IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005489

First-tier Tribunal Nos: HU/52929/2023
LH/01557/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 6th of June 2024

Before

UPPER TRIBUNAL JUDGE KEITH
DEPUTY UPPER TRIBUNAL JUDGE CHANA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

BYLBYL UKPERAJ
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr S Walker, Senior Home Office Presenting Officer
For the Respondent: Mr P Richardson, Counsel instructed by Morgan Pearse Solicitors

Heard at Field House on 17th May 2024

DECISION AND REASONS

1. These are the written reasons which reflect the full oral judgment which we gave to the parties at the end of the hearing.

2. Because the appeal is by the Secretary of State, to avoid confusion, we will refer to the parties as they were before the First-tier Tribunal, specifically the Secretary of State and the claimant.

The Judge's decision under challenge

3. We turn to the substance of the decision of Judge Aldridge, following a hearing on 14th November 2023. The Judge considered two separate claims, the first which we do not need to touch on in any particular detail, which was to dismiss the claimant's protection claim. There is no appeal against that decision and that

decision consequently stands, which is the reason why we have lifted the anonymity direction with the consent of Mr Richardson. In terms of the remaining claim, namely Article 8 ECHR, the Judge considered and allowed that appeal in separate operative reasoning at §60 onwards.

4. It is important to note, before we turn to the findings, that at §56, the Judge began by considering whether the claimant was a 'foreign criminal' in accordance with Section 117D(2) of the Nationality, Immigration and Asylum Act 2002 such that the relevant provisions of Section 117C would apply. The claimant had been convicted of an offence which attracted a sentence of less than 12 months, which was a single offence and therefore he was not a persistent offender, and by reference to the well-known authority of Wilson (NIAA Part 5A; deportation decisions) [2020] UKUT 00350, the Judge concluded that the offence did not cause serious harm and as a consequence, the claimant was not a foreign criminal for the purposes of the provisions. We mention that in passing because that had been a ground of a challenge in the original permission application in the IAFT-4, but permission was refused on that specific ground and was not renewed and the grant of permission was therefore only in part, which in turn related to the nature of the claimant's family life in the UK. We canvassed with Mr Walker before us whether any point was taken on the partial grant and as is sometimes argued, whether an issue arose of whether all grounds could be argued by analogy to EH (PTA: limited grounds; Cart JR) Bangladesh [2021] UKUT 0117 (IAC). Mr Walker confirmed that no issue was taken. The sole issue was the Judge's reasons on exceptional circumstances in the Article 8 analysis.

5. We then return to where we had started, at §60 onwards of the Judge's decision. The Judge reminded himself of the well-known authority of R (Razgar) v SSHD [2004] 2 AC 368, the principles of which are sufficiently well-known that we do not recite them. At §62 the Judge recorded the claimant's presence in the UK since 2014. The Judge focused on family life because the private life, or any evidence of it, was described as minimal. The Judge went on to conclude:

> "However, there is compelling evidence that the appellant has significant family life ties to the UK. He resides with his partner who is a Greek national with settled status in the UK. The partner of the appellant has only resided in Albania for the first year of her life and, whilst she does speak Albanian, she has no family in that country and cannot be said to be familiar with life in that country. She has employment in the UK as a carer and also runs her own private enterprise. She has indicated to the tribunal that she would find it difficult for her to live anywhere else other than in the UK and would be unlikely to follow her partner should he be removed to Albania".

The Judge continued at §63:

> "The couple have a young child together and live together as a family unit. Removal of the appellant would result in separation of that family unit. I am satisfied the appellant enjoys a genuine and subsisting relationship with both his partner and their young child. In coming to my findings, I have taken into account Section 55, and I am satisfied that it is in the best interests of the child that the appellant remains in the UK. Should the appellant be removed from the UK the child would remain without a father and I accept that he plays a fundamental role in her life and upbringing, she would be negatively affected were he not to remain and a child does benefit

> from having both parents. I agree that this tips the balance in favour of the appellant".

