IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000675

First-tier Tribunal No:
HU/52875/2022; LH/00675/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 13 June 2023

Before

UPPER TRIBUNAL JUDGE SMITH

Between

LEONARD BORICI
(NO ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Sowerby, Counsel instructed by Waterstone Legal
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

Heard at Field House on Tuesday 30 May 2023

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Beg dated 13 February 2023 ("the Decision") dismissing the Appellant's appeal against the Respondent's decision dated 14 April 2022, refusing the Appellant's human rights claim. The human rights claim was made in the context of the Appellant's application to remain as the spouse of a person settled in the UK, Ms Aysha Troncheva ("the Sponsor"). The Sponsor is a national of Bulgaria with pre-settled status under the EU Settlement Scheme. As noted at [20] of the Decision, the Respondent does not dispute that the Sponsor is a qualifying partner.

2. The Appellant is a national of Albania. He came to the UK illegally in June 2015 and has remained here without leave since that date.

3. The Respondent accepted that the Appellant meets most of the eligibility, financial and English language requirements of the Immigration Rules ("the Rules"). However, she did not accept that there would be insurmountable obstacles to the Appellant and Sponsor continuing their family life in Albania. She did not accept therefore that paragraph EX.1. of Appendix FM to the Rules was met. The Appellant has to show that there are insurmountable obstacles to family life continuing in Albania.

4. The insurmountable obstacles said to exist are that the Sponsor does not speak Albanian, is not familiar with the culture there and that she suffers from mental health problems. It is said that she would suffer emotionally and mentally if she had to live in Albania. In addition, it is said that she depends on the Appellant for day-to-day support in the UK so that it would be disproportionate to expect the Appellant to return to Albania to apply for entry clearance.

5. The Judge found that there were no insurmountable obstacles to family life being continued in Albania. Outside the Rules, the Judge noted that applications for entry clearance in Albania were subject to a waiting period of 24 weeks ([44] of the Decision). She accepted that the Appellant's relationship with the Sponsor is a genuine one. She also accepted that a separation even in the short-term would interfere with family life. However, the Judge found that interference would be outweighed by the public interest.

6. The Judge also considered whether removal would disproportionately impact on the Appellant's private life but concluded that it would not. There is no challenge to this part of the Decision.

7. The Appellant appeals on six grounds which can be summarised as follows:

   Ground 1: the Judge overlooked evidence from the Sponsor's therapist and evidence that the Sponsor is receiving counselling.

   Ground 2: the Judge made inconsistent findings whether the Sponsor is or is not receiving therapy.

   Ground 3: the Judge failed to make clear findings on the extent of the Sponsor's mental health difficulties.

   Ground 4: the Judge overlooked evidence about the support which the Appellant provides to the Sponsor. It is said that if the Judge required clarification in that regard, she could have sought it. This ground also therefore raises an issue of procedural fairness. I note that the Respondent was unrepresented before the First-tier Tribunal.

Ground 5: the Judge overlooked evidence in relation to the causes of the Sponsor's mental illness.

Ground 6: the Judge misstated the evidence from the Sponsor about the therapy which she was receiving.

8. The grounds were supported by a witness statement of Araniya Kogulathas, Counsel who represented the Appellant in the First-tier Tribunal. She appends to that statement her notes of the hearing in support of the grounds. Although the Appellant was represented by a different representative before me which would have permitted Ms Kogulathas to give evidence if that were necessary, no application was made by the Respondent to cross-examine her. I take the statement as read and I have proceeded on the basis that the notes as appended are an accurate record of the hearing. Neither party invited me to listen to the recording of the hearing (assuming it was recorded). Neither party has asked for a transcript of the hearing. Given the way in which the Appellant's case was argued, I need refer only to one or two minor aspects of this evidence in any event.

9. Permission to appeal was granted by First-tier Tribunal Judge Komorowski on 16 March 2023 in the following terms so far as relevant:

> "... 2. An appeal on the grounds advanced in the application has a real prospect of resulting in the First-tier Tribunal's decision being set aside.
>
> 3. In particular:
>
> a. The Judge arguably was not satisfied that the sponsor was not receiving therapy (or as to the extent of the therapy being received) on an incorrect basis.
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> b. Arguably, the Judge was wrong to say there was no documentary evidence of the sponsor receiving therapy where there was a report from a clinician referring to a continuing course of therapy, and the sponsor referred to a clinician with the same first name (albeit unable to give her surname) as the author of that report (ground 1).
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> c. Arguably, if counsel's note of the oral evidence is correct, the judge was wrong to understand the sponsor as having said she saw her therapist weekly *or* received text messages (but rather she saw her therapist weekly *and* received texts (ground 6: para 22).
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> 4. The potential merit of the other complaints is less apparent, but given the close connection between them and the grounds that do appear to me to be arguable, and considering what is said in the *Joint Presidential Guidance 2019 No. 1: Permission to appeal to UTIAC,* para 48 (second sentence), I grant permission on all grounds."

