



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-001119

First-tier Tribunal No: HU/57124/2021  
IA/16392/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

**On 28<sup>th</sup> February 2024**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**  
**DEPUTY UPPER TRIBUNAL JUDGE CAMPBELL**

**Between**

**URIM GJOKA**  
**(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms A Kogulathas of Counsel, instructed by Legal Practitioners and Co

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

**Heard at Field House on 26<sup>th</sup> October 2023**

**DECISION AND REASONS**

1. On 24<sup>th</sup> June 2023, the Upper Tribunal (Upper Tribunal Judge Canavan and Deputy Upper Tribunal Judge Welsh) set aside a decision of the First-tier Tribunal promulgated on 21<sup>st</sup> February 2023, in which the appellant's appeal against refusal of his human rights claim was allowed. Directions were made that the appeal should remain in the Upper Tribunal and reheard there, as only limited findings of fact would be required in remaking the decision. A number of the First-tier Tribunal's findings of fact were preserved, including the following:

- a. The non-disclosures in relation to the appellant's identity and criminal conviction were deceptions and were "deliberate and in respect of significant matters" (as found by the First-tier Tribunal Judge)
  - b. The non-disclosure in relation to a caution given to the appellant was "highly likely" to be the result of the appellant having forgotten about it
  - c. The appellant met the requirements of the immigration rules in relation to the relationship requirement in Appendix FM [18].
2. The directions allowed updating evidence to be filed and served. In addition to the evidence which was before the First-tier Tribunal, we were provided with a supplementary bundle, which included a skeleton argument dated 25<sup>th</sup> October, prepared by Ms Kogulathas. The supplementary bundle also included a witness statement made by the appellant, dated 13<sup>th</sup> October and a statement from his partner, Ms Alison Reeve, dated 11<sup>th</sup> October, and medical and country evidence. Ms Reeve gave oral evidence and was cross-examined by Mr Avery.
3. The appellant is a national of Albania. On 23<sup>rd</sup> July 2021, he applied for entry clearance under Appendix FM, to join his partner in the United Kingdom, Ms Reeve. That application was refused on 15<sup>th</sup> September 2021, the respondent finding that the appellant did not meet the suitability requirements of the rules under S-EC.2.2(b). This provides that an application will normally be refused if, whether or not to the applicant's knowledge, there has been a failure to disclose material facts in relation to the application. The respondent found that the appellant had deceived the decision-maker in declaring, in his application, that he had not been known by any other name, whereas in fact he entered the United Kingdom in 1999 under a false identity, as a Kosovan national named Argon Llaka and in declaring that he had no criminal convictions or cautions, whereas he was cautioned on 5<sup>th</sup> August 1999 and convicted of an offence, being sentenced on 2<sup>nd</sup> August 2002 to a term of 12 months in a Young Offenders' Institution.
4. The appellant's case before us, as set out in the skeleton argument, is that the appellant can show that he meets the suitability requirement under Appendix FM and satisfies the requirements of the rules for leave to enter as a partner. If the rules are met, his appeal should be allowed but even if they are not, it is contended on his behalf that refusal of entry clearance amounts to a disproportionate interference with his right to family life under Article 8, and so the appeal should nevertheless be allowed on this basis.
5. Attention was drawn in the skeleton argument to the respondent's policy on family life and exceptional circumstances, in the context of the suitability requirements, a further policy on false representations and deception, in the same context, the appellant's witness statements and his evidence that he had difficulty reckoning with his past circumstances at a time when he was young and vulnerable and to what was asserted to be his positive contribution to his community following his unlawful re-entry to the United Kingdom in 2006. He had supported Ms Reeve, his partner and left the United Kingdom in 2020 and applied for entry clearance from abroad. He had not been given an opportunity to respond to the allegations of false representations before the respondent made her decision. Overall (paragraph 12 of the skeleton) there were compelling reasons showing that the suitability requirements were met.
6. Even if those requirements were not met, the appellant could succeed in the light of Gen 3.2 in Appendix FM or under Article 8, outside the rules. The appellant and Ms Reeve had been in a relationship since 2006 and intend to

