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

Case No: UI-2024-003670

First-tier Tribunal No:
LH/03938/2024
HU/62100/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**
**On 31 January 2025**

**Before**

**UPPER TRIBUNAL JUDGE BLUNDELL**
**DEPUTY UPPER TRIBUNAL JUDGE BURGHER**

**Between**

**NM (A MINOR)**
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mr A Slatter, Counsel, instructed by Morgan Pearse Solicitors
For the Respondent: Ms A Nolan, Senior Presenting Officer

**Heard at Field House on 24 January 2025**

**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

1. The Appellant is a child and was born on 23 April 2022.

2. This is the decision of the panel and includes the contributions of both judges.

3. There has been no request to anonymise the parties but the appellant is two years old. Applying the presumption at [33] of the Upper Tribunal's Guidance Note No 2 *Anonymity Orders and Hearings in Private*, however, we have ordered anonymity of our own volition on account of his age.

## Background

4. The appellant applied for leave to remain on 17 January 2023 under the Appendix FM (Child) route. This application was refused by the Secretary of State on 5 October 2023. The appellant appealed this decision by notice of appeal dated 9 October 2023. The Secretary of State reviewed the refusal on 23 April 2024 and upheld the decision.

5. FtT Judge S Taylor heard the appellant's appeal on 17 June 2024 and dismissed it by decision and reasons sent on 21 June 2024. The appellant appealed to the Upper Tribunal by notice of appeal dated 2 July 2024. FtT Judge Dainty granted permission to appeal on 8 August 2024.

6. The appellant's appeal against the decision of FtT Judge S Taylor was subsequently heard by UTJ Blundell on 21 November 2024. The appeal was allowed with decision and reasons being sent on 22 November 2024. UTJ Blundell accepted the submission made by both parties that the FtT decision involved the making of an error on a point of law and the decision was set aside to be remade afresh at this resumed hearing.

## The Legal Framework

7. At the outset of the hearing the parties accepted that given the deletion of paragraph APP PL3 and 4 of HC217, which took effect on 8 October 2024, that in remaking the appeal, it was necessary to focus consideration on the requirements in paragraph PL 21A.1 and the requirements in Appendix Children. We adopted this course.

8. PL 21A.1 states:

> PL 21A.1 and the requirements in Appendix Children to which that paragraph refers.
>
> PL 21A.1. The applicant must meet the following requirements for a dependent child in Appendix Children:
> (a) independent life requirement; and
> (b) care requirement; and
> (c) relationship requirement: entry clearance and permission to stay.
>
> PL 21A.2. The applicant must have been born in the UK.

9. The relevant paragraphs of APP CHI state:

**Age Requirement**

CHI 1.1. The applicant must be under the age of 18 on the date of application unless CHI 1.2 applies.

CHI 1.2. .....

**Independent Life Requirement**

CHI 1A.1. The applicant must not be leading an independent life.

**Care Requirement**

CHI 2.1. If the applicant is under the age of 18 on the date of application, there must be suitable arrangements for the child's care and accommodation in the UK which must comply with relevant UK law.

**Relationship Requirement: Entry Clearance and Permission to Stay**

CHI 3.1. Where the application is for entry clearance or permission to stay, the applicant must be the child of a parent (P) where one of the following applies:

(a) P has entry clearance or permission to stay on the same route the applicant is applying for; or

(b) P is, at the same time, applying for (and is granted) entry clearance or permission to stay on the same route the applicant is applying for; or

(c) P is settled or has become a British citizen, providing P previously had permission to stay on the same route the applicant is applying for and the applicant had permission as P's child at that time or was born since P's last grant of permission and before P settled; or

(d) …

(e) …

(f) …

CHI 3.2. The applicant's parents must each be either applying at the same time as the applicant or have permission to be in the UK (other than as a Visitor) unless:

(a) the parent applying for or with entry clearance or permission to stay is the sole surviving parent or has sole responsibility for the child's upbringing; or

(b) the parent who does not have permission:

(i) is a British citizen or a person who has a right to enter or stay in the UK without restriction; and

(ii) lives, or intends to live, in the UK; or

(c) the decision maker is satisfied that there are serious and compelling reasons to grant the applicant entry clearance or permission to stay with the parent who is applying for or has entry clearance or permission to stay or who is covered by CHI 3.2.(b).

