Upper Tribunal **Appeal No: UI-2023-005187**
(Immigration and Asylum Chamber) **First Tier Tribunal No: HU/53814/2022**

IA/05896/2022

THE IMMIGRATION ACTS

Decision and Reasons Issued
On 26 June 2024

Before

Deputy Upper Tribunal Judge MANUELL

Between

Mr ELDJORT AJAZI
(NO ANONYMITY DIRECTION MADE)

Appellant
and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Heard at FIELD HOUSE
On 14 June 2024

Representation:
For the Appellant: Ms A Sharma, Counsel
(instructed by TNS Legal Services Limited)
For the Respondent: Mr P Wain, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a national of Albania, born there on 10 December 1987. He appealed against the Respondent's decision to refuse his Article 8 ECHR human rights claim made on 15 June 2022 following the decision to make a deportation order against him. His human rights appeal was previously allowed by the First-tier Tribunal on 23 August 2023, however material errors of law were found in that decision by the Upper Tribunal in its decision dated 22 January 2024. It was ordered that the human rights appeal should be reheard in the Upper Tribunal.

The Respondent's decision

2. The Appellant claimed that he had entered the United Kingdom in 2006, illegally. There was no record of the date of his arrival.

3. On 17 January 2020 at Maidstone Crown Court, the Appellant was convicted of possession of controlled class A drugs (cocaine) with intent to supply. He was sentenced to 3 years and 9 months' imprisonment. On 8 June 2021 the Appellant was served with a decision to make a deportation order against him under section 32(5) of the UK Borders Act 2007. It was not accepted that the Appellant was socially and culturally integrated into the United Kingdom. His private and family life interests under Article 8 ECHR were outweighed by the public interest.

The law

4. Section 32(5) of the UK Borders Act 2007 imposes a duty on Secretary of State for the Home Department to make a deportation order against a foreign criminal unless one of the specified exceptions set out in section 33 of the same act applies. Deportation from the United Kingdom is further governed by the Immigration Rules, paragraphs 398 and 399. There is no right of appeal against a deportation order.

5. The relevant Immigration Rules (extracts) are as follows:

   398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and…

(b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months; or
(c) the deportation of the person from the UK is conducive to the public good and in the public interest because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law, the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.

399. This paragraph applies where paragraph 398 (b) or (c) applies if

(a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and

(i) the child is a British Citizen; or
(ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision; and in either case
(a) it would be unduly harsh for the child to live in the country to which the person is to be deported; and
(b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported; or

(b) the person has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen or settled in the UK, and
(i) the relationship was formed at a time when the person (deportee) was in the UK lawfully and their immigration status was not precarious; and
(ii) it would be unduly harsh for that partner to live in the country to which the person is to be deported, because of compelling circumstances over and above those described in paragraph EX.2. of Appendix FM; and
(iii) it would be unduly harsh for that partner to remain in the UK without the person who is to be deported.

6. The appeal is brought pursuant to section 82 (1) of the Nationality, Immigration and Asylum Act 2002. It is necessary for the Tribunal to decide the appeal on the balance of probabilities. The burden of proof is upon the Appellant. Sections 117A-D of Nationality Immigration and Asylum Act 2002 apply to the Article 8 ECHR issues.

The preserved findings

7. The following findings from the determination of the First-tier Tribunal were expressly preserved:

> The Appellant's asylum claim that he feared two brothers in Albania, to whom he said he owed money was dismissed by Judge Davey as disclosing no Refugee Convention reason and for being incredible in any event. The Appellant's Articles 2 and 3 ECHR claims were similarly dismissed. Those findings have not been appealed. Judge Davey further found that section 72 of the Nationality, Immigration and Asylum Act 2002 applied to any such claims because the Appellant's offences posed a danger to the community.

The hearing and the evidence

8. The Appellant gave evidence in English in accordance with his witness statements dated 7 February 2024 and 25 October 2022. In summary the Appellant said that he came to the United Kingdom in 2006 seeking a better life, joining his brother and his cousin. He worked until 2018 after which his life went downhill. He committed a crime and went to prison, which he regretted and which would not happen again.

9. At this time he met Zelihe Vehapaj ("Ms Vehapaj"). They had a son together. After the Appellant's release from prison he lived with his brother but saw his partner and son nearly every day. The couple now had a second child, Daisy Vehapaj, born on 2 May 2024. He supported his partner in every way he could. The Appellant said that if he went to Albania he would miss seeing his children grow up. His partner would not be able to travel to Albania to see him. The Appellant produced a series of family

photographs and various utility bills and TV licence payments.

10. Cross examined, the Appellant said that he had no documents to show that he arrived in the United Kingdom in 2006, but he insisted he had never returned to Albania. He accepted that he had always been in the United Kingdom illegally. He had supported himself by working illegally on building sites. He had lost his job because of using drugs. It was possible that he would find work in Albania but he wanted to remain with his family. He was in regular contact with his parents in Albania. He denied that he had any remaining friends in Albania, he was only 16 when he left. His brother and cousin had nothing to with his drug crime.

