Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/30042/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
Judgment given orally at hearing On 16 May 2016	**On 29 July 2016**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

DRITAN KRASNIQI

Respondent

Representation:

For the Appellant: Mr S Kotas, Home Office Presenting Officer
For the Respondent: Mr G Denholm, Counsel, instructed by J D Spicer Zeb Solicitors

DECISION AND REASONS

1. The appellant in these proceedings is the Secretary of State. However, for convenience I refer to the parties as they were before the First-tier Tribunal ("the FtT"). First-tier Tribunal Judge Griffith ("The FtJ") heard the

appellant's appeal on 22 September 2015 against a decision by the respondent to refuse leave to remain on Article 8 grounds and to make a removal decision under section 10 of the Immigration and Asylum Act 1999.

2. It is convenient to start with the decision of the FtJ. She referred to the appellant's immigration history, the appellant having come to the UK as an illegal entrant from Kosovo in August 2000 aged 16. His asylum claim based on his Roma ethnicity was refused on 7 March 2002 but he was granted a period of discretionary leave until his 18th birthday.

3. The respondent's decision rejected the contention that the appellant was able to meet the requirements of the relevant Article 8 Immigration Rules, in particular with reference to paragraph 276ADE. The FtJ summarised the respondent's decision.

4. She heard evidence from a Ms Yvonne James and from three other witnesses who were present in support of the appeal. They adopted their witness statements. The appellant apparently has a partner but she was unable to attend as their child was unwell.

5. There was an issue before the FtJ about whether the appellant had been an absconder for five years or for three years, the Secretary of State saying that it was for five years but the appellant contending that it was three years.

6. The FtJ recorded the appellant's account of his relationship in the UK and of apparent discrimination in Kosovo because he was dark skinned and was identified as a gypsy. The appellant gave evidence about speaking English and attending no Kosovan activities or cultural events in the UK. There was evidence of some work that the appellant had undertaken in the UK.

7. The submissions on behalf of the respondent before the FtJ were to the effect that the appellant was not able to meet the requirements of the Immigration Rules and that there were no significant obstacles to integration in Kosovo. Reference was made to the appellant's asylum appeal having been dismissed. It was contended that the appellant has no family life as his partner is not British and he entered into the relationship when there was no lawful basis for him to remain. The appellant's partner is Albanian and arrived in the UK in October 2014.

8. The FtJ's findings start from [41] of her decision. She said that it was not in dispute that the appellant had been in the UK since August 2000, a period of just over 15 years, and that he was 16 years of age on arrival. She referred to the fact that she had not seen a full copy of the determination of the appellant's asylum appeal, that asylum appeal having taken place on 25 January 2005 before an Adjudicator, Mr J McMahon. At the hearing I was provided with a complete copy of the Adjudicator's determination which was not in the papers before the FtJ. The FtJ said that

she did not know whether any adverse credibility findings were made at that hearing.

9. It is as well at this point to note that the Adjudicator found that the appellant is of mixed ethnicity, his father being Albanian and his mother Roma. He also found that on return the appellant would not seek to assert the Roma part of his ethnicity and would be accepted by others as Albanian. He did accept however, that the appellant's mother was killed in June 2000 during an outbreak of violence in the town of Mitrovice. He accepted that the appellant and his family lived all their lives in Mitrovice. The decision letter in this case asserted that the Adjudicator found the appellant's claim to be of Roma ethnicity incredible, as was his claim that he came from Mitrovice.

10. The FtJ identified discrepancies in the evidence given to her. She described a small discrepancy between the appellant's written and oral evidence in that he stated in his witness statement that he attended school for three years whereas his oral evidence was that he only received six months' primary school education. There was also said to be what the FtJ described as a small discrepancy between his evidence and that of Ms James concerning the outcome of the enquiries made in an attempt to trace the appellant's family in Kosovo. The appellant said that a reply had been received from the relevant agency whereas it was Ms James's evidence that no response had been received. The FtJ concluded that those discrepancies were not material and she said that she accepted the truthfulness of the appellant's evidence about what he has been doing during his stay in the UK and his present circumstances.

11. At [42] she said that the appellant is now aged 31 and she considered whether he could bring himself within paragraph 276ADE (vi) in terms of no ties including social, cultural or family ties with Kosovo. She then referred to the current amended Immigration Rule which speaks of very significant obstacles to integration into the country to which he would have to go if returned.

