Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2021-000309
[HU/06153/2020]

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 20 July 2022	**On 13 September 2022**

Before

UPPER TRIBUNAL JUDGE PERKINS
DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AK
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Ms A Nolan, Home Office Presenting Officer
For the Respondent: Mr P Jorro, Counsel instructed by Waterstone Solicitors

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent (also "the claimant") and his family members are granted anonymity. No-one shall publish or reveal any information, including the name or address of the respondent or his family members, likely to lead members of the public to identify the respondent or his family members. Failure to comply with this order could amount to a contempt of court. This order replaces a similar order made by the First-tier Tribunal. We make it because we are concerned that publicity could impact adversely on the respondent's children.

2. This is an appeal brought by the Secretary of State against a decision of the First-tier Tribunal allowing the appeal of the respondent (hereinafter "the claimant") against a decision of the Secretary of State refusing to revoke a deportation order. The appeal was brought on human rights grounds.

3. We make it plain at this stage that, as in our experience is almost always the case where appeals by foreign criminals are allowed on "private and family life" grounds that the judge did not allow the appeal because of any sympathy for the claimant but because of the consequences of the claimant's absence from the United Kingdom on those who were close to him, in this case a family in the United Kingdom including British citizen children who, it is accepted reasonably and obviously by everybody, should not be expected to give up their rights to live in the United Kingdom and remove with their father to Albania.

4. The Secretary of State accepts in the grounds that the correct directions were given and it is the Secretary of State's case that the reasons are inadequate. The Secretary of State does not suggest perversity, nor could that have been suggested.

5. We see a degree of justified criticism in the First-tier Tribunal's decision because there is not a classic balancing exercise at the end of the decision where the judge might have been expected to have set out almost in columns the reasons for the person being removed and the reasons for his being allowed to remain. However it is absolutely obvious from reading the decision that the judge was entirely aware of the serious nature of the claimant's misbehaviour. It is twofold. He has committed serious crime and has shown contemptuous disregard for immigration control. The judge had drawn attention to these points at the start of his Decision and Reasons and he cannot be thought to have forgotten them by the time he reached the end of the decision.

6. The judge was perfectly aware that appeals should not be allowed by people who have been sent to prison for four years without high legal tests being identified. He identified them. The judge has given, we find, perfectly clear reasons for finding that this is such a case. They occur in the last three paragraphs or so of the First-tier Tribunal's decision. They are related entirely to the difficulties in the home. The children have particular needs. This is supported by medical evidence. The judge refers to the children having needs that are increasing as they are getting older, that it is becoming harder for their mother to cope particularly because of the difficulties one of the children faces. The judge was clearly entitled to find the risk of harm to the children to be "over and above" undue harshness.

7. It is a case where we are entirely satisfied that the judge has identified the correct test and has reached clear conclusions which are wholly supported by the evidence.

8. We do not accept that this is a case where there is any doubt that the correct test has in fact been applied and we reject the contention that the judge was unaware of the nature of the public interest because we find he

plainly was even though, with the benefit of hindsight, it could perhaps have been set out in a way that would have been clear beyond any possible argument even at the outset.

9. Where there are legal tests that permit a margin of judicial discretion rather than impose a bright line distinction, there are always going to be cases which might have been decided rationally and differently by a different judge on a different occasion. This may well be such a case but, with respect to Ms Nolan, who has presented the case expeditiously, we do not agree that there is any material error here. The fundamental tests are clear. The correct legal test was applied, the reasons were given and they are reasons that can be understood by anybody reading the decision with a fair mind.

10. We did not ask Mr Jorro to address us. His carefully drawn paperwork was sufficient to answer the Secretary of State's case.

11. In the circumstances, we dismiss the Secretary of State’s appeal. That is our decision.

Notice of Decision

12. The First-tier Tribunal did not err in law. We dismiss the Secretary of State’s appeal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 27 July 2022