10. The matter comes before me to decide whether the Decision contains an error of law. If I conclude that it does, I must then decide whether the Decision should be set aside in consequence. If the Decision is set aside,

I must then either re-make the decision in this Tribunal or remit the appeal to the First-tier Tribunal for re-determination.

11. I had before me a core bundle of documents relating to the appeal, the Appellant's bundle ([AB/xx]) and Respondent's bundle before the First-tier Tribunal together with the Appellant's skeleton argument before the First-tier Tribunal.

12. Having heard submissions from Mr Sowerby and Mr Tufan, I indicated that I would reserve my decision and provide that with reasons in writing. I now turn to do that.

DISCUSSION

13. Given the terms of the grant of permission, Mr Sowerby focussed his oral submissions on grounds one and six although he also made clear that he was not abandoning the other grounds. As Judge Komorowski observed when granting permission, there is an overlap between the grounds in any event and I have therefore considered all grounds in what follows.

14. The focus of Mr Sowerby's submissions was [29] and [35] of the Decision. However, as Mr Tufan pointed out, and given the focus of the grounds taken together, what is there said has to be read in the context of the Judge's findings at [21] to [35] of the Decision concerning the Sponsor's mental health as follows:

> "21. The respondent also accepts that the appellant has a genuine and subsisting relationship with his partner. The appellant stated in his witness statement that his wife suffers from anxiety and panic attacks which would only get worse if she has to go and live in Albania. He stated at paragraph 4 that he provides daily support to his wife because she has negative destructive thoughts.
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> 22. At paragraph 5 he stated that their doctor has told him that his wife needs a high degree of emotional support. The sponsor in her witness statement confirmed at paragraph 4 that she suffers from anxiety and panic disorder which would become worse if she went to Albania.
>
> 23. At paragraph 5 she stated that she grew up with trauma because her own father physically abused her mother on a daily basis, which she witnessed. She stated that her mother later separated from her father and remarried taking her to live with her Turkey. However, her mother's second husband was also abusive and attempted to sexually abuse her (the sponsor). Her mother passed away in 2019.
>
> 24. At paragraph 6 she stated that she is very attached to her husband who provides her with support and affection. The sponsor did not provide details including examples, in her evidence about the day-to-day support provided to her by the appellant.
>
> 25. The letter from Dr Vasileva, a psychologist, dated 14 July 2022, states that the sponsor was diagnosed with anxiety, panic disorder with

dysfunctional cognitive patterns of thinking and behaviour following individual cognitive behavioural psychotherapy sessions.

26. The letter notes that in 2020 the sponsor was diagnosed with panic disorder after the loss of her mother in 2019. She was seen by The Doctors 4 You clinic on 14 July 2022. Family psychotherapy with family support was recommended. The sponsor has not provided copies of her GP notes to confirm when she consulted her GP regarding her mental health issues. Nor is there any documentary evidence that she was referred for a psychological assessment and/or counselling.

27. In evidence the appellant said that his wife sees a therapist once a week and that she has been having therapy for a year. The sponsor in her evidence said that she sees a therapist once a week or alternatively the therapist sends her a motivational text. She said that financial restrictions have limited her access to therapy.

28. The sponsor said that she has been having therapy for a few months; possibly five or six months. I find that her evidence differed from the evidence of Ms Isaku who said that the sponsor has had therapy 'a couple of times'. Ms Vida did not know whether the sponsor has seen anyone other than her doctor.

29. The sponsor could not remember the surname of her therapist. She has not provided a letter from her therapist to confirm when she began therapy sessions and how many sessions she has attended. I find that there is inconsistent evidence with regard to when the sponsor began therapy sessions. I do not find the appellant and the sponsor credible on this issue.

30. I bear in mind that Dr Vasileva has not provided her qualifications or CV as an attachment to her letter. She makes no reference to when the sponsor saw her GP for mental health issues. The sponsor was seen by The Doctors 4 You clinic four months after the appellant's application for leave to remain was made on 4 March 2022.

31. In HA (expert evidence; mental health) Sri Lanka [2022] UKUT 00111 (IAC), the court held that where an expert report concerns the mental health of an individual, the Tribunal will be particularly reliant upon the author fully complying with their obligations as an expert, as well as upon their adherence to the standards and principles of the expert's professional regulator.

32. The court further held that notwithstanding their limitations, the GP records concerning the individual detail a specific record of presentation and may paint a broader picture of his or her mental health than is available to the expert psychiatrist, particularly where the individual and the GP (and any associated health care professionals) have interacted over a significant period of time.

33. The court further held that accordingly, as a general matter, GP records are likely to be regarded by the Tribunal as directly relevant to the assessment of the individual's mental health and should be engaged with by the expert in their report. In all cases in which expert evidence is adduced, the Tribunal should be scrupulous in ensuring that the expert has not merely recited their obligations, at the beginning or end of their report, but has

> actually complied with them in substance. Where there has been significant non-compliance, the Tribunal should say so in terms, in its decision.
>
> 34. I find that in the absence of the sponsor's GP records and the failure by Dr Vasileva to set out her qualifications and her obligations as an expert, I attach limited weight to the letter which is referred to as 'Doctor's Certificate'. It states that the sponsor attended the clinic on 14 July 2022, stating that she required psychotherapeutic help.
>
> 35. The letter refers to the sponsor's narrative and her explanation of her mental health symptoms. There is little explanation of the criteria used to assess the sponsor other than a reference to 'observed assessment treatment'. As indicated above, I find that there is no documentary evidence from the sponsor's therapist from whom she is said to be receiving therapy."

15. Mr Sowerby focussed his attention on grounds one and six, so I adopt the same order.

16. Ground one takes issue with what is said at [29] and [34] of the Decision. The Appellant asserts that the Judge has erred in her finding that there was no documentary evidence from the therapist from whom the Sponsor was receiving therapy. It is said that the Sponsor gave the therapist's first name but could not remember the surname. The Appellant submits that the Judge should have inferred that it was Dr Vasileva since her first name is "Mirena".

17. There is no requirement for a Judge to infer evidence if that is not given. The Sponsor could have been re-examined on this issue if Counsel thought it necessary to make the link clear to the Judge.

18. In any event, there is no error in this regard. The letter from Dr Vasileva appears at [AB/25-27]. It is dated when the Sponsor first visited Doctors 4 You on 14 July 2022. It was said that the Sponsor would continue psychotherapy treatment in twelve upcoming sessions. As Mr Sowerby was constrained to accept, however, there is no documentary evidence that such sessions took place. There is no further letter from Dr Vasileva. The absence of such further letter is consistent with the Judge's finding at [29] of the Decision that there was no documentary evidence about the number of sessions which the Sponsor had attended or when those began.

19. Similarly in relation to what is said at [26] of the Decision, the Judge makes the point that there is no evidence that the Sponsor was referred for counselling. Although Dr Vasileva's letter shows that it was intended that the Sponsor would receive further therapy, the Judge's finding that there was nothing to show that the Sponsor was receiving counselling is not inconsistent with that evidence. The letter from Dr Vasileva is forward-looking. There is no further documentary evidence showing that such therapy took place.

20. For those reasons, there is no error of law disclosed by ground one. The Judge clearly had regard to Dr Vasileva's letter (contrary to Mr Sowerby's submission). The Judge dealt with it in some detail at [25] to [35] of the Decision. There is no error of fact made by the Judge when dealing with the content of that letter.

21. Turning then to ground six, it is said that the Judge misstated the evidence about the period during which the Sponsor had received therapy. It is said that the Judge has wrongly recorded that the Appellant said this had been for one year, when the Appellant actually said "approximately" one year, and that the Judge had omitted to say that the Sponsor said that she thought it had been five to six months but could not say "for definite". In fact, the Judge records that the Sponsor said that it was "possibly five or six months" so there is no misunderstanding in that regard.

22. There is a significant difference between twelve months and six months even assuming that neither witness could say exactly how long the Sponsor had attended therapy. It is obvious that one year even in approximate terms could not be factually accurate as the Sponsor did not attend the "Doctors 4 You" clinic until mid-July 2022 and the appeal hearing was in February 2023. The Sponsor's assessment was therefore probably more likely to be correct. However, the Judge was entitled to rely upon the inconsistency.

23. Even if the Judge did not use the precise words said by the witnesses (and the Decision does not suggest that these were direct quotes from their evidence), there was no error in the Judge's reliance on this inconsistency. Moreover, the inconsistency continued in relation to the evidence of the other witnesses one of whom said that the Sponsor had seen a therapist "a couple of times" and the other who was unaware that the Sponsor had seen a therapist at all (see [28] of the Decision).

