IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006632

First-tier Tribunal No: HU/50681/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

13th December 2023

Before

UPPER TRIBUNAL JUDGE LINDSLEY
DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

CLIRIM KUKAJ
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Ms A Everett, Senior Home Office Presenting Officer
For the Respondent: Ms A Kogulathas, of Counsel, instructed by Morgan Pearse Solicitors

Heard at Field House on 5 December 2023

DECISION AND REASONS

Introduction

1. The claimant is a citizen of Serbia born on 24th November 1993. He arrived in the UK clandestinely on 10th April 2007. He made an asylum claim which was refused but he was granted discretionary leave to remain until 5th June 2010, and then on 8th April 2014 he was granted indefinite leave to remain. On 18th May 2020 he was convicted at Cambridge Crown Court of being concerned with the production of cannabis. He was sentenced to 18 months imprisonment. On 21st August the Secretary of State issued a stage one letter informing the

claimant that he had made a decision to deport him. The claimant then replied by making a human rights claim on 15th September 2020. This human rights claim was refused by the Secretary of State on 12th February 2021. His appeal against this decision was allowed by First-tier Tribunal Judge Loke after a hearing on the 1st August 2022.

2. Permission to appeal was granted by Upper Tribunal Judge Stephen Smith on 8th November 2023 on the basis that it was arguable that the First-tier judge had erred in law in finding that the claimant no longer speaks Serbian without sufficient reasoning and failed to address a material matter namely given the claimant could speak Albanian whether this would be a useful local language which would assist his integration on return. Permission was granted on all grounds but it was noted that the second and third grounds appear to have less merit and to be disagreements of fact and weight.

3. The matter came before us to determine whether the First-tier Tribunal had erred in law, and if so whether any such error was material and thus whether the decision should be set aside.

Submissions – Error of Law

4. In the grounds of appeal and in oral submission from Ms Everett it is argued, in short summary, as follows.

5. Firstly, it is contended, the First-tier Tribunal erred in law by failing to provide adequate reasons why it is found the claimant no longer speaks Serbian when he lives with his brother, who is also Serbian, and spent the first 13 years of his life in Serbia. Ms Everett argued that the First-tier Tribunal had overlooked considering how the claimant had survived in Serbia until he was 13 years old. Further the claimant gave evidence before the First-tier Tribunal that he speaks Albanian, and this is a language spoken in Serbia, and it is argued that this is a factor which would assist his integration. Ms Everett accepted that it was potentially problematic that the Secretary of State had not raised this issue or put in any supporting evidence before the First-tier Tribunal.

6. Secondly, it is argued, that none of the witnesses appeared in person to corroborate the claimant's account, and reliance on this uncorroborated account amounted to a misdirection of law. Ms Everett maintained this ground but did not add any further oral submissions on it.

7. Thirdly, it is argued in the grounds, that the finding that the claimant had arrived in the UK as a vulnerable child who had lost his parents, is of no relevance as there is no evidence of any trauma at the current time, and therefore thus it was irrational to treat this as a factor relevant to his integration on return to Serbia. Ms Everett did not pursue this ground of appeal.

8. In a Rule 24 notice it is argued for the claimant with respect to the first ground that it would be wrong to interfere with the finding of the First-

tier Tribunal as an appellate court should exercise judicial restraint when looking at reasons provided by a Tribunal, as per the Court of Appeal in UT (Sri Lanka) v SSHD [2019] EWCA Civ 1095. It is argued that the First-tier Tribunal clearly considered the issue of the languages spoken by the claimant. She concluded that he no longer spoke any Serbian but did speak Albanian. It is argued that this was a conclusion open to her on the evidence of the claimant as it was supported by the fact he is an ethnic Albanian who left Serbia aged 13 years and then spent time in the British care system. The claimant was interviewed at the age of 13 years in Albanian by the Home Office in the UK, and lives currently with his brother and sister-in-law who are ethnic Albanians who speak that language. Further the two background evidence links provided in the grounds of appeal supposedly to information about Albanian being spoken in Serbia fail to provide any supporting evidence that Albanian is an official language used in provincial administration or to quantify Albanian speakers in Serbia. The evidence included in the grounds of appeal is therefore that Albanian is not even an official minority language, and so this evidence, which was not before the First-tier Tribunal, in any case supports the conclusion that the claimant's language abilities would not assist him to communicate in a way which would make him "enough of an insider" within Serbian society.