marry. If the appellant were denied entry clearance, they would be separated long term. There would in any event be insurmountable obstacles to family life between the appellant and Ms Reeve continuing outside the United Kingdom (paragraph 22 of the skeleton). Ms Reeve would experience very significant hardship were she to relocate to Albania as she would be forced to abandon friends and family here, including her sister, who suffers from Type 1 diabetes. She cannot speak Albanian and would struggle to find work and integrate. She underwent surgery related to an ovarian cyst and endometriosis in September 2023. Relocating to Albania would disrupt and impede her recovery. It was clear from country evidence that medical facilities were more limited in Albania. The appellant and Ms Reeve have high regard for their cat, described in the skeleton (paragraph 28) as “an integral part of their family life”, all the more so as they do not have children.

7. Continued separation would be unjustifiably harsh and amount to a disproportionate interference with their family life. There have been visits by Ms Reeve to Albania but they have struggled with the separation. Ms Reeve’s evidence in her statement is that support from family and friends cannot address the need for day to day assistance with her recovery.
8. The public interest in immigration control is not strong enough to warrant the appellant’s continued exclusion from the United Kingdom. His is not a deportation case and he has not been convicted of an offence since 2002. He has remained in Albania since 2020, almost three years. This is a substantial amount of time during which he has been separated from his partner, their cat and his friends in the United Kingdom.
9. In his supplementary statement, the appellant explained his current circumstances. He still believed that he was innocent of the crime that led to his conviction, although he was found guilty by a jury. He considered that the case was closed and so did not reveal it in his application for entry clearance. During what he described as his second residence in the United Kingdom and throughout his relationship with Ms Reeve, he had lived in the most honest way possible, for nearly 20 years. The appellant explained the reasons why Ms Reeve could not move to Albania. He considered the United Kingdom to be his home and had missed it for the last few years. Albania had a completely different lifestyle which he had struggled to adapt to, living with his parents for the last three years. It would not be possible to take their pet to Albania as the cat would not have access to medical care, as was available in the United Kingdom. The appellant described his relationship with Ms Reeves as still genuine and strong. She visited him in Albania in August 2023. He wished to be with her to help her recovery, following her surgery.
10. In her statement, Ms Reeve described her relationship with the appellant as loving and supportive. He was protective of her and their cat and had been a huge support when she was faced with life events and challenges. The appellant was loved and respected by her family and friends. The appellant had spent almost all his adult life in the United Kingdom, returning to Albania when his mother fell seriously ill during Covid. Fortunately, she recovered and Ms Reeve had met her. Ms Reeve had a career in the United Kingdom, working full time since she was 16 years old, save for a career break. Albania did not offer work opportunities for the appellant or Ms Reeve.

11. Ms Reeve stated that she worked hard and enjoyed a full social life, going to the gym and meeting friends socially. She would not be able to do those things in Albania due to the language barrier and a lack of income. She also had concerns as a woman about aspects of Albanian culture. She and the appellant were of different faiths and she will not be able to live under his parents' roof. With a lack of income, they would be unable to rent or buy their own home in Albania.
12. Ms Reeve described her health circumstances in her statement. She is currently making use of private healthcare for gynaecological conditions and underwent investigations and two operations in the summer of 2023. She would find it difficult to get necessary treatment and medicines, in Albania. While visiting the appellant in Albania in August 2023, she had an accident, while they were together in the sea. The appellant was caring and looked after Ms Reeve, telephoning his sister, a nurse, for medical advice. They went to stay with her the following day. Ms Reeve stated that she has a wonderful circle of friends in the United Kingdom and acts as a volunteer for Age UK Telephone Friend. She understands that with modern technology, it is possible to message and video call people but this is not the same as being together in person. She provides support for her sister, who has type one diabetes. They live close to each other in North London. Her brother and his family live in the Midlands and so cannot provide support to Ms Reeve's sister.
13. Ms Reeve and the appellant discussed the possibility of marrying in Albania but were advised to see if the appeal process through before changing their status. They remain strong as a couple and speak regularly, using WhatsApp.