12. Moving on, at [43] she referred to the appellant's evidence that the main language he speaks is English, that he has no ties or links with Kosovo, participates in no Kosovan activities or cultural events and that he said in evidence that he was becoming more English. His evidence about his life in the UK was supported by the evidence of Ms James and the other witnesses who attended the hearing. The FtJ said that she accepted Ms James' evidence that she has known the appellant for a substantial period of time and that he is a close friend and is treated like one of the family. The FtJ said that she considered Ms James was in a good position to give an opinion about what ties the appellant might still have with Kosovo and the level of his integration into British society. She said that she had attached "due weight" to her evidence. Whilst that phrase is in some respects vague, I interpret it to mean that the FtJ found her evidence to be credible in that respect.

13. She went on to note that the appellant had spent almost half his life in the UK and had grown up here and been educated here. She noted that he had worked in the UK, albeit illegally, also referring to the fact that the appellant appeared to have paid tax.

14. The FtJ concluded that although there was no up-to-date country information about present day Kosovo it was reasonable to assume that the Kosovo of today is not the same Kosovo the appellant left in 2000 where he spent his childhood and early teenage years. She said that there was no evidence to suggest that he has maintained any continuing connection with Kosovo or that there are any factors tying him to his country of origin beyond those early years which were not a "happy experience". She said that it was to his credit that with the help of Ms James he had attempted to find his family some eight years ago but without success. She concluded at [46] with reference to the decision in *Ogundimu (Article 8 – new Rules) Nigeria* [2013] UKUT 00060 (IAC) that the appellant had no meaningful ties to Kosovo and given the length of his absence and the extent of his integration in the UK there would be very significant obstacles to his integration into Kosovo without family or friends there to support him.

15. She then said that it was not therefore necessary to go on to consider Article 8 but if she had done so she would have found that the respondent's decision was a disproportionate interference with the appellant's Article 8 rights.

16. The respondent's grounds as pleaded take issue with the FtJ's findings. It is contended that the onus was on the appellant to show why as a national of Kosovo he could not return there. Reference is made to the fact that he has no health problems, speaks the language and given that he had spent the first 16 years of his life there, must be aware of cultural norms. The grounds contend that the very significant obstacles test is a high one and the appellant would need to show good reasons as to why he would not be able to establish a private life on return.

17. The appellant's private life in the UK, it is contended, established whilst pursuing his claim, is not a relevant consideration in the very significant obstacles test. Furthermore, the grounds refer to the rejection of the earlier asylum claim based on Roma ethnicity which was not, according to the refusal letter at least, a credible one. Mr Kotas accepted however, that the way that the Adjudicator's decision was characterised in the decision letter is not entirely accurate.

18. The respondent's grounds were developed before me to include the contention that the FtJ wrongly applied the 'no tie's' test when in fact, in terms of paragraph 276ADE, it is the 'very significant obstacles test' that applies. I was referred to the decision in *YM (Uganda) v Secretary of State for the Home Department* [2014] EWCA Civ 1292.

19. There it said at [39] that:

> "So far as the 2014 Rules are concerned, it is clear from the provisions of Rule A362 itself, as well as the statement under 'implementation' in the Statement of Changes and paragraphs 3.4 and 4.7 of the Explanatory Memorandum, that the 2014 Rules are to be applied to all decisions concerning Article 8 claims that are made after 28 July 2014."

20. In [39] it also states that in the absence of any statement to the contrary, the most natural reading of the Rules is that they apply to decisions taken by the Secretary of State until such time as she promulgates new rules after which she will decide according to the new rules. The decision continues that the same applies to decisions by tribunals and the courts. Reference is made to the decision of the Court of Appeal in *MF (Nigeria) v Secretary of State for the Home Department* 1WLR 544. The Court of Appeal held that both the Upper Tribunal and the Court of Appeal were obliged to apply the 2012 Rules despite the fact that the Secretary of State had taken her original decision in 2010 under the existing Rules.

21. I was also referred on behalf of the respondent to HC 532 at pages 2 and 3 in support of the contention that the judge had applied the incorrect Rule, that is to say the 'no ties' test rather than the 'very significant obstacles' test.

22. This argument, which is not pleaded, unsurprisingly caught Mr Denholm by surprise. It was not suggested, and I do not consider it to be the case, that it was Mr Kotas's intention, as it were, to 'wrong foot' Mr Denholm, but Mr Denholm submitted that if it was a material matter that would feature in my decision-making he would require more time to consider the point. I indicated that I would allow him more time if I thought that he needed it in terms of the relevance of the issue to my deliberations.

23. Mr Denholm, in essence, contended that the FtJ had applied the correct Rule but even if he had not, he had considered the appeal under both bases: either no ties and in the alternative under very significant obstacles.

24. Mr Kotas referred me to various aspects of the FtJ's decision in terms of the factual findings, contending that essentially the decision was focused on the appellant's circumstances in the UK without reference to what the circumstances might be on his return. He also relied on the decision in *Bossadi (Paragraph 276ADE; suitