Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/10199/2019

THE IMMIGRATION ACTS

Heard at Field House Remotely	**Decision & Reasons Promulgated**
On 2 December 2020	**On 18 March 2021**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

Y M
(anonymity direction made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms K Reid, Counsel instructed by Marsh and Partners Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant or his partner. Breach of this order can be punished as a contempt of court. I make this order because the Decision and Reasons involves detailed consideration of the appellant's partner's circumstances and she is a refugee and entitled to privacy.
2. This is an appeal against the decision of the First-tier Tribunal to dismiss the appeal of the appellant against a decision of the Secretary of State refusing him leave to remain in the United Kingdom.

3. Permission was given by the First-tier Tribunal particularly because it was found arguable that the:

> "FtT Judge made a material error in law in failing to have sufficient regard to the Appellant's partner's status as a refugee, failing to adequately analyse the basis for this grant of asylum and the risks in her returning to Albania, and/or failing to give clear and sufficient reasons for going behind this grant and finding that, in the circumstances of this case, it is reasonable to expect the children to go to Albania. In addition it is arguable that the judge, in finding that it is in the children's best interests to be with both parents, has failed to have sufficient regard to this factor when considering the particular circumstances of the case as a whole."

4. I begin by looking carefully at the First-tier Tribunal Judge's decision.

5. The appellant is a national of Albania who was born in 1986. He claims to have entered the United Kingdom irregularly by lorry in July 2015 but to have left the United Kingdom in March 2016 after about eight months to go to Germany because of family problems. He says that he re-entered the United Kingdom, again irregularly, in June 2018 and on 18 September 2018 he applied for leave to remain on "private and family life" grounds.

6. When the appellant applied for leave he explained through his solicitors that his partner, who I identify simply as "R", was born in 1995 in Albania, that they have a daughter born in May 2016 in the United Kingdom and that his partner was expecting a second child in March 2019. His partner "R" is a refugee. It was her case that the present appellant is the biological parent of a child (now children) with refugee status in the United Kingdom. They had lived together as a family unit when the appellant looked after the children on a daily basis and he wanted permission to be in the United Kingdom so that he could work to support his family. It was the appellant's case that his family could not live in Albania.

7. The application was refused and the judge considered the Reasons for Refusal.

8. The Secretary of State was not satisfied that the appellant's "partner" was a partner within the definition in the Immigration Rules because they had not been living together in a relationship akin to marriage for at least two years prior to the date of application and, in any event, the appellant was not eligible for leave because he did not hold any leave to enter or remain in the United Kingdom. The respondent found that the appellant had not shown "very significant obstacles to his integration" into life in Albania and that there were no exceptional circumstances warranting a grant of leave outside the Rules.

9. The Secretary of State considered the interests of the appellant's children. At the date of the application his daughter was 2 years and 3 months old and his son was not born until March 2019. The Secretary of State's view was that they were developing language skills and awareness of their surroundings and could adapt. The Secretary of State's reasons included the finding that it was "both reasonable and Section 55 compliant for your children" to return to Albania.

10. It is not clear from that decision if the Secretary of State contemplated separating the children from their mother, who is entitled to be in the United Kingdom.

11. The First-tier Tribunal Judge consider the evidence.

12. The Judge found the appellant's witness statements to be "repetitive" but noted the claim that there were significant obstacles to integration in Albania and that the appellant could not live in Albania with his partner because she was a refugee and was frightened of returning to Albania for a Convention reason. There was little point in his returning to Albania and applying to enter regularly because his partner did not earn sufficiently to support him and her earning capacity was limited by reason of her needing to look after the children and particularly the youngest one, who she was breastfeeding. The appellant regarded separating the children from their mother as a "serious breach of Article 8 ECHR".

13. It is his case that he met his partner in October 2014 and their close relationship started not long after that. He entered the United Kingdom in July 2015 and they started to cohabit in September 2018. He did not explain in his statement his reasons for going to Germany and living there for two years.