### **The hearing**

14. Ms Reeve gave evidence. She adopted her witness statements, including the one dated 11<sup>th</sup> October 2023. Mr Avery had no questions he wished to put. In answer to questions from the panel, Ms Reeve said that she became aware of the appellant's immigration status in about 2007, a year or so after their relationship began. She did not know about his conviction or the caution until after the appeal process had begun. Neither representative had any questions in the light of ours.
15. Mr Avery, for the respondent, said that the terms of the rules were clear and the appellant's application was one which should normally be refused, as found by the entry clearance officer. A finding retained from the First-tier Tribunal's decision was that the appellant had used deception, acting deliberately. It was clear from his statement that he still claimed innocence. The deception was clear and serious. Nothing present in the appellant's case set it apart from the majority of applications that fell for refusal. The relationship was accepted. The sponsor, Ms Reeve, was established in the United Kingdom but, again, nothing set the case apart from the usual category. The sponsor might need medical support or intervention but it was difficult to see anything approaching exceptional circumstances, taking the health aspect in the round with everything else.
16. The application was properly refused under the rules. Taking that refusal into Gen 3.2 and an Article 8 assessment, the evidence fell far short of showing exceptional circumstances. Apart from the early offending, it was clear that appellant had lied about his circumstances when the entry clearance application was made in June 2021 and it appeared that he hadn't even then revealed the true position to Ms Reeve, who found out about it only once the proceedings

began. Albania was a modern European country and access was reasonably straightforward. Ms Reeve could continue with medical support and treatment here as there would be no difficulty returning from Albania for this purpose. The appellant and Ms Reeve could maintain their relationship. The appellant's material deception was serious and undermined immigration control. Nothing in the evidence set the case apart from what might be expected as a consequence of his behaviour.

17. Ms Kogulathas relied on her skeleton argument. The application for entry clearance was refused under the discretionary ground and the mitigating factors required careful assessment. The appellant was not given an opportunity to respond to the decision-maker before refusal, though he had been given an opportunity to do so since, not least in his appeal. His offending behaviour was long ago and a particular chapter in this life. His caution was in 1999 and his sentence following conviction in 2002. The appellant had closed his mind and felt shame for what he had done. He had entered the United Kingdom twice unlawfully and had not had leave to remain. His second entry in 2006 might be said not to have aggravating factors, notwithstanding his failure to disclose his true identity. He returned to Albania to be with his mother and did not try to re-enter again, applying instead for entry clearance.
18. The appellant had reformed and rehabilitated himself since his offending behaviour and presented no risk to the public. There was nothing to show that his presence here was undesirable. He had made a mistake in his application for entry clearance by not being truthful in relation to his identity and nationality. He struggled in relation to his conviction, being a passenger in a car with others and a stolen television being present. A jury found him guilty.
19. An evaluative exercise was required in relation to the suitability requirement. If it was met, then all the material rules were met. If they were all met, there was no public interest in excluding the appellant. If the suitability requirement was not met, this was a case which fell within Gen 3.2 of Appendix FM and the assessment of whether exceptional circumstances were present incorporated a proportionality assessment under Article 8. The respondent's view was that the relationship between the appellant and Ms Reeve could be maintained and continued but this did not take proper account of Ms Reeve's responsibilities in the United Kingdom, including her job, her mortgage, her pet, her ties to friends and family and the help she gave to her family in childcare. Realistically, the scenarios were that the relationship continued with Ms Reeve in the United Kingdom and the appellant in Albania or that Ms Reeve left for Albania so that the relationship could continue there.
20. Ms Kogulathas said the first scenario would be akin to a deportation case, with the couple separated and proportionality in issue. The appellant had been away for over three years and had enjoyed only limited time with Ms Reeve. She had endured surgery and the difficulties for both were obvious. A permanent separation could not be justified and Ms Reeve needed her partner's help here. The second option would entail hardship. Ms Reeve underwent major surgery in September 2023 and a letter from her consultant showed that a further appointment had been arranged for three months after that. It would be unreasonable to expect her to depart for Albania while she was recovering. If she did move there, she would need access to health care. It would not be reasonable to expect her to return to the United Kingdom and the facilities in Albania were limited. Her medical records would need to be translated and there