11. The Appellant said that he was now living with his partner. They had had to wait until she had a house of her own. He had wanted to prove to Ms Vehapaj that he had changed. She had stood by him and visited him in prison. She knew that he was in the United Kingdom illegally. She knew nothing of his crimes until he was arrested.

12. The Appellant said that he had taken courses in prison and done his best to reflect. He was clear of drugs. He was spending his time with his family.

13. Ms Vehapaj gave evidence in Albanian through the tribunal's interpreter. She confirmed as true and adopted as her evidence in chief her witness statements dated 7 February 2024 and 19 October 2022. There Ms Vehapaj said she had been granted asylum in March 2021. She had met the Appellant in 2018. When the Appellant was sent to prison in 2020 she was pregnant with their son Victor who was born on 31 August 2020. She and Victor visited the Appellant while he was in prison. The couple were unable to live together until she had a house of her own. The Appellant was involved in Victor's care and they had a strong relationship. Ms Vehapaj said she could not travel to Albania.

14. Mrs Vahapaj was cross examined. She said that she learned that the Appellant was in the United Kingdom illegally after she had met him, it was not important to her and she was not curious about it. She only learned of his criminal activity after his conviction. Ms Vehapaj was not

working. While the Appellant was in prison she had a key worker and a foster carer to help with the child.

15. Re-examined, Ms Vehapaj said that the Appellant had been a support to her since his release from prison. He took Victor to school.

16. Mr Ergin Ajazi ("Mr Ajazi"), the Appellant's brother, gave evidence in English in accordance with his witness statements dated 19 February 2022 and 7 February 2024. There he said that his own children were the same age as the Appellant's and they often played together. The Appellant had a strong bond with his son Victor.

17. Cross examined, Mr Ajazi said that he saw the Appellant every week. The Appellant had been living with him before the Appellant moved in with his partner. Mr Ajazi would support the Appellant's family but his son needed his father.

18. Ms Vivian Pavitt filed a witness statement dated 9 February 2024. There she said that she had fostered Ms Vehapaj and her baby son. She considered that the Appellant had been as supportive as he could be. She would be willing to support the family in the future.

Submissions

19. Mr Wain for the Respondent relied on his skeleton argument, the reasons for refusal letter, deportation decision and the Respondent's review. None of the statutory exceptions applied to the Appellant. It was not accepted that he was socially and culturally integrated. The Appellant had evaded the authorities. He had committed a serious crime and the sentence was close to four years. The public interest in the prevention of crime outweighed the private interest. Deportation was a proportionate response. The Appellant's relationship with Ms Vehapaj had been entered into when both knew he had no leave to remain so there was no expectation that family life in the United Kingdom would continue. There was no independent evidence of the Appellant's rehabilitation. There were no very significant obstacles to the Appellant's reintegration into Albania. There were no exceptional,

compelling or compassionate circumstances. The appeal should be dismissed.

20. Ms Sharma for the Appellant relied on her skeleton argument. There was no real dispute of fact. The Appellant had spent his entire adult life in the United Kingdom. He had worked and he spoke English well. He was able to work and wanted to work. The best interests of the children were a primary consideration. The absence of their father would have a big impact on the children, which would be life-long. The children deserved stability. They should not suffer because of their father's mistakes. Just connecting with him through modern technology was not enough. There was a genuine relationship. The appeal should be allowed.

Discussion and findings

21. There was no independent documentary evidence of the date that the Appellant entered the United Kingdom illegally. As he had mentioned no difficulty doing so, it is possible that the Appellant has been able to return to Albania to visit his parents, with whom he said he remained in contact. For the purposes of the present appeal, however, the Tribunal will accept the Appellant's claim that he has been in the United Kingdom since 2006, as the precise length of the Appellant's stay in the United Kingdom is not of itself significant. The Appellant accepts that on his own case he has never had any form of leave to remain. The Appellant also accepts that he has worked illegally for the greater part of his presence in the United Kingdom. He advanced no claim that he had ever paid income tax or national insurance, whether in an assumed name or his own.

22. It was accepted that neither of the statutory exceptions in section 117C(4) and section 117(5) of the Nationality, Immigration and Asylum 2002 apply to the facts. The appeal therefore must be considered under section 117(C)(6) and the Immigration Rules.

23. The Appellant's claim to have a close and supportive relationship with his partner and their two children was corroborated by the partner, the Appellant's brother and

Ms Vehapaj's former foster carer. The Tribunal finds that there is the relationship claimed.

24. It is plainly in the best interests of both children to have their father's continued involvement in their lives, ideally in person. The Tribunal so finds. But the best interests of the two children are a primary consideration, not a paramount consideration. The reality is that both are very young. Victor already has experience of his father's absence in prison. Daisy is only a few months old.