24. This ground also raises what is said to be a further discrepancy regarding the frequency with which the Sponsor sees a therapist. The Judge has recorded the Sponsor's evidence as being that she sees the therapist once a week or the therapist sends her a text whereas Ms Kogulathas says that the evidence was that the Sponsor sees the therapist once a week and the therapist sends texts.

25. Whilst I accept that the Judge's record of this evidence may not be accurate according to Counsel's note, nothing turns on this. The Judge found against the evidence about the therapy based on the period for which the Sponsor had been attending and not based on frequency. The Judge does not rely on what is said at [27] of the Decision in relation to frequency when rejecting the Appellant's case about therapy at [29] of the Decision.

26. For those reasons, the very minor error disclosed by ground six is immaterial to the outcome.

27. As I have noted, Mr Sowerby did not abandon reliance on the other grounds, and I therefore deal with the remainder in order.

28. Ground two raises what is said to be an inconsistency between the Judge's findings as to whether the Sponsor was receiving therapy. As noted, at [29] of the Decision, the Judge did not accept the evidence that the Sponsor was receiving therapy. That is said to be inconsistent with what is said by the Judge at [52] of the Decision, that the Sponsor "would be able to continue having therapy for her mental health issues" (in Albania).

29. There is no inconsistency in this regard. The Judge might have added the words "if she requires it" at the end of the sentence at [52] of the Decision. However, it is sufficiently clear that the Judge was there considering the alternative possibility that the Sponsor might require treatment in the future rather than making a finding that the Sponsor is receiving treatment now. The use of the word "continue" does not constitute an inconsistent finding when read in context. Ground two does not disclose any error as pleaded.

30. This brings me on to a further matter regarding therapy. The Judge recorded at [38] of the Decision that "Ms Kogulathas did not dispute that Albania has a healthcare system and that the sponsor would be able to access counselling". Even if there were any error therefore in relation to the Sponsor's need for therapy, that could not be material unless the Sponsor could not obtain treatment (if required) in Albania. The concession by the Appellant's Counsel was that she could.

31. This leads on to ground three where it is asserted that the Judge has failed to make a clear finding about the extent of the Sponsor's mental health difficulties which it is said was central to the issue of insurmountable obstacles and proportionality.

32. There are two preliminary points to be made in this regard. First, the issue is not the diagnosis or extent of the Sponsor's medical conditions but the nature of the treatment and support which she is receiving or might need and whether that is available to the Sponsor in Albania. I have already referred to the Judge's record of the concession made that the Sponsor could obtain counselling which, according to the Appellant and Sponsor, is the treatment she is receiving now.

33. Second, given the Judge's rejection of the medical evidence of Dr Vasileva for the reasons given, the Judge had no medical evidence on which to base findings in relation to the diagnosis and extent of the Sponsor's mental health problems. All the Judge had was the evidence of the Appellant and Sponsor which is sufficiently set out at [21] to [24] of the Decision. Although the Judge gave little weight to Dr Vasileva's letter, the Judge also recorded her diagnosis at [25] of the Decision.

34. The Appellant's complaint as pleaded in this regard is somewhat difficult to follow. In relation to insurmountable obstacles, the issue is

whether the Sponsor could live in Albania given her mental health problems. The Judge did not have to recite the Sponsor's evidence about what those mental health problems entailed. In any event, the Judge did so in summary at [21] to [24] of the Decision. The real issue is whether the Sponsor could obtain treatment for her problems (which depended on the evidence about the treatment which she receives or says she receives in the UK) and whether she could otherwise cope in Albania with the support which would be available (as it is in the UK) from the Appellant as identified by the Judge at [38] of the Decision:

> "Ms Kogulathas did not dispute that Albania has a healthcare system and that the sponsor would be able to access counselling. The appellant's family consisting of his parents and a sister live in Albania. I find that the couple would have a network of support. The appellant speaks Albanian and is familiar with the culture and societal norms of Albania. He would be able to utilise his experience and skills to obtain employment."

35. Insofar as the complaint is that the Judge did not consider how the Sponsor could cope in the short-term if she were separated from the Appellant, this is considered by the Judge at [52] of the Decision when looking at the proportionality of such a separation:

> "I find that the sponsor can continue her employment in this country to support an entry clearance application from abroad. She has a network of support through her friends. She would be able to continue having therapy for her mental health issues. She would be able to keep in contact with the appellant by telephone and email. This will enable him to provide her with motivation and moral support. She would also be able to visit him in Albania. The sponsor gave evidence that she is able to travel and visits Turkey to see her daughter once a year. In considering the matter in the round, I do not find that removal even for a temporary period will be a disproportionate interference in family life."