10. Section 55 of the Borders, Citizenship and Immigration Act 2009 sets out the duty regarding the welfare of children.

Section 55

(1) The Secretary of State must make arrangements for ensuring that—

(a) the functions mentioned in subsection (2) are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom, and

(b) any services provided by another person pursuant to arrangements which are made by the Secretary of State and relate to the discharge of a function mentioned in subsection (2) are provided having regard to that need.

11. When considering the best interests of the child, and serious and compelling circumstances the reasoning in the decision of Mundeba (s.55 and para 297(i)(f)) [2013] UKUT 88 (IAC) is applicable. Paragraphs 34 and 38 state:

> 34. In our view, 'serious' means that there needs to be more than the parties simply desiring a state of affairs to obtain. 'Compelling' in the context of paragraph 297(i)(f) indicates that considerations that are persuasive and powerful. 'Serious' read with 'compelling' together indicate that the family or other considerations render the exclusion of the child from the United Kingdom undesirable. The analysis is one of degree and kind. Such an interpretation sets a high threshold that excludes cases where, without more, it is simply the wish of parties to be together however natural that ambition that may be.
>
> ...
>
> 38. As a starting point the best interests of a child are usually best served by being with both or at least one of their parents. Continuity of residence is another factor; change in the place of residence where a child has grown up for a number of years when socially aware is important.

12. An appellant's ability to satisfy the Immigration Rules is positively determinative of the issue of proportionality in his appeal. It was held in TZ (Pakistan) and PG (India) v The Secretary of State for the Home Department [2018] EWCA Civ 1109 at [34]:

> The policy of the Secretary of State as expressed in the Rules is not to be ignored when a decision about article 8 is to be made outside the Rules. An evaluation of the question whether there are insurmountable obstacles is a relevant factor because considerable weight is to be placed on the Secretary of State's policy as reflected in the Rules of the circumstances in which a foreign national partner should be granted leave to remain. Accordingly, the tribunal should undertake an evaluation of the insurmountable obstacles test within the Rules in order to inform an evaluation outside the Rules because that formulates the strength of the public policy in immigration control '*in the case before it*', which is what the Supreme Court in *Hesham Ali* (at [50]) held was to be taken into account. That has the benefit that where a person satisfies the Rules, whether or not by reference to an article 8 informed requirement, then this will be positively determinative of that person's article 8 appeal, provided their case engages article 8(1), for the very reason that it would then be disproportionate for that person to be removed.

13. For a separate consideration of Article 8 TZ (Pakistan) states at paragraph 35 that a structured assessment balancing the pros (factors that weigh in favour of family and private life) and cons (factors in favour of immigration control) is to be recommended.

The Burden of proof

14. The burden of proof as to the facts and the engagement of Article 8 ECHR is on the appellant and the standard of proof required is the balance of probabilities. It is for the respondent to establish that an interference with a protected private or family life is proportionate.

The Hearing

15. During the hearing we were referred to relevant pages in a 255-page consolidated pdf bundle. Numbers referred to in square brackets below refer to the electronic pdf bundle page numbers (which were different from the bundle pagination).

16. The hearing bundle included witness statements from the appellant's father, Mr Arben Meta dated 6 February 2024 [78 -79] and 14 January 2025 [31 – 32]; and witness statements from the appellant's mother, Ms Enxhi Nasufi dated 6 February 2024 [73 -77] and 14 January 2025 [29 – 30].

17. Both Mr Arben and Ms Nasufi attended the hearing, gave oral evidence and were cross examined.

18. We were also assisted by an Appellant's written skeleton argument provided by Mr Slatter and by concise and structured closing submissions from both Mr Slatter and Ms Nolan for the Respondent.

