IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001324

First-tier Tribunal No: HU/00944/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 12 September 2024

Before

UPPER TRIBUNAL JUDGE HOFFMAN

Between

Kadriv Taulant
(NO ANONYMITY ORDER MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr L Singh, Solicitor Agent instructed by Kewalion & Co
For the Respondent: Miss S Simbi, Senior Home Office Presenting Officer

Heard remotely at Field House on 2 September 2024

DECISION AND REASONS

1. The appellant appeals the decision of First-tier Tribunal Judge Phull promulgated on 10 December 2023 dismissing his appeal against the respondent's decision of 6 March 2021 refusing to revoke his deportation order on human rights grounds.

Background

2. The appellant is a national of Albania born in 1987. On 4 September 2006, the appellant applied for entry clearance as a visitor. That application was refused on 19 September 2006. Undeterred, the appellant entered the UK illegally on an unknown date which he says was around 2007. On 8 March 2013, he was encountered by immigration enforcement officers and served with notice that he was liable to removal as an illegal entrant.

3. On 7 July 2016, the appellant was convicted at Warwick Crown Court of two counts of possession/control of identity documents with intent and one count of

possessing with intent to supply a controlled Class A drug (cocaine). He was sentenced to three years and eight months' imprisonment. The appellant's conviction led to the respondent informing him that he was liable to deportation. On 1 August 2016, the appellant signed a disclaimer confirming that he would not be opposing the making of a deportation order and that he wished to return to Albania. Consequently, a deportation order was made against the appellant on 28 March 2017 and he was deported from the UK on 17 July 2017 under the facilitated returns scheme.

4. On an unknown date that the appellant says was in 2018, he re-entered the UK illegally and in breach of the deportation order. In circumstances that are unclear from the papers before me, on 9 September 2019, the appellant was detained under immigration powers and, because he was also in breach of his licence, he was returned to prison to finish his sentence.

5. On 8 October 2019, the appellant claimed asylum which was refused in a decision dated 7 April 2020 and certified as clearly unfounded under s.94 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act").

6. On 5 November 2020, the appellant's representatives sent further submissions to the respondent asking that the deportation order be revoked on the basis of his family life (it was said he had a son in the UK, "C1") and private life in the UK. In a decision dated 6 March 2021, the respondent refused to revoke the deportation order.

The appeal before the First-tier Tribunal

7. The appellant exercised his right of appeal against the respondent's decision and his case was heard by First-tier Tribunal Judge Phull ("the judge") on 22 September 2023. By the time of that hearing, the appellant also sought to rely on his relationship with his partner, Marsela Driza, who had settled status in the UK, with whom he now had a second child ("C2") who was a British citizen. In her decision dismissing the appellant's appeal, the judge found that it would not be unduly harsh on the appellant's children for him to be deported to Albania and for them to remain in the UK with their mother or for the children to return to Albania with their parents. The judge also found that there were no very compelling circumstances to the case to outweigh the public interest in the appellant's deportation.

The appellant's appeal to the Upper Tribunal

8. Permission to appeal to the Upper Tribunal was granted in part by First-tier Tribunal Judge Lawrence on 20 March 2024. The grounds of appeal were limited to those relating to the judge's findings that (a) it would not be unduly harsh for C2 to move to Albania with the appellant and the rest of the family; and (b) it would not be unduly harsh for the appellant's partner and their children to remain in the UK if the appellant was deported.

9. The appellant's grounds of appeal argue that the judge failed to take into account that C2 is a British citizen with a right of abode in the UK who should not be compelled to leave the UK; that C2's mother has no ties to Albania; and that C2 has particular vulnerabilities arising from his health.

Findings – Error of Law

10. As I indicated at the end of the hearing, I am not satisfied that the judge made a material error of law in her decision.

11. In the present case, the judge correctly directed herself at [25] and [26] that this was a case where the exceptions under s.117C(4) and (5) of the 2002 Act applied because the appellant was a foreign criminal (as defined under s.117D(2)). She considers the unduly harsh consequences of the appellant's deportation on his children at [27] to [30]. While the appellant has two children, C1 is an Albanian citizen, and the grounds of appeal focus solely on the judge's consideration of C2's circumstances.

12. At [27], the judge noted that C2 is British and found that given his young age (he was born January 2023), he could adjust to separation from the appellant with the help of his mother. While the appellant argues that the judge failed to have proper regard to C2 circumstances, and, in particular, Mr Singh argued that the judge had failed to have proper regard to C2's medical issues, I accept Miss Simbi's submission that the judge's findings in that paragraph have to be considered in the light of the decision as a whole. That includes [19], where the judge finds that C2 is British citizen; that he "has suffered from infantile spasms, previously requiring hospitalisation and medical treatment"; that the appellant and his partner are concerned about C2's welfare; that C2 is under the care of a paediatric consultant; and that the appellant helps his partner to administer C2's medication. Nevertheless, the judge went on at [20] to find that the appellant's deportation would not require C2's removal, which is consistent with her findings at [27]. The judge then returns to this point at [29] where, having taken into account the evidence of Ms Driza that she would prefer to stay in the UK with her children and the appellant, she finds that "it would not be unduly harsh for [C2] to remain in the UK with his mother and brother" and that he could have regular contact with the appellant through video calls and visits to Albania.

