



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/19921/2018**

Appeal Numbers:

925/2018

HU/19

926/2018

HU/19

THE IMMIGRATION ACTS

**Heard at Field House
On 30 September 2019**

**Decision & Reasons Promulgated
On 1 October 2019**

Before

UPPER TRIBUNAL JUDGE PITT

Between

**MISS DHURATA BERA (FIRST APPELLANT)
MISS ANILA BREA (SECOND APPELLANT)
MISS LEONELA BERA (THIRD APPELLANT)
(ANONYMITY DIRECTION NOT MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr J Collins, Counsel, instructed by Marsh & Partners
Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision issued on 13 June 2019 of First-tier Tribunal Judge Traynor which refused the appeals brought on Article 8 ECHR grounds by the appellants.

2. The appellants are citizens of Albania. They are sisters. The first appellant was born on 7 March 2000. The second appellant was born on 15 July 2002. The third appellant was born on 3 September 2003. The exact date of the appellants' arrival in the UK is not clear, the evidence referring to both 2016 and 2017. It is not disputed that they entered the UK illegally.
3. The appellants maintain that they came to the UK to join their father, Mr Lulzim Bera, born on 1 July 1972, also an Albanian national. The appellants made an application for leave to remain on Article 8 ECHR grounds on 22 February 2018. The appellants maintained that they had felt obliged to come to the UK illegally in order to join their father as they were abandoned by their mother in Albania in approximately February 2016.
4. That application was refused in a decision dated 19 September 2018. The appellants' appeals were heard by the First-tier Tribunal on 10 April 2019 and the appeals dismissed in the decision of Judge Traynor dated 13 June 2019. Permission to appeal against the decision of the First-tier Tribunal was granted on 25 July 2019.
5. First-tier Tribunal Judge Traynor did not find the evidence before him, including the oral evidence of the first appellant and Mr Bera, to be in any way credible. In paragraph 64, when considering the evidence of the father on how the appellant's came to the UK, the Judge states "in this regard, I find the Appellants' father's evidence to be highly inconsistent". Later in the same paragraph the Judge states "I find what the Appellants' father had to say in this regard to be wholly implausible and unlikely". In paragraph 68, again referring to Mr Bera's evidence on how the appellants came to the UK, the Judge found "that his evidence in this regard is both highly incredible and implausible and I give no weight to it".
6. Further, in paragraph 70, when assessing the evidence of the first appellant and Mr Bera, the First-tier Tribunal found:

"Essentially, I find that the evidence presented in the witness statements has varied so dramatically from the oral testimony that I am unable to give any weight to what the First Appellant and her father said misrepresenting the truth of their circumstances and how the Appellants arrived in this country".
7. In paragraph 72, assessing the evidence of the first appellant on the family home in Albania, the judge found as follows:

"I find that based upon this evidence it is reasonable to conclude that upon a balance of probabilities the home in which the Appellants resided prior to them coming to the UK remains available to them and that there is no evidence to suggest that they cannot return to live there".
8. In paragraph 73 the judge makes further findings rejecting the evidence that there were difficulties on arrival and finds the evidence of the

appellants' father as to having been threatened by people traffickers to be "nothing more than nonsense".

9. In paragraph 74 the judge states "I find that there are fundamental inconsistencies between the First Appellant and her father's evidence regarding the circumstances in which they arrived in the United Kingdom".

10. In paragraph 75 the judge states:

"I find that all of the Appellants, as well as their father, have been entirely economical with the truth in regard to the circumstances in which they came to this country, the timing of their arrival and the presence of other family members here. I find that this seriously damages the reliability of their evidence and their claim that the Respondent's decision to refuse their applications would amount to a breach of their Article 8 rights to protect their private life".

11. In paragraph 78 of the decision, First-tier Tribunal Judge Traynor finds "that the Appellants have been thoroughly dishonest".

12. In paragraph 79 of the decision, the Judge addresses the claim of the appellants that their mother disappeared and that their father has sole responsibility for them. He states:

"Whilst I am told that the Appellants' mother has disappeared, I again find that this is only part of the story. I find it utterly unbelievable that neither the Appellants' father, nor the Appellants themselves, attempted to make any contact with their maternal relatives in order to try and establish whether their mother was visiting and had not returned. The fact that I was told in oral evidence that she left at the same time as the brother, who had never been mentioned previously, and that he has again materialised in the United Kingdom, leads me to conclude that the Respondent's submission that in all probability their mother is in the United Kingdom is one which can be drawn from their evidence. I find there is no evidence that the Appellants' mother has disappeared as claimed, or that the Appellants were abandoned in circumstances where it was necessary for their father to make these alleged arrangements to bring them to the United Kingdom".

13. Having made these extensive adverse credibility findings, the First-tier Tribunal did not find that the appellants had shown that there would be a disproportionate breach of Article ECHR arising from the respondent's decision to refuse leave on Article 8 ECHR grounds.

14. The grounds of appeal concede in paragraph 4 that there is no error in the credibility findings of the First-tier Tribunal. They maintain, however, that in the Article 8 ECHR proportionality assessment, the First-tier Tribunal was asked to take into account the appellant's claim that they met the provisions of paragraphs 297 of the Immigration Rules. That paragraph allowed for a dependent child to be granted entry clearance to come to the UK to be with a parent. The appellants had submitted to the First-tier Tribunal that their father had sole responsibility for them and could

maintain and accommodate them adequately but the decision did not show that the Judge had made a finding against them on these issues. Failing to do so when the point was clearly put before him was an error of a point of law. The point was material as, if they were found to meet the provisions of paragraph 297, it was not proportionate for the appellants to be expected to return to Albania. They relied on the principles from the case of Chikwamba v SSHD [2008] UKHL 40 and SSHD v Hayat [2012] EWCA Civ 1054.


15. Certainly, in paragraph 60 of the decision, the Judge was asked to assess whether the appellant's met paragraph 297 of the Immigration Rules and to take that into account in the proportionality assessment. In paragraph 61 of the decision, First-tier Tribunal Judge Traynor declined to carry out an assessment of whether paragraphs 297 was met, stating:

"I give no weight to the submission that Part 8 of the Rules should play any part in my assessment of the evidence in this case".

16. This challenge has no merit. The decision of the First-tier Tribunal shows very clearly that the evidence of the appellants on their circumstances in Albania, including having been abandoned by their mother or being unable to contact her, was not accepted. Their account of their circumstances in Albania and in the UK was rejected entirely. Where those findings stand, it is not arguable that the appellants could have been found to have shown that their father had sole responsibility for them or met the maintenance and accommodation requirements. It was for the appellants to make out their case on these provisions and as nothing they said on them was credible, it is not arguable that there was any basis on which the Judge could have proceeded to make a Chikwamba/Hayat assessment when considering proportionality.
17. For these reasons, I do not find an error of law in the decision of the First-tier Tribunal which shall stand.

Notice of Decision

The decision of the First-tier Tribunal does not disclose an error of law and stands.

Signed: 
2019
Upper Tribunal Judge Pitt

Date: 30 September