IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-002369

First-tier Tribunal No: HU/51636/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 22 October 2024

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

AGOSTIN DODAJ
(no anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Faryl, instructed by Obeid Solicitors
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

Heard at Manchester Civil Justice Centre on 21 October 2024

DECISION AND REASONS

1. The appellant is a citizen of Albania born on 28 May 1982. He appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse his human rights claim.

2. The appellant entered the UK illegally on 1 April 2017 and made several unsuccessful applications for an EEA residence card and under the EUSS between 2019 and 2022. On 25 April 2022 he applied for leave to remain on the basis of his family and private life in the UK, specifically as a parent of his son BK.

3. The respondent refused the appellant's application in a decision dated 20 January 2023. The respondent considered that the appellant did not meet the eligibility requirements as a parent because his claimed child was not British, was not settled in

the UK and had not resided in the UK for seven or more years. The respondent noted that the appellant claimed to no longer be in a relationship with the child's mother and that his ex-partner had EU settled status in the UK. The respondent noted that the child's birth certificate showed another male named as his father and that there was no evidence to show that the appellant was biologically related to the child. The respondent considered that, in any event, the child could continue to reside in the UK with his mother if the appellant had to leave the UK and that it was reasonable for the child to remain in the UK. The respondent considered that the appellant did not meet the private life requirements in paragraph 276ADE(1) and that there were no exceptional circumstances justifying a grant of leave outside the immigration rules.

4. The appellant appealed against the respondent's decision. His appeal was heard in the First-tier Tribunal by Judge Gould on 11 March 2024. The appellant provided an appeal bundle for the appeal which included a DNA report confirming him to be BK's father. The appellant gave oral evidence before the judge, as did BK and two other witnesses. The judge also had before him a handwritten letter from BK's mother, in the respondent's appeal bundle.

5. The judge concluded, on the basis of DNA evidence produced for the appeal, that the appellant was the father of BK. He noted that BK lived with his mother in London whilst the appellant resided in Manchester, but that BK had regular meetings with the appellant. He found that the appellant had "intermittent contact" with his son and that that could continue in the event of his return to Albania by way of visits or social media. The judge found that any interference with the appellant's family and private life was proportionate and he accordingly dismissed the appeal on Article 8 grounds.

6. The appellant sought, and was granted, permission to appeal to the Upper Tribunal on the grounds that the judge had made contradictory findings about the contact between the appellant and his son which materially impacted upon his proportionality assessment. There was no challenge by the respondent to the judge's finding that the appellant was the father of BK.

7. The matter then came before me at a hearing. For the hearing the appellant produced further evidence in the form of confirmation of the grant of settled status under the EUSS to BK on 6 June 2024 and confirmation of BK's place at a college in Manchester.

8. Mr Bates conceded that Judge Gould had made an error of law in his decision, both in regard to his contradictory findings on contact with his son at [32] and [33] and in regard to his findings on the best interests of the child at [35]. Having consulted his records and accepted, at my instigation, that BK had been resident in the UK for over seven years at the time of the hearing before Judge Gould, and that section 117(B)(6) of the Nationality, Immigration and Asylum Sct 2002 therefore applied, Mr Bates also conceded that the appeal should succeed under Article 8 and that the decision should be re-made by allowing the appellant's appeal against the decision to refuse his human rights claim.

9. Accordingly, in light of Mr Bates' concession, I advised the parties that I was setting aside Judge Gould's decision and would re-make the decision by allowing the appellant's appeal on human rights grounds on the basis that his removal from the UK would be disproportionate and in breach of his Article 8 rights. There was clearly an established family life between the appellant and his son BK and, given that the appellant had a genuine and subsisting relationship with a qualifying child, and that it would not be reasonable to expect BK to leave the UK, the public interest did not

require the appellant's removal from the UK, pursuant to section 117B(6) of the NIAA 2002.

Notice of Decision

10.The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. First-tier Tribunal Judge Gould's decision is set aside. I re-make the decision by allowing the appellant's appeal.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 October 2024