



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

**Case No: UI-2022-006153**  
**First Tier No: PA/04293/2020**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 8 August 2024**

**Before**

**UPPER TRIBUNAL JUDGE LANE**  
**DEPUTY UPPER TRIBUNAL JUDGE CHANA**

**Between**

**B.B**  
**(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Not present or represented  
For the Respondent : Mr Nolan, Senior Presenting Officer

**Heard at Field House on 14 June 2024**

**Order Regarding Anonymity**

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the claimant has been granted anonymity, and is to be referred to in these proceedings by the initials O.H. No-one shall publish or reveal any information, including the name or address of the claimant, likely to lead members of the public to identify the claimant.

**Failure to comply with this order could amount to a contempt of court.**

### **DECISION AND REASONS**

1. This is an appeal by the appellant against the decision of the First-tier Tribunal Judge dismissing the claimant's appeal against the decision of the respondent to deport him from the United Kingdom and refusing his claim for international protection.
2. There has been a delay in the determination of the appellant's appeal. The issues for consideration have been complex and varied. The appellant's alleged statelessness was raised as a new matter, and required expert evidence and evidence from the respondent relating to communications with foreign authorities. Moreover, the appellant lost capacity to conduct the litigation and there were delays in appointing a litigant friend. At a Case Management hearing of 22 July 2022, the appellant's representatives confirmed that they had struggled to identify an appropriate litigant's friend following the appellant's loss of capacity.
3. The appellant's appeal against the decision of the respondent to make a deportation order was considered by Judge Bird of the First-tier Tribunal. In a decision promulgated on 8 August 2016, Judge Bird dismissed the appellant's international protection claim (on the basis that he is an Ashkali Muslim); Article 3 claim on the basis of medical conditions/treatment and suicide was considered together with the appellant's Article 8 claim. Judge of the First-tier Tribunal Thorne, in a decision and reasons promulgated on 9 July 2018 dismissed the appellant's asylum, Article 3 and Article 8 appeals.
4. Permission to appeal was granted by First-tier Tribunal Judge as follows:

“... Permission to appeal is allowed on the basis of the arguments advanced under Ground 1 and detailed at paragraphs 6–9 of the grounds. It is arguable that there was a material error of law in the manner in which the Judge sought to apply ‘Article 6 of the Law on Citizenship of Kosovo’, to the appellant's circumstances when seeking to resolve the issue of his nationality”
5. At the initial hearing before the Upper Tribunal, the appellant did not appear. No reasons for not attending had been received by the Tribunal. We confirmed from the case file that the appellant was served with the hearing notice on 15 May 2024 via his email account. We further confirmed that all previous communications by the Tribunal after he ceased to be represented, were sent to the appellant on the same email account.

6. We have considered a report from Prof Katona, in relation to the appellant's incapacity. It states that the appellant is unable to give a clear and consistent account of his past experiences (both in Kosovo and in the UK) in that his account is markedly influenced by his anger and resentment at his situation and his difficulty in taking responsibility for his own actions and their consequences. In the professor's view, this is likely to interfere significantly with the appellant's ability to provide evidence as to his immigration. The medical expert's opinion is therefore that the appellant lacks capacity within the meaning of the Mental Capacity Act 2005 and cannot make decisions and provide instructions in relation to his asylum case or give evidence at the Tribunal. In response to this evidence, the judge noted: " for the purposes of this decision and reasons, notwithstanding my concerns in relation to Prof Katona's report, I am willing to take report of Prof Katona at its highest in respect its capacity findings and I accept that the Appellant does not have capacity in the manner described by Prof Katona".
7. The medical evidence does not say that the appellant is unable to read, understand and reply to emails. The very fact that he has an email account, demonstrates that he has the capacity to receive emails and reply to them. It would appear that the appellant is either living alone or with others; he is not in hospital or otherwise in residential care. We consider that he has the ability to seek help should he require it. We find that, in the circumstances, the appellant has been validly served with the notice of hearing.
8. After hearing submissions from the Senior Home Office presenting Officer, and for the reasons set out in this decision, we have come to the conclusion that the decision of the First-tier Tribunal Judge did not involve a material error of law and we uphold its decision.
9. The permission to appeal was granted on the basis that the Tribunal -tier Tribunal Judge materially erred in law by applying 'Article 6 of the Law on Citizenship of Kosovo', to the appellant's circumstances when seeking to resolve the issue of his nationality". The evidence before the First-tier Tribunal indicated that the appellant did not dispute that that he was born in Kosovo. Indeed, the previous decisions of Judges Bird and Thorne concluded that the appellant is a citizen of Kosovo. Judge Thorne noted that the appellant in his witness statement stated that he was born in Kosovo and came to the United Kingdom in 2001 with the rest of his family. Similarly, the appellant's evidence before Judge Thorne was that he was born in Kosovo. Judge Thorne records that the appellant had lived in Klina. Judge Bird records that the appellant was a Kosovan national who been granted refugee status in the United Kingdom, "in line with his family in 2001". In addition, Judge Bird's finding is indicative that the appellant's whole family, including the appellant's mother were granted refugee status on the basis that they would be returned to Kosovo, as Kosovan nationals. His father claimed asylum on the basis that he was Kosovan and would be

returned to Kosovo. The Kosovan authorities recognise the appellant's mother as a Kosovan national. The Home Office records indicate that the Home Office were in possession of the "mother's Kosovan birth certificate". Accordingly, the cogent and abundant evidence is that the appellant was born in Kosovo to Kosovan parents and meets all the requirements to register as a Kosovan citizen by the Kosovan authorities.

10. In all the circumstances, we find that the Judge did not materially err in respect of his finding that the appellant is a national of Kosovo. The basis of the appeal (that is that the First-tier Tribunal erred in its consideration of Kosovan nationality law and wrongly concluded that the appellant is a Kosovan citizen) has simply not been made out. Given the unequivocal findings of several Tribunals that this appellant is a Kosovan citizen, we dismiss the appellant's appeal.

### **Notice of Decision**

The appeal is dismissed.

Dated: 29 July 2024

Sureta Chana

Sureta Chana  
Deputy Judge of the Upper Tribunal