36. The Judge made clear at [38] and [52] of the Decision why she found as she did in relation to insurmountable obstacles and proportionality having regard to the Sponsor's mental health problems. There is no absence of a finding or a finding which is unclear. This ground is a mere disagreement.

37. The fourth ground refers to [24] of the Decision and the Judge's finding that the Sponsor's evidence about the support given to her by the Appellant was unclear. It is also said that if the Judge required more detail about this, she should have sought clarification as the Respondent was unrepresented and therefore the Appellant and his witnesses were not cross-examined.

38. The Sponsor deals with this issue at [6] of her statement at [AB/17] as follows:

> "Due to the above, I am heavily attached and dependent on my husband's support and affection. The doctor has stated that it is necessary for me to receive the highest degree of emotional affection. My husband is the only

> person who can uplift and support me emotionally as he provides the highest level of affection possible. We want to continue sleeping next to each other at night and be hugged by my husband from my negative-destructive thoughts. When I am having a panic attack, I want to continue to feel safe in my husband's arms and reassured that I am not dying."

39. Much of what is there said is set out in summary at [21] and [22] of the Decision. The Judge clearly had regard to paragraph [6] of the statement at [24] of the Decision as the Judge expressly refers to that paragraph of the statement. The Judge was entitled to say that this evidence lacked details about day-to-day support. The evidence might well be described as vague. The Sponsor does not say what the Appellant does for her other than to hug her to reassure her. The Judge was entitled to say that the evidence lacked examples of the sort of day-to-day support which the Appellant provides. In any event, if the Sponsor were to return to Albania with the Appellant, his support as set out in her statement would continue to be available to her. Unless there is any error in the Judge's conclusion in relation to insurmountable obstacles, therefore, the Appellant could not succeed. Put another way, any error in this regard could not make any difference to the outcome.

40. In any event, the Judge was not under any obligation to seek out more evidence. The Appellant and Sponsor were legally represented. Their statements were clearly drafted with assistance from representatives. They were represented at the hearing by experienced Counsel who could have sought further particulars if she had thought it necessary. It is clear from Ms Kogulathas' note that the Judge asked some questions by way of clarification of the evidence which the Judge was given. However, it was not incumbent on the Judge to seek to improve that evidence by asking for more detail of evidence already set out in statements.

41. The extract from WN (Surendran; credibility; new evidence) Democratic Republic of Congo [2004] UKIAT 00213 cited at [14] of the grounds is not relevant to this situation. This was not a case where new material emerged following the Respondent's decision under appeal which went to an issue of credibility. This is a case where a legally represented party has put forward evidence, but that evidence lacks detail. As the decision in WN makes clear, the issue which the Surendran guidelines seeks to address is fairness of proceedings. It cannot be the case that a Judge is obliged as a matter of fairness to ask questions to elicit further evidence in a case where the party is legally represented, and the witness has had the benefit of such representation in the giving of his or her evidence.

42. Ground 4 does not disclose any error of law.

43. Finally, under the fifth ground, the Appellant asserts that the Judge has failed to consider evidence going to the Sponsor's ongoing mental health issues. Attention is drawn first to [50] of the Decision, where the Judge finds that "even if [she accepts] that the sponsor suffers from anxiety and panic attacks, these are of long-standing duration following

the death of her mother in 2019". It is said that this ignores the Sponsor's problems since then which are linked to the prospect of the Appellant's removal.

44. There is no error in this regard. The Judge is merely recording that the Sponsor's mental health problems began some time ago and were linked to her bereavement. According to Dr Vasileva's letter this is factually accurate.

45. To suggest that the Judge has ignored evidence about the Sponsor's more recent problems is to take this paragraph out of context. As I have noted above, when dealing with the other grounds, the Judge considered the evidence about the Sponsor's current mental health problems and made findings about those. The Judge considered the impact of those problems on the Sponsor's ability to move to Albania permanently or remain in the UK temporarily without the Appellant.

46. For those reasons, the fifth ground does not disclose any error of law.

CONCLUSION

47. The Appellant's grounds do not disclose any material error of law. I therefore uphold the Decision with the consequence that the Appellant's appeal remains dismissed.

NOTICE OF DECISION

The decision of First-tier Tribunal Judge Beg dated 13 February 2023 does not contain any material error of law. I therefore uphold the decision with the consequence that the Appellant's appeal remains dismissed.

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber
2 June 2023