might be a risk of complications. She would be moving to a country where she did not speak the language and this would cause harm and stress to her. The respondent's stance was that there was nothing exceptional in the case but an evaluation was needed of the loss to her and the hardship that would ensue. Ms Reeve had a rich and entrenched private life here and substantial family ties. The couple had no children. Ms Reeve was a volunteer for Age UK. Relocation would lead to a loss of her sense of identity. In the Lal case, the sponsor couldn't deal with the heat and extreme climate in the country of return and her Ms Reeve did not speak Albanian. Visiting the United Kingdom from time to time wouldn't be practical to maintain her identity or provide for the couple's pet.

21. As in Lal, a cumulative assessment of all the factors was required. The weight to be given to the public interest required engagement with the fact this was not a deportation case and the appellant posed no risk to the public and had no further convictions. An Article 8 assessment outside the rules would require the statutory factors in section 117A - D to be taken into account. Ms Kogulathas submitted that there were exceptional circumstances present and unjustifiably harsh consequences would follow the refusal of entry clearance if the appeal were dismissed. The appellant and his sponsor had known each other since 2006 and apart from a period between 2016 and 2018 when they separated and were apart, the relationship had been maintained since then. The public interest was outweighed in this case and the appeal should succeed.

### **Our findings and conclusions**

22. We are grateful to Ms Kogulathas and Mr Avery for the careful way in which they put the cases for the appellant and respondent. There was very little that was contested in the evidence. We have made our findings of fact on the balance of probabilities, the burden of proof falling on the appellant.
23. Our assessment will engage first with the immigration rules and the basis on which the respondent refused entry clearance as, although no direct appeal may be brought against that finding, it is plainly material to our assessment of the position under Gen 3.2 of Appendix FM and any Article 8 assessment outside the rules that may be required, and it is the foundation for an assessment of the strength of the public interest in refusing the human rights claim that gave rise to the appeal.
24. The appellant's application for entry clearance under Appendix FM, in which reliance was placed on his relationship with Ms Reeve as his fiancée, was refused as he did not meet the suitability requirement contained in S-EC2.2 (b). The respondent found that he had failed to disclose that he had entered the United Kingdom in 1999 under a false identity, as a Kosovan national called Argon Llaka, and failed to disclose his caution on 5 August 1999 and the conviction and sentence on 2 August 2002 to 12 months in a Young Offenders' Institution. The Upper Tribunal preserved the First-tier Tribunal Judge's findings, in the appeal brought by the appellant, that the deception was "deliberate and in respect of significant matters" although the failure to disclose the caution was "highly likely" to be the result of appellant having forgotten about it. Also preserved was the finding that the appellant met the relationship requirement of Appendix FM.
25. S-EC2.1 provides that an applicant "will normally be refused on grounds of suitability" if S-EC2.2 applies. The respondent's policies and guidance on refusal in these circumstances make it clear that a case-specific consideration is

required, that compelling circumstances might be present that show the criteria are met, notwithstanding deception or failure to disclose material facts and that mitigating factors may outweigh deception. The appellant's case is that compelling reasons and mitigating factors are present, as the deception related to circumstances from about 20 years ago, events which the appellant deeply regretted, there were no further convictions and so the appellant had rehabilitated and shown that his presence in the United Kingdom was not undesirable. Since re-entering the United Kingdom in 2006, he had made a positive contribution to his community and had supported Ms Reeve. Moreover, he left the United Kingdom in 2020 voluntarily and applied for entry clearance from abroad, showing that he was willing to comply with immigration rules. The appellant might have given a full explanation for his deception, had he been given an opportunity to do so (**Balajigari [2019] EWCA Civ 673** being material in this context), although Ms Kogulathas accepted, properly, that he has been given ample opportunity in the course of the appeal to make his case clear.