25. The Appellant's relationship with Ms Vehapaj was formed and continued when he had no leave to remain. Both knew that. It was of no concern to either of them, yet they cannot have had any reasonable expectation of being able to continue their family life in the United Kingdom in such circumstances. As was pointed out in the Respondent's skeleton argument, Ms Vehapaj was served with notice as an illegal entrant on 2 February 2017. She was subsequently recognised as a refugee as a victim of trafficking and as having an illegitimate child born on 31 August 2020, with estranged family in Albania. The father's name was not given by her at the time. It was considered by the decision maker that Ms Vehapaj would be facing return to Albania as a lone female with a child. The original decision to refuse asylum dated 6 March 2020 was withdrawn. It is now known that the Appellant is the father of the illegitimate child, i.e., his son Victor.

26. According to the Respondent, while that is a material change of circumstances, "pragmatically given her extant status the SSHD at this time would not argue that family life could be maintained in Albania." In the Tribunal's view, there has indeed been a material change in circumstances, such that, now that the true facts are known, Ms Vehapaj could safely return to Albania, renouncing her refugee status. That, however, is a matter for her. For the purposes of the present appeal, the Tribunal treats Ms Vehapaj as holding refugee status and as unable to return to Albania. The "go" or "stay" question thus becomes only a "stay" question.

27. The issue is whether it would be unduly harsh for her to remain in the United Kingdom on her own with two young children. Unduly harsh" must be considered in the light of HA (Iraq) v Secretary of State for the Home Department

[2020] EWCA Civ 1176. The Tribunal finds that it will not be unduly harsh. It will be no more than the typical harsh consequence of a deportation order and no special factors are in play. Ms Vehapaj has accommodation in her own name. She receives state benefits. She has a local support network in the form of Mr Ajazi and his family, as well as a pledge of support from her former foster carer. She speaks English. There are no health problems. The children will receive education. Contact with the Appellant can be maintained via modern means.

28. Unfortunately the Appellant chose to engage in the supply of Class A drugs. It must be said that the ease with which the Appellant was able to establish contact with criminals gives cause for concern, if not alarm. The tribunal sees no reason to disbelieve Ms Vehapaj or Mr Ajazi who said they knew nothing about that until the Appellant's arrest. That indicates that the Appellant acted deceitfully towards his own family.

29. It was accepted that the latest OASys report stated that the Respondent was assessed as being at low risk of reoffending. Nevertheless it is a fact that Class A drugs are a serious danger to the community. The Appellant planned his involvement in drug dealing and was motivated by personal benefit, heedless of the harm his dealing would cause to others. The Appellant claimed no knowledge of chemistry and can have no idea whether the drugs he was helping supply were contaminated, increasing the level of danger to others. Theft to feed drug habits is a common cause of crime. Ignoring the violence and murders committed by drug dealers and drug gangs, mainly among themselves, thousands of people die every year in the United Kingdom from drug-related deaths, as the official statistics show. Vast resources are needed for policing and health care. Illegal drugs are a burden on society.

30. The Appellant has only been released from prison relatively recently. There was little specific evidence of his reformation, other than his expressions of regret and remorse which are easily made. The Appellant was in the United Kingdom illegally at all times, in itself deceitful behaviour. The fact that engaging in serious crime carried with it an increased risk of deportation (apart from causing harm to others) had no deterrent effect on him. Such conduct indicates no serious desire to integrate into the

United Kingdom. In the tribunal's view the Appellant continues to pose a degree of risk to the public.

31. Although the Appellant claimed that he has never been back to Albania, he is in contact with his parents. He would be able to re-integrate without undue difficulty. He was educated there and speaks the language. His asylum claim was dismissed as incredible. There is no reason why he would not be able to find employment from which to provide for himself and for his family adequately. No evidence to the contrary was produced. The Tribunal so finds.

32. There was no evidence to suggest that the Appellant would be unable to continue to rehabilitate himself in Albania and to access support groups if he wishes. He will have the opportunity to make a fresh start. The Tribunal so finds.

33. The tribunal finds that the proportionality balance under Article 8 ECHR falls with the public interest, rather than the Appellant's private interest. As noted above, the Appellant's private life and degree of integration into the United Kingdom is limited despite his length of stay. The Appellant made an asylum claim which was dismissed as incredible. The obvious inference is that it was a device to avoid his deportation. That was a further waste of public resources. The Appellant's deportation is conducive to the public good. Neither undue harshness nor very compelling circumstances have been shown. The tribunal so finds. The appeal must be dismissed.

DECISION

The appeal is DISMISSED

Signed R J Manuell **Dated** 18 June 2024
Deputy Upper Tribunal Judge Manuell

TO THE RESPONDENT:
FEE AWARD

No fee award can be made

Signed R J Manuell **Dated** 18 June 2024
Deputy Upper Tribunal Judge Manuell