9. With respect to the second ground of appeal it is argued that this is entirely misguided. The conclusion of the First-tier Tribunal was based on the oral evidence of the claimant, and it was open to the Judge to accept that evidence. Further, as per R (on the application of V) v Asylum and Immigration Tribunal & Anor [2009] EWHC 1902 Admin, " the question of evidential weight is quintessentially a matter for the tribunal".

10. With respect to the third ground of appeal it is argued that a letter from Hertfordshire Children's Services which was before the First-tier Tribunal states explicitly that the claimant was supported by them post 18 years due to his vulnerability. It was not irrational for the First-tier Tribunal to have concluded that loss of his mother as a child would have been traumatic/ highly distressing for the claimant. Previous hardship in the claimant's country of origin was a factor that was rationally open to the First-tier Tribunal to consider when looking at the issue of very significant obstacles to integration.

11. At the end of hearing we informed the parties that we found that there was no error of law in the decision of the First-tier Tribunal but that we would set our reasons in writing.

Conclusions – Error of Law

12. With respect to the first exception to deportation at s.117C(4) of the Nationality, Immigration and Asylum Act 2002 it is conceded by the Secretary of State that the claimant has been lawfully resident in the UK for most of his life. The two issues which remained to be determined by

the First-tier Tribunal were therefore whether the claimant would have very significant obstacles to integration if he were to be returned to Serbia and whether he was socially and culturally integrated in the UK.

13. We do not find the first ground of appeal arguable for the following reasons. The First-tier Tribunal records at paragraph 11(b) the claimant's evidence that he no longer speaks Serbian but does speak Albanian; and at 11(a) it records that he stopped schooling in Serbia at the age of 8 years due to bullying. We find that from a reading of the decision as a whole that the First-tier Tribunal clearly found the claimant to be a credible witness, and therefore accepted his evidence. We find that the finding at 22(a) of the decision that the claimant no longer speaks Serbian is sufficiently reasoned, particularly as we find that it was entirely rationally open to the First-tier Tribunal given that the claimant clearly comes from an ethnically Albanian and Albanian speaking family and had ceased engaging with the Serbian language at school from the age of 8 years. The finding is also consistent, as is identified in the Rule 24 response for the claimant, with his having been interviewed in Albanian on arrival in the UK when he was 13 years old and having lived thereafter either in the English care system or with his Albanian speaking brother and sister-in-law, and so not with Serbian speakers.

14. There was no argument from the Secretary of State before the First-tier Tribunal that the claimant would be assisted in his re-integration into Serbian society by virtue of his ability to speak Albanian. There was no country of origin evidence before the First-tier Tribunal that suggested that this was the case. As Ms Kogulathas has pointed out in her Rule 24 notice the documents identified by the Secretary of State in the grounds of appeal (with no rule 15(2A) Tribunal Procedure (Upper Tribunal) Rules 2008 application to adduce them) do not assist the Secretary of State in showing that Albanian is an official minority or widely used language in Serbia. In these circumstances we find that this was not a contention with which the First-tier Tribunal needed to engage, and there was therefore no need for there to be reasoning pertaining to it.

15. We find that the second and third grounds also fail to disclose any material errors of law. The approach to integration and very significant obstacles to integration is both sufficiently reasoned and rational. When considering the evidence regarding integration the First-tier Tribunal makes specific note at paragraph 19(e) that none of the witness attended the hearing in support of the claimant, and thus properly weighs this factor in the balance when considering their evidence. We find that it was appropriate to consider that the claimant had spent all his UK childhood in the care system when considering his integration. We find that the reference to his being vulnerable and having undergone the trauma of losing his parents at paragraph 19(b) is based on evidence that it was open to the First-tier Tribunal to accept: the claimant describes the death of his mother as tragic in his witness statement and the Hertfordshire Children's Services letter refers to him

as vulnerable. We find that the conclusion that the claimant is socially and culturally integrated in the UK properly weighs all of the evidence, including that related to the claimant's criminal offending, at paragraphs 19 to 21 of the decision.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

2. We uphold the decision of the First-tier Tribunal allowing the appeal on human rights grounds.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

6th December 2023