Submissions

19. Prior to hearing closing submissions, we clarified with Ms Nolan how the issue of Mr Meta returning to Albania was relevant to the applicable Immigration Rules. This clarification followed the careful line of questioning that Ms Nolan asked of both Mr Meta and Ms Nasufi on the extent to which they had discussed and considered returning to Albania with the appellant as a family unit. Ms Nolan accepted that the Respondent's position was that, for the purpose of the Immigration Rules, Mr Meta is UK based, it was in the best interests of the appellant for him to be with both parents and in respect of this issue it is not part of her case that Mr Meta should be required to return to Albania. However, in respect of Article 8 considerations Ms Nolan maintained that the family unit could relocate to Albania which would not undermine the appellants best interests.

20. Ms Nolan submitted that there were not serious and compelling reasons for the appellant to remain. She contended that the inconsistencies identified go to the nature of the relationship between Mr Meta and the appellant. Specifically, if Mr Meta and the appellant were in fact in a close relationship, there should not have been inconsistency between Mr Meta and Ms Nasufi about the time the appellant went to bed. In respect of Article 8 Ms Nolan submitted that that they could relocate as a family unit to Albania but chose not to. As such the balancing exercise favoured immigration control.

21. Mr Slatter stated that Mr Meta had a strong bond with the appellant, and that Mr Meta was the primary carer, applying at the same time as Ms Nasufi and as such Appendix PL 21A.1 and PL 21A.2 and Appendix CHI have been satisfied to allow the appellant leave to remain.

22. Mr Slatter submitted that if the requirements of Appendix CHI 3.2 was not satisfied then APP CHI 3.2(c) applied in respect of entitling Mr Meta to

apply for leave without Ms Nasufi. The appellant's best interests to stay with his father ranks as a primary consideration on the appeal. He contended that there were serious and compelling reasons to grant the appellant permission to stay. Removal of the appellant would not be in his best interests as it would deprive him of daily contact with his father who he now lives with. There was also the risk of the removal of the appellant to Albania with his mother whose case remains unresolved and the separation of the appellant's direct physical and emotional bond with his father.

23. Mr Slatter added that if the Immigration Rules had been satisfied then this would also dispose of the Article 8 claim per TZ (Pakistan)

Findings

24. We find the following from the available evidence.

25. The appellant was born in the UK on 23 April 2022. Mr Arben Meta and Ms Enxhi Nasufi are his father and mother and are registered on his birth certificate [238].

26. Mr Meta is an Albanian national. On 19 October 2022 he was granted 30 months leave to remain in the UK. This will expire on 18 April 2025, under the Private Life Route [243 – 246]. He states that he will apply to renew this leave as he has no wish to return to Albania.

27. Mr Meta has taken a consistent and active part in the appellant's life from birth. He sees the appellant every day, even though he was previously not living with the appellant and Ms Nasufi. He undertakes ordinary paternal responsibilities such as feeding, bathing, playing and putting the appellant to bed.

28. Mr Meta financially supports both the appellant and Ms Nasufi, he has attended the appellant's medical appointments from 2022 [82 -104] and is recorded as primary next of kin for the appellant for medical appointments [81, 33].

29. Mr Meta is a company director and employs staff in his own roofing business. Mr Meta takes the appellant on normal daily activities such as shopping, playground and café visits. Although he generally works 6 days a week he manages his working hours to regularly take an active role in the appellant's nursery pickup and drop off needs [34].

30. Mr Meta and Ms Nasufi reconciled their personal relationship during 2024 and started living together with the appellant at 5 Oval Road North, Dagenham RM10 9EX just before Christmas in December 2024.

31. Ms Nasufi, is the primary carer for the appellant. She has always resided with the appellant. She does not currently have leave to remain in the UK. She applied along with the appellant as a dependent for asylum on 13 June 2022. These applications were refused and they were informed by letters

dated 11 September 2023 that their applications for asylum were certified as clearly unfounded [170, 188]. Ms Nasufi's leave status is precarious. Her Article 8 application for leave to remain dated 30 October 2023 remains undetermined [120].

32. When Mr Meta and Ms Nasufi were asked whether they had thought about or discussed returning to Albania as a family they both said no. Mr Meta stated that he has been in the UK for over 22 years, more than half his life and that he does not want to be separated from his son.

33. There were inconsistencies in several respects relating to the oral evidence given by Mr Meta and Ms Nasufi, specifically concerning the appellant's bedtime, the number of siblings and contact with family in Albania. There was also inconsistency with the oral evidence that Ms Nasufi gave concerning the duration of her relationship with Mr Meta. She stated that they had always been together but this is contradicted by her 6 February 2024 statement [73 – 77] and statements made during her asylum interview on 23 March 2023 [124 – 168]. However, these inconsistencies did not undermine the nature and depth of the relationship that Mr Meta has with the appellant. Specifically, in the asylum interview Ms Nasufi frankly states that Mr Meta and her were not together but Mr Meta was a "good father" to the appellant and whilst she did not live with Mr Meta he "takes care" of the appellant and saw the appellant "every day" [133, 135, 136, 138]. At paragraph 21 of her 6 February 2024 statement [76] Ms Nasufi states:

> [N]'s father Arben is very much involved in our son's life. They see each other every day and have created a bond together. Arben stays for sleep overs very often and [N] loves when Arben puts him to bed and reads bedtime stories to him…

34. These statements are consistent with the written and oral evidence of Mr Meta and supporting documents and we accept this. We find that Mr Meta has established that he has a strong, uninterrupted and genuine co-parenting relationship with the appellant. Ms Nolan did not suggest that the relationship between the appellant's parents is not as claimed, and we accept that they are in a genuine and committed relationship and that they resumed cohabitation in December 2024.

Conclusions

35. In respect of APP CHI it is not in dispute that the Independent Life Requirement (CHI 1A.1), the Care Requirement (CHI 2.1) and the Relationship Requirements CHI 3.1(a) and CHI 3.3 are satisfied. The appellant, 2 years old, is not leading an independent life, there are suitable arrangements for his care and accommodation in the UK and Mr Meta has leave to remain on the Private Life Route.

36. Ms Nasufi's unresolved immigration status means that she is not a person on whom the appellant's application can be based. Therefore, we do not accept Mr Slatter's submission that Ms Nasufi is a parent that applied at

the same time as Mr Meta for the purpose of APP CHI 3.2. Further, APP CHI 3.2 (a) and (b) are not applicable. Therefore, APP 3.2 (c) and consideration of serious and compelling circumstances is the central issue for us to determine.

37. We conclude that, whilst Mr Meta is not the appellant's primary carer there is a strong bond between him and his appellant son. Mr Meta takes a very important part in the upbringing of the appellant. Breaking this bond would not be in the appellant's best interest. The appellant will be 3 years old on 23 April 2025 and we accept that there is a genuine co-parenting relationship.

38. Applying Mundeba [38], the best interests of a child are usually best served by being with both or at least one of their parents and we consider that it is firmly in the best interests of this appellant that he continues to receive care from both parents. We accept Mr Slatter's submission that there is an additional consideration in this case. The appellant's mother's immigration status is currently unresolved. We are required to determine the appellant's human rights claim on the facts as they stand at the date of hearing. His father has permission to remain in the UK and his mother cannot be removed whilst her human rights submissions are pending. Taking that into account, and considering the best interests of the appellant, we conclude that there are serious and compelling reasons to grant him permission to stay for the purposes of APP CHI 3.2 (c).

39. In these circumstances, following TZ (Pakistan) consideration of the Article 8 balancing exercise was unnecessary.

40. We remake the decision. The appellant satisfies APP CHI 3.2(c) and the appeal is allowed.

**Benjimin Burgher**

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 January 2025