



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/18911/2018

**THE IMMIGRATION ACTS**

Heard at Manchester  
On 5<sup>th</sup> April 2019

Decision and Reasons Promulgated  
On 9<sup>th</sup> April 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

MR TONIN DODA  
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms N Wilkins, Counsel, instructed by My UK Visas.  
For the respondent: Mr McVeety, Senior Presenting Officer.

**DECISION AND REASONS**

Introduction

1. The appellant is a national of Albania, born on 30 April 1968. On 1 September 2017 he made a claim based upon his article 8 rights for leave to remain in the United Kingdom. He claimed to have entered the United Kingdom on 18 July 1997. If this were correct then under paragraph 276 ADE 1(iii) the 20 years provision in the immigration rules would be met in respect of his private life.

2. The respondent, on 31 August 2018, refused his application on the basis he had not demonstrated residence for this length of time. There was no evidence of any family life in the United Kingdom. No exceptional circumstances were identified which would otherwise justify the grant of leave.

### The First tier Tribunal

3. His appeal was heard by First-tier Tribunal Judge Morris at Manchester on 30 October 2018. In a decision promulgated on 12 November 2018 it was dismissed. The appellant was represented by Counsel and there was a presenting officer in attendance.
4. In support of his appeal, statements were provided from various people as to the length of time he had been in the United Kingdom. The judge heard from a Mr Naim Maleci and a Mr Agron Elezi who adopted their statements. The appellant's claim was that he travelled to the United Kingdom with Mr Naim Maleci. They arrived on 18 July 1997 and made a claim for protection shortly after. This was subsequently dismissed. Thereafter, they lived at various shared addresses until 1999 when Mr Malaci was returned. He then began to live with Mr Agron Elezi who had arrived in the United Kingdom in 2000.
5. Mr Naim Maleci subsequently obtained limited leave to remain. He had returned the United Kingdom in 2001 and then returned to Albania in 2003. He returned here again in 2005 to 2009, and then again in 2010. He subsequently married and has 2 children. He was cross-examined about criminal convictions and it was recorded he accepted he had used another name to obtain identity documents. The evidence of Mr Agron Elezi was that he knew the appellant in Albania and was aware he came to the United Kingdom in 1997.
6. At hearing, the presenting officer accepted Home Office held some records confirming the appellant's presence in the United Kingdom in 2000.
7. At paragraph 50 onwards of the decision, the judge refers to the evidence presented. The judge found that some of the letters of support referred to events after 2000, which had been accepted. There was one letter from a Mr Martini stating the appellant had been here since 1997. He did not attend the hearing. The judge referred to the appellant's friend, Mr Maleci, and said that his evidence was not being discounted solely on the basis he had a criminal conviction but this nevertheless this was a factor in the assessment of his evidence.
8. At paragraph 53 the judge concluded the appellant had not discharged the burden of proof to show he had been here 20 years. The judge concluded that whilst private life was engaged the outcome was proportionate.

## The Upper Tribunal

9. Permission to appeal to the Upper Tribunal was granted on the basis it was arguable the judge had failed to make specific findings in respect of the relevant evidence submitted, including the written evidence presented in the form of letters from friends.
10. At hearing, Mr McVeety, Senior Presenting Officer accepted there is a material error of law in the decision. The appellant's appeal bundle contains statements in support of his claim of long residence from Mr Naim Maleci and Mr Agron Elezi. The judge does make reference to this evidence. However within the respondent's bundle are further statements at part C which are not commented upon. There are statements from a Mr Vullnet Curaj he said he met the appellant in Manchester in 1999. There is also a statement from a Mr Col Maleci he states he had known him since 1997 and that they met in Manchester. There is also a letter from Mr Tonin Doda it states he knew the appellant from Albania and from their time in the United Kingdom. Ms N Wilkins, Counsel, states that in all there were 7 letters in support and 4 are not assessed in the decision.
11. On the basis of what has been agreed between the parties no further written reasons are required. The requirements of subparagraph 40(3) (a) and (b) of the Upper Tribunal procedural rules are met. I therefore set aside the decision of the First-tier Tribunal remitted the matter for a de novo hearing in the First-tier Tribunal.

## Decision

The decision of First-tier Tribunal judge Morris materially errs in law and is set aside. The matter is remitted to the First-tier Tribunal for a de novo hearing.

Deputy Upper Tribunal Judge Farrelly.

## Directions

1. Relist for a de novo hearing in the First-tier Tribunal in Manchester excluding First-tier Tribunal Judge Morris.
2. An Albanian interpreter will be required.
3. It is estimated the hearing would take around 2 hours.
4. The appellant's representatives should provide the personal details of any witnesses claiming to be aware of the appellant's presence in the United Kingdom from 1997. This is so that police checks can be made on them. If the respondent wishes to rely upon adverse features, such as convictions, they should serve copies of any records upon the appellant's representatives who in turn should confirm whether they agree or disagree with the accuracy of the information.

Deputy Upper Tribunal Judge Farrelly

Dated 05 April 2019