Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/24748/2018 (R)

THE IMMIGRATION ACTS

Remote Hearing by Microsoft Teams	**Decision & Reasons Promulgated**
On 22nd June 2021	**On 28th June 2021**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

MR LEO SINA
(Anonymity Direction Not Made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Greer, counsel instructed by MYUKVISAS
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS (R)

1. The hearing before me on 22nd June 2021 took the form of a remote hearing using Microsoft Teams. Neither party objected. I sat at the Birmingham Civil Justice Centre. I was addressed by the representatives in exactly the same way as I would

have been if the parties had attended the hearing together. I was satisfied: that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate. I was satisfied that it was in the interests of justice and in accordance with the overriding objective to proceed with a remote hearing because of the present need to take precautions against the spread of Covid-19, and to avoid delay. I was satisfied that a remote hearing would ensure the matter is dealt with fairly and justly in a way that is proportionate to the importance of the case, the complexity of the issues that arise, and the anticipated costs and resources of the parties. At the end of the hearing I was satisfied that both parties had been able to participate fully in the proceedings.

The Background

2. The appellant is a national of Albania. On 20th September 2018 he made an application for entry clearance to the UK as the fiancée of Luljeta Zekthi, who is in the UK with refugee leave. The application was refused by the respondent for reasons set out in a decision dated 23rd November 2018. The respondent relied upon paragraph 320(11) of the immigration rules which provides that entry clearance should normally be refused where the applicant has previously contrived in a significant way to frustrate the intentions of the rules. Additionally, the respondent concluded that the application fell for refusal on grounds of suitability and that the eligibility relationship requirements and English language requirements were not met.

3. The appellant's appeal against that decision was dismissed by First-tier Tribunal Judge Ali for reasons set out in a decision promulgated on 15th October 2019. Judge Ali found that the appellant had not met the requirements for leave to enter set out in Appendix FM because at the date of application, the appellant had not passed an English language test. He accepted however that the appellant had provided a copy of an IELTS certificate confirming the appellant has passed A1 of the CEFR in speaking and listening, albeit that certificate postdates the application.

4. First-tier Tribunal Judge Ali also found that the appellant and sponsor are in a genuine relationship, and that for the purposes of paragraph E-ECP.2.8, the appellant is seeking entry to the UK to enable his marriage to the sponsor to take place. First-tier Tribunal Judge Ali also considered whether the application should be refused under paragraph 320(11) of the immigration rules and concluded that it should not, having considered the explanation provided by the appellant for his previous presence in the UK and the matters leading to a conviction in February 2016, and his subsequent voluntary return to Albania in December 2016.

5. The appellant was granted permission to appeal the decision of First-tier Tribunal Judge Ali by Upper Tribunal Judge Bruce on 7th November 2020. I found there to be an error of law in the decision of the First-tier Tribunal for reasons set out in my decision promulgated on 12th May 2021. I noted that the findings made by Judge Ali had not been challenged by the respondent and those findings were preserved. I directed that the matter be listed for a resumed hearing for the decision to be re-made in the Upper Tribunal.

6. The only ground of appeal available to the appellant is that the respondent's decision is unlawful under s6 of the Human Rights Act. Article 8 is plainly engaged. I find that the decision to refuse the appellant leave to enter may have consequences of such gravity as potentially to engage the operation of Article 8. I accept that the interference is in accordance with the law, and that the interference is necessary to protect the legitimate aim of immigration control and the economic well-being of the country. The issue in this appeal, as is often the case, is whether the interference is proportionate to the legitimate public end sought to be achieved.

7. Mr McVeety, rightly in my judgment, accepts that although the requirements of the immigration rules were not met by the appellant as at the date of the application for entry clearance, based upon the preserved findings of First-tier Tribunal Judge Ali, the requirements are now met.

8. I have had regard to the public interest considerations set out in s117B of the Nationality, Immigration and Asylum Act 2002. As set out by the Court of Appeal in TZ (Pakistan) [2018] EWCA Civ 1109, compliance with the immigration rules would usually mean that there is nothing on the Secretary of State's side of the scales to show that the refusal of the claim could be justified. At paragraphs [32] to [34], the Senior President of Tribunals confirmed that where a person meets the rules, the human rights appeal must succeed because 'considerable weight' must be given to the respondent's policy as set out in the rules.

9. Having regard to the policy of the respondent as expressed in the immigration rules, and in the absence of any countervailing factors in the public interest that weigh against the appellant, I am satisfied that on the facts here, the decision to refuse leave to enter is disproportionate to the legitimate aim of immigration control. In the circumstances I allow the appeal on Article 8 grounds.

Notice of Decision

10. The appeal is allowed on Article 8 grounds outside the immigration rules.

Signed *V. Mandalia* Date 22nd June 2021

Upper Tribunal Judge Mandalia

FEE AWARD

I decline to make a fee award. The appellant did not satisfy the requirements of the immigration rules at the date of his application and it was open to the respondent to refuse his application under the immigration rules. The appellant has since provided evidence that post-dates the decision, that establishes that the rules are now met, and his appeal has succeeded on that basis outside the immigration rules.