains this finding in [41] and [42], in light of the child's age, his mother being the primary carer, his limited amount of contact with the Appellant and because a relationship can be maintained by remote means and visits.

31. Having reviewed the evidence that was before the Judge, very little detail of the nature of the relationship between the Appellant and his child is disclosed beyond the fact of contact. It is therefore difficult to see what more the Judge could have made of it.

32. Overall, I consider the Judge's findings to be soundly reasoned and open to him on the evidence. Ground 4 is in the nature of mere disagreement with these findings and discloses no error.

33. Accordingly, I find the grounds are not made out.

34. 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 Meah promulgated on 16 October 2023 is maintained.
2. No anonymity direction is made.

**L.Shepherd**  
Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
**16 January 2024**