26. We find that the application was properly refused, in accordance with the rules themselves and the respondent's policies and guidance. Although the appellant's caution (which we give little weight to in the light of the preserved finding) and conviction and sentence (which have substantial weight) occurred about 20 years ago, they were salient features not only when the appellant returned to the United Kingdom in 2006, unlawfully, but also when he applied years later for entry clearance to return. The appellant states that he was deported to Kosovo after his sentence. There is little detail in the evidence about this but his return in 2006 was plainly not accompanied by any candour about the false identity he had when present here before his removal. He has not had leave to remain at any time while and there was no disclosure of his true identity and nationality in the years that followed his return. He left the United Kingdom in 2020, out of a concern for his mother's health during the pandemic. His application for entry clearance to return to join Ms Reeve in September 2021 was a clear opportunity to be candid. In the event, it included deception and a failure to disclose material facts and is relatively recent. Any mitigating factors, including his voluntary departure in 2020 and the fact the he can show the relationship requirements of the rules are met, are insufficient to outweigh the deception deployed and maintained at the material times in his very poor immigration history. The decision-maker was plainly entitled to conclude that the application fell within the category of those which will normally be refused on grounds of suitability and that the exercise of discretion in this case was not merited and we reach the same conclusion on the evidence before us.
27. The appellant's failure to meet the suitability requirements of the rules, as a consequence of his deception and failure to disclose material facts, is a factor that is material and has adverse weight in any further Article 8 assessment we are required to make: **Agyarko [2017] UKSC 11**.
28. In making a proportionality assessment, or considering the public interest question, we must have regard to the considerations listed in section 117B of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act"). The rules provide for a similar assessment in Gen 3.2, relied upon by the appellant, such that decision-makers must consider whether there are exceptional circumstances which would render refusal of entry clearance a breach of Article 8, because refusal would result in unjustifiably harsh consequences for the appellant, Ms Reeve or another family member whose Article 8 rights would be affected by refusal.

29. As noted above, the fact of the relationship between the appellant and Ms Reeve is not contested. It began in 2006 and has continued since, save for a separation between 2016 and 2018. She was able to visit the appellant in Albania in the summer of 2023. He has provided her with support. Their life together contains many of the ordinary features one would expect, including the care and love for their cat. There is no reason to doubt that the appellant has been supportive as a partner during the years they have been together. We do not doubt either that Ms Reeve has missed that support during the time in which she underwent surgery in September 2023, related to an ovarian cyst and endometriosis, which required her to take four weeks leave from work. The medical evidence shows that a further appointment for an assessment was set for three months after her operation. Her consultant described the purpose as “to ensure that her recovery has gone smoothly”. The evidence suggests that there is no reason to suppose that the surgery was unsuccessful and nothing to suggest that, apart from the appointment, any substantial further intervention is at present required.
30. So far as Ms Reeve is concerned, it is clear from her evidence that she has strong family ties here, providing support for her sister who has diabetes, and her brother and his children, assisting as she does with childcare and school-runs. She has a well-established private life too, volunteering for Age UK and having friends and a career, developed over many years. None of this is unusual.
31. Dealing first with the second of the options proposed by Ms Kogulathas, how should we assess the position on the basis that Ms Reeve relocates to Albania so that her relationship with the appellant may continue there? There would be a lessening of intensity so far as her family relationships are concerned, with no doubt some adjustment required on the part of her sister and brother and her brother’s children. On the other hand, visits from Albania to the United Kingdom would help her to maintain the relationships. It is unlikely that she would be able to continue her volunteering work. Her current career would probably stall or come to an end, but it does not follow that she would have no economic opportunities available to her. As she put it in her most recent witness statement, it is doubtful that she would find work in Albania that would match her current work or generate a similar salary. We do not doubt that she would struggle with the language and rely on the appellant to help her with communication, at least for a time. It was submitted on the appellant’s behalf that Ms Reeve’s relocation to Albania would cause her to “lose her own sense of identity” but we do not accept that, nor the related submission that visits here would not sufficiently mitigate against such a risk. In this context, we do not discount the support and love that the appellant would be in a position to provide, should his partner move to Albania. We take into account his evidence that Albania has changed since he grew up there and that it has been hard living with his parents in the three years or so since he returned. So far as her medical circumstances are concerned, the respondent’s Country Information Note (May 2023) suggests that facilities to treat gynaecological conditions are present in some public hospitals in Albania and that there are private facilities too (section 12.1.1 and 12.1.2) but even if that were not the case, we accept Mr Avery’s crisp submission on this point that if need be Ms Reeve could return to the United Kingdom if treatment were required without difficulty. Difficult choices would no doubt arise in relation to their pet if Ms Reeve were to relocate, to continue her relationship with the appellant in Albania. It is said that the cat would not be able to travel with Ms Reeves and that leaving the cat behind is not possible either, as



daily medication is required. Of course, that medication might be administered by others, perhaps in Ms Reeve's circle of friends and family.

32. The first scenario suggested on the appellant's behalf was that Ms Reeve remains in the United Kingdom and the appellant in Albania. We do not doubt that continued separation would be difficult for them both. We find in the light of the evidence, nonetheless, that they could maintain their relationship, albeit it at a reduced intensity. Ms Reeve made a recent visit to spend time with the appellant, before her surgery. Visits may continue in the future. Weighing the medical evidence, we find that although Ms Reeve would wish the appellant to be present to support her, her recovery does not require this. She has ready access to her consultant, and to her friends and family.
33. We remind ourselves that we must have regard to section 117B of the 2002 Act. Section 117B(4) (a) provides that little weight should be given to a private life established by a person when the person is in the United Kingdom unlawfully. The appellant has never had leave to remain. His most recent statement provided little detail about his private life here, save that he stated that "during (his) second residence in the UK" (in other words, following the second of his illegal entries) "(he has) always lived in the most honest way possible" and has "worked and built my life in the UK where I am respected by all the community with which I have worked, lived or socialized with". Section 117B(4)(b) provides that little weight should be given to a relationship with a qualifying partner, established at a time when the person is in the United Kingdom unlawfully. Ms Reeve is a qualifying partner as she is a British citizen. When the relationship was established, in about 2006, the appellant was present here unlawfully.
34. We have taken account the guidance given by the Court of Appeal in **Lal [2019] EWCA Civ 1925** and have considered the cumulative impact of all the circumstances, to assess whether very serious hardship would be entailed for the appellant or Ms Reeve, should she relocate to Albania or, on the other hand, remain in the United Kingdom. The same assessment is required in relation to the question whether there are insurmountable obstacles to family life continuing abroad, and consideration of the same cumulative impact guides us to the answer to the question put in Gen.3.2 regarding exceptional circumstances and unjustifiably harsh consequences resulting from refusal of entry clearance. The evidence shows that whichever choice is made by the appellant and Ms Reeve, so that she either remains or joins him in Albania, difficulty and a degree of hardship and adjustment will result. Giving all due weight to their circumstances as they were when together and in the years since he departed in 2020, and taking into account the medical evidence, that difficulty and hardship falls far short of amounting to very serious hardship or exceptional circumstances. The evidence does not show that refusal of entry clearance would result in unjustifiably harsh consequences for either the appellant or Ms Reeve. The readily apparent public interest in maintaining the integrity of immigration controls, all the stronger in this case in the light of the appellant's deception, is not outweighed by the private and family life ties established in their relationship with each other or more widely in their relationships with others. Stepping outside the rules altogether, we reach the same conclusion. The individual aspects or factors identified in the evidence do not show exceptional circumstances, taken singly or cumulatively. Weighing the competing interests, refusal of the human rights claim made by the appellant amounts to a proportionate response and so the Article 8 case is not made out.

35. For these reasons, the appeal is dismissed.

**Notice of Decision**

The appeal is dismissed. No anonymity order is made.

RC Campbell  
Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

28<sup>th</sup> February 2024