6. We pause also to observe that at §60, the Judge had recorded that there was a public interest to protect the public from offending criminal behaviour and the claimant remained liable to deportation. There are references elsewhere at §§64, 65 and 67, all of which reflect the strength of the public interest in the maintenance of immigration control, and at §66 the Judge recognised the need for compelling reasons and exceptional circumstances. These points in particular, which we do not recite in full, were all points picked out by Mr Richardson in his oral submissions.

7. We also note that the Judge referred himself to Section 117B of the 2002 Act, at §65, in reaching the conclusion at §68 that the claimant's case was exceptional, because the balance sheet proportionality assessment was against the respondent. The strength of the public policy in maintaining immigration control was outweighed by the strength of the claimant's Article 8 case.

The Secretary of State's appeal

8. The wording of the Secretary of State's ground, which was permitted to proceed, was quite specific:

> "13. At [68] the FTTJ finds that the appellant's circumstances are 'exceptional', such that the public interest in his removal is outweighed by his Article 8 rights. It is submitted that there are no evident reasons given for this finding.
>
> 14. It is submitted that the FTTJ has failed to give adequate weight to the public interest in maintaining an effective immigration control, particularly in light of the fact that the appellant has deliberately sought to frustrate the intentions of those rules by relying on false identity documentation, working illegally and claiming asylum in order to frustrate the deportation process which allowed the appellant to develop a family life in the UK when he was here illegally."

The hearing before us and the parties' submissions

9. On behalf of the Secretary of State, Mr Walker reiterated the grounds and accepted that there was no perversity challenge. Rather, this was a reasons challenge to the conclusion on exceptional circumstances, in the sense that the reasons were not adequate.

10. On behalf of the Claimant, Mr Richardson referred us to the Rule 24 response, the gist of which was that the challenge that there were no "evident reasons" was simply incorrect. There were reasons. The Secretary of State merely disagreed with them. Moreover, the Judge had reiterated at multiple places in his judgment about the importance of the public interest in deporting the claimant, the need for exceptional circumstances and the strength of the public interest in immigration control, all of which had been noted at §§60, 64 and 68 as well as the factors in Section 117B at §65. Any suggestion therefore that the public interest had not been considered was plainly incorrect, and any suggestion that the reasons, even if, as Mr Richardson accepted, had resulted in a decision which

might be regarded as generous, did not amount to an error of law, particularly where there was not a perversity challenge.

Discussion and Conclusions

11. We take the grounds in the order in which they were originally set out in the IAFT-4. In relation to the lack of "evident reasons," we accept Mr Richardson's submission that this should properly be read as an absence of reasons at all, in other words whether it was evident and obviously discernible from the judgment, as is sometimes the case. Contrary to that ground, there were clearly reasons set out for the circumstances said to be exceptional, in relation to the claimant's partner's circumstances, her willingness or ability to relocate to the claimant's country of origin, their child and the effect of fracturing the family relationship, were the claimant to be deported. Specifically, there is no perversity challenge before us and there are adequate reasons given, in the sense that it is very clear why the Judge reached the conclusion he had, instead of reaching a conclusion which is inexplicable. The reasons were adequate and there was no perversity challenge.

12. In relation to the second challenge, and the question of a lack of adequacy of weight, we remind ourselves that the Judge will have been in a position to consider the evidence in a way that we have not. The weight to be attached in a particular matter is intensely fact-sensitive and ultimately ordinarily is one for the Judge, unless a relevant factor has been omitted or an irrelevant one inappropriately considered. It is not our role to substitute our view for what we would have decided. We accept the thrust of Mr Richardson's submissions that the Judge repeatedly reminded himself of the importance of immigration control and the public interest in deporting those who have offended, such as the claimant. Nevertheless, the challenge that the Judge had failed to give adequate weight to the public interest, in the circumstances of these repeated self-directions and where the Judge had explained why that public interest was outweighed, discloses no error of law.

13. As a consequence, the Secretary of State's appeal in relation to the human rights claim fails and is dismissed. Nothing in our decision affects the Judge's dismissal of the protection claim. That decision stands and remained unaffected by our decision.

Notice of decision

Judge Aldridge's decision following a hearing on 14th November 2024 to allow the claimant's human rights claim, but to dismiss his protection claim, contains no error of law, and stands. The Secretary of State's appeal fails and is dismissed.

J Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 May 2024