Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2023-003199

First-tier Tribunal
No: HU/57523/2021

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 22 September 2023	5th October 2023

Before

Deputy Upper Tribunal Judge MANUELL

Between

MR AFRIM GJORRETAJ
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr J Dhanji, Counsel
(instructed by Malik and Malik, Solicitors)
For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Limited permission to appeal was granted by First-tier Tribunal Judge Karbani on 2 August 2023 against the decision to dismiss the Appellant's Article 8 ECHR

private life appeal made by First-tier Tribunal Judge Chinweze in a decision and reasons promulgated on or about 3 March 2023.

2. The Appellant, a national of Albania born on 27 October 1978, had applied for leave to remain Article 8 ECHR human rights grounds on 15 November 2020. The application was refused by the Secretary of State for the Home Department on 12 November 2021.

3. Judge Chinweze noted that the Appellant had entered the United Kingdom illegally on 12 September 1999. He claimed asylum which was refused on 19 September 2000. On 28 July 2006 the Appellant was removed to Kosovo. The Appellant claimed that he re-entered the United Kingdom clandestinely in August 2006. On 9 November 2011 the Appellant made another asylum claim, which was refused on 21 February 2013. The Appellant then made the private life application which is the subject of the present appeal.

4. Judge Chinweze further noted that the Respondent had not consented to the new matter of the Appellant's relationship with his Filipino fiancée, however he ruled that the relationship could be considered as part of the private life claim. The judge found that the Appellant could return to Albania and resume his private life there without encountering very significant obstacles. The judge placed no weight on the Appellant's claim that he was the victim of a blood feud, a claim that had been rejected twice before and in support of which no new evidence had been produced.

5. Judge Chinweze accepted that the Appellant was in a genuine and subsisting relationship with his fiancée. Nevertheless that relationship was not an obstacle to the Appellants reintegration in Albania. He was not dependent on her and they had never lived together. She could visit him in Albania and they could keep in touch by modern methods of communication. There were no exceptional circumstances and there was no Article 8 ECHR disproportionality, within or outside the Immigration Rules. Section 117B of the Nationality, Immigration and Asylum Act 2002 applied. The Appellant has used a false identity twice and had entered the United Kingdom illegally twice. The public interest prevailed. Hence the appeal was dismissed.

6. Judge Karbani refused permission to appeal over the weight the judge placed on the Appellant's use of false details as that was a legitimate factor in the assessment of the public interest. It was, however, considered arguable that the judge had failed to consider the impact of separation on the Appellant's fiancée and had erred when considering the application of Chikwamba [2008] UKHL 40, because the Appellant's fiancée had only limited leave to remain as a skilled worker.

7. The Respondent filed a rule 24 notice dated 11 August 2023, opposing the onwards appeal. It was submitted that the judge had no jurisdiction to consider family life (the Appellant's claimed relationship with his fiancée) as that had been a new matter raised after his application had been made and the Secretary of State for the Home Department had refused to consent. Any impact on the Appellant's fiancée arising from the Appellant's removal would have been a family life matter and so excluded from the judge's consideration. The same applied to the Appellant's ability to rejoin his fiancée. There was no error of law and the determination should be upheld.

8. Mr Dhanji for the Appellant relied on the grounds of appeal and the grant of permission to appeal. He submitted that this appeal was in essence and indeed only an Article 8 ECHR private life appeal. That had been accepted on the Appellant's behalf by the counsel who had appeared in the First-tier Tribunal appeal (not Mr Dhanji) but somehow the appeal had strayed into argument over Article 8 ECHR family life. The plain fact was that the Appellant's partner was not settled in the United Kingdom so was not able to sponsor his return if he left the United Kingdom and applied for entry clearance. Chikwamba (above) was inapplicable and irrelevant. Hence it was a separation case, and so the impact on the Appellant's fiancée should have been considered. Quite plainly there was no such consideration. Proportionality had not been considered on the correct basis. That was a material error of law. The judge's determination was unsafe and should be set aside. The error of law appeal should be allowed.

9. Mr Wain for the Respondent relied on the rule 24 notice and submitted that there was no material error of law at all. It was plain that the judge had correctly identified where the public interest lay for the purpose of the Article 8 ECHR balancing exercise. Sustainable findings

had been reached and explained. The onwards appeal should be dismissed.

10. There was nothing which Mr Dhanji wished to raise by way of reply.

11. The tribunal finds that there was no error of law in Judge Chinweze's decision, so that the onwards appeal must be dismissed. It is not easy to see why permission to appeal was ever granted. As Mr Dhanji candidly accepted, the arguments which counsel for the Appellant had raised before the judge at the First-tier Tribunal hearing had drifted into Article 8 ECHR family life issues, when in fact the only live issue before the tribunal was Article 8 ECHR private life outside the Immigration Rules. The Secretary of State for the Home Department had refused to consent to the raising of the new matter of the Appellant's relationship with his fiancée, a national of the Philippines only recently arrived in the United Kingdom with limited leave to remain in the United Kingdom as a Skilled Worker. There was no need to consider her position which could only have been relevant where Article 8 ECHR family life was in issue.

12. In any event, it was obvious by the date of the witness statements that the Appellant's fiancée was aware that the Appellant was in the United Kingdom without any form of leave, so that in effect she would have to go to Albania with him if she wished for them to live together in the future. The couple were not, of course, living together at the date of the hearing.

13. As Mr Wain pointed out, Chikwamba (above) had no application at all, even prior to Alam [2023] EWCA Civ 30, because the requirements for entry clearance under Appendix FM were not met.

14. The focus was thus on the Appellant's private life. The Appellant's immigration history was bad and the judge found that all the Appellant's excuses for non compliance and illegal re-entry were insufficient. The Appellant's ability to speak English, the absence of reliance on public funds (because he was working illegally) and the length of his residence (because he was in the United Kingdom illegally) did not add to the Appellant's case. Nor did his relationship with is fiancée,

15. In the tribunal's judgment the First-tier Tribunal Judge reached sustainable findings, in the course of a determination, which securely resolved the issues.

16. No reason was given by the judge as to why an anonymity order was made in the First-tier Tribunal. Such an order is not needed and the anonymity order is lifted.

DECISION

The Appellant's appeal to the Upper Tribunal is dismissed.

There was no material error of law in the First-tier Tribunal's decision and reasons, which stands unchanged, save that the anonymity order is lifted.

Signed **Dated** 3 October 2023

R J Manuell
Deputy Upper Tribunal Judge Manuell