13. At [28], the judge then finds that it also would not be unduly harsh for C2 to live in Albania with his parents and his older brother. Here, the judge again took into account that C2 is a British citizen and that he was not required to leave the UK. However, she found that C2 could be expected to adapt to life in a new country with the help of his parents, which I am satisfied was a rational finding given C2's young age. Contrary to what is claimed at para 6 of the grounds of appeal, the judge did not fail to consider that C2 had a right of abode as a British citizen. She was clearly aware that he had British citizenship and, in her words, "he is not required to leave the UK". It is clear from reading her decision as a whole that what the judge was suggesting was that it was a decision for the family whether they would move to Albania to live with the appellant. While, before the Upper Tribunal, Mr Singh placed emphasis on the fact that C2 has British citizenship, that is not a trump card. It is only in non-criminal cases that there is no public interest in the removal of a person with a genuine and subsisting relationship with a qualifying child and, even then, only in cases where it would not be reasonable to expect the child to leave the UK: see s.117B(6). However, as explained above, this is a case involving a foreign criminal and the judge correctly directed herself that she had to consider the exception under s.117C(5). While Mr Singh argued that the judge had been inconsistent on whether C2 could remain in the UK or go to Albania with his family, I am not satisfied that amounts to a material error of law. It was plainly reasonable for the judge to look at both

options – C2 remaining in the UK with his mother and brother; or the family going to Albania together – and consider whether either or both would be unduly harsh. She found that neither option would lead to unduly harsh consequences for C2.

14. To the extent that it is argued that the judge failed to take into account C2's medical needs, it is correct that this is not expressly mentioned at [27] to [30]. Having referred to this at [19], it is not until [40] that the judge returns to the question of C2's health as part of her consideration of very compelling circumstances rather than the exception under s.117C(5). At [40], she takes into account the medical evidence regarding C2 suffering from infantile spasms, including a letter from a consultant paediatrician dated 13 September 2023. She also takes into account the evidence of the appellant and his partner that C2's medication is unavailable in Albania. However, the judge found that C2 had been discharged from hospital on 5 September 2023; that he had not had any further seizures since then; he had not been readmitted to hospital; and that he was now on medication. She was therefore satisfied that as of the date of the hearing, C2's seizures were under control. Furthermore, the judge found that there was no objective evidence before her to support the claim that medication or treatment for infantile spasms were unavailable in Albania. I am satisfied that she was entitled to make those findings based on the evidence before her.

15. At para 13 of the grounds of appeal, the appellant argues that judge erred in law because the consultant paediatrician's letter dated 13 September 2023 "plainly showed [C2] would be unable to participate in society in Albania in any meaningful way". Miss Simbi submitted that the letter did not go that far and I would agree. What that letter, written by Dr Gail Kakoullis, says is:

> "I am writing on the request of [C2's] father, Taulant Kadriu. [C2] has been a recent inpatient and continues under very close follow up for a condition called infantile spasms which is going to require treatment for a prolonged period of time. I understand his father is applying for an extension of his visa and it is important for both his mother and father to be around to support [sic] during this period of time."

Setting aside the point that the appellant certainly was not applying to extend his visa, I am satisfied that this brief letter does not on a plain reading indicate that C2 would be unable to participate in Albanian society.

16. While the judge's consideration of the medical evidence takes place under the very compelling circumstances heading rather than under the s.117C(5) part of the decision, I am not satisfied that this amounts to a material error of law. Given that, at [40], the judge found that (a) C2's condition was being adequately manged in the UK; and (b) there was insufficient evidence before the tribunal that the family would be unable to obtain medication and treatment for C2 in Albania, it is obvious that had she applied that reasoning earlier in her decision she would have found that C2's medical condition would not lead to any unduly harsh consequences for him, whether he was to remain in the UK with his mother or whether he was to return to Albania with the rest of his family.

17. I next turn to the point at para 7 of the grounds of appeal which asserts that the judge failed to consider that Ms Driza has no ties to Albania of her own when considering whether it would be unduly harsh for C2 to move to Albania with his family. This is not a point raised in the appellant's grounds of appeal before the First-tier Tribunal nor does Ms Driza claim in her witness statement that she has no ties to Albania. That is unsurprising given that she is an Albanian citizen

herself. There is no evidence before me to show that this point was ever argued before the judge and I find that there is no merit to this element of the appellant's grounds.

18. Finally, it is argued at paras 15 and 16 of the appellant's grounds of appeal that he has no family members to support them and no house to live in in Albania and that the judge failed to give any proper reasons for not accepting the appellant's evidence in this regard. At 17 and 18 it is also argued that the judge failed to give proper consideration to whether the appellant would be able to find work for himself in Albania. While it is unclear whether First-tier Tribunal Judge Lawrence gave permission for these grounds to be advanced, I deal with them because it appears that they appear to be relevant to the unduly harsh test in the context of the family returning to Albania together. However, as Miss Simbi submitted, these points are not raised in the appellant's grounds of appeal relied upon before the judge. Furthermore, neither the witness statement of the appellant or the witness statement of Ms Driza touched on these issues. It is therefore unclear whether these points were even advanced before the judge. In fact, as the judge records at [35], the evidence before the tribunal was that the appellant does have family in Albania, including his parents. I therefore find that there is no merit to these grounds of appeal.

Conclusions – Error of Law

19. I am satisfied that the judge had proper regard to the evidence before her and that, when read as a whole, the judge's findings in relation to the unduly harsh test were adequately reasoned and her conclusions were within the range of rational decisions open to her. The appellant's grounds disclose no material error of law.

Notice of Decision

There is no error of law in Judge Phull's decision.

The appeal is dismissed.

M R Hoffman

Judge of the Upper Tribunal
Immigration and Asylum Chamber

4th September 2024