14. The appellant's partner gave evidence and confirmed the details of the onset of their relationship and described the appellant as her "future husband". At the time of the hearing they had two children. She feared that if the appellant were returned to Albania her family would be destroyed. She did not intend to leave the United Kingdom because she was afraid. She said she would not agree to the children going to Albania as she did not think it would be safe for them.

15. They had not been able to marry because the Secretary of State had retained her husband's passport.

16. When he gave evidence the appellant explained that he had travelled to Germany as his brother had suffered bleeding in the brain and the appellant wanted to help. His evidence was that he and his partner were not "engaged" but they did live together and had two children. It had not been legally possible to marry.

17. He agreed that they had not cohabited for two years because cohabitation began in September 2018. He accepted that his partner was aware of his immigration status and he said they had arrived together when she was escaping a family problem.

18. He explained that his partner had claimed asylum in 2016. They had lived together since they arrived in the United Kingdom together but he went to Germany and thus broke their continuity of residence. He did not want to claim asylum before he went to Germany as he did not know how the process would work. The Home Office had invited him to claim asylum in a letter dated 7 May 2019 but he said he would do that if his human rights application were refused.

19. The appellant's partner gave evidence. She said that the basis of her asylum claim was threats from her father, who did not agree with her choice of partner. Her father wanted her to marry an old person who would pay the family money.

20. She said that they resumed cohabitation in September 2018. She was not working because she wanted to give her attention to her 7 month old son.

21. Helpfully and realistically the appellant by his Counsel, Ms Reid, conceded that the appellant was not her "partner" within the meaning of the Rules.

22. Ms Reid confirmed that it was accepted that the trip to Germany broke the continuity of residence but she submitted that there was an insurmountable obstacle in the path of the relationship continuing outside the United Kingdom. She said the children could not leave the United Kingdom without their mother and the mother could not leave because it was not safe.

23. The judge noted that there was little supporting evidence about the intensity and longevity of the relationship although the judge did seem to be satisfied that the appellant and his partner do now cohabit and that the appellant is involved in the lives of the children. For example, the judge accepted evidence that the appellant is known to the eldest child's nursery school and that he collects her from there.

24. At paragraph 29 the judge noted the appellant's case that the appellant's partner and children are refugees and cannot be expected to return to Albania. About this the judge said:

> "It is right that they cannot be expected to return however, this is still a choice available as the claim relates to the partner's difficulty with her family, she would not be returning to Albania to live as a lone woman or a single parent. She would[?] have the appellant's support and there is no evidence which suggests that her family have influence throughout the country and that she could not live with the appellant and the children in another part of Albania."

25. The judge went on to say that the children were young and that their best interests were to be with their parents.

26. At paragraph 31 the judge made an alternative finding. She said that the appellant could return to Albania and keep in contact with his family as he did when he was in Germany.

27. She found the appellant's reluctance to claim asylum indicative that he did not have a sound protection claim but said in reality he had spent little time actually living with his family and his partner was able to manage in his absence. His partner had never worked in the United Kingdom but had supported the children from public funds and noted that the letter showing the appellant to be known to the nursery school also indicated that he did not take primary responsibility for taking the child to and from nursery. The judge found any interference in private and family life consequent on his removal to be proportionate.

28. The judge then noted the appellant's weak ties in the United Kingdom. There was no evidence of his "integration" and his residence had been for a short term only. She said it was not unreasonable or disproportionate for the appellant to return to Albania.

29. There are two grounds of appeal. The first complains that the judge had "essentially redetermined the appellant's partner's asylum claim". She said it had been established that internal relocation was not an option because her

asylum claim had succeeded. There was no evidence before the Tribunal that the appellant's partner would not be at risk if he were there with her.

30. Secondly it was said that there had been a failure to give proper consideration to the best interests of the children.

31. Special directions were issued in this case in a view to making an expeditious decision during the time of national lockdown and this led to the respondent serving written submissions dated 4 June 2020. They are signed by Mr Clarke.

32. In response to ground 1, contending that the appellant's partner is a refugee and could not be expected to return to Albania, the submissions argue that the First-tier Tribunal allowed the appeal of the appellant's partner specifically because she feared her father because she was single. At that point it was her case that her partner had gone to Germany to visit his brother and she had not had further dealings with him. Against this background the First-tier Tribunal Judge found at paragraph 54 that "the appellant is reasonably likely to fall into the category of women perceived as kurva as she is returning as a single mother" and this created a risk of persecution that could not be addressed by internal relocation. The summary written submissions contended that the First-tier Tribunal was absolutely entitled to find that she would not be returning as a lone woman or single parent and therefore in the category of people who risk persecution.

33. Mr Clarke then gave substance to this by producing a copy of the decision of the First-tier Tribunal Judge which was in appeal number PA/12351/2016.

34. Ground 2 complaining that the First-tier Tribunal Judge had not given proper consideration to the best interests of the children is dismissed almost summarily by Mr Clarke. He contends that the ground depends on a misunderstanding of the nature of the appellant's partner's case. The problem was in her returning alone and that problem is not contemplated now.

35. The First-tier Tribunal Judge's decision in the appellant's partner's case is of limited value because it was not before the First-tier Tribunal. Rather disappointingly the Secretary of State did not ensure that it was available. It would have been helpful. However, its real value to me is to confirm that the judge's finding the reason for the partner being given asylum was fear of her father because she was single woman with a child.

36. It is not absolutely clear on what basis the judge reached that conclusion but there was evidence before the judge that is not recorded in any detail before me and I am certainly not suggesting the judge was not entitled to reach that conclusion on what was before him.

37. Mr Clarke contended that this was the proper approach, particularly in light of the decision of the Court of Appeal in **AL (Albania) v SSHD [2019] EWCA Civ 950**. I find Mr Clarke's submission is right but did not understand them to be subject to significant challenge on the law.

38. I have reflected on the oral submissions as well as the written matters that I have noted. If there was any suggestion in the First-tier Tribunal's decision that the children should go and leave their mother behind then I would find that surprising. The children are entitled to be in the United Kingdom and at

present their mother is entitled to be with them. If they are not going to have contact with their father then the evidence only points in favour of saying that their best interests lie in remaining where they are in the United Kingdom lawfully in the day-to-day care of their mother with some contact with their father when he is able to arrange it. Presently he is living with them but that has not always been the case. Clearly this couple have found a way of exercising a family life whilst living apart.

39. However, as the First-tier Tribunal clearly recognised, whatever the best interests of the children are, there is a strong proportionality argument in making decisions that do not allow people to prosper from casual disregard of the requirements of immigration control such as occurred here.

40. Albania is a diverse country. Some people live very well there. If the appellant were concerned about the children he could have led evidence that the children would not have an acceptable lifestyle there but that has not happened. In reality, no good reason has been given other than the fact of, rather than the reasons for, refugee status.

41. I am entirely satisfied the judge was entitled to conclude that the family could remove to Albania and that there was nothing disproportionate in reaching such a decision. This is not affected by any criticisms that might be found in the consideration of the best interests of the children. I also find no legitimate criticism of the second limb of the judge's decision that the appellant can return to Albania and the family can live apart as they have chosen to do. Again, this is probably not ideal and not in the best interests of the children but it is not a disproportionate interference with the private and family lives of the people concerned. Rather it is a reflection of the fact that each parent and the children have different rights; one parent is entitled to be in Albania and the United Kingdom, the children are entitled to be in the United Kingdom and one parent is only entitled to be in Albania. The judge was entitled to conclude that arranging affairs for the family who lived apart for much of the time was not disproportionate on the facts of this case.

42. It follows that I find no material error in the decision of the First-tier Tribunal and I dismiss the appeal against this decision.

Notice of Decision

This appeal is dismissed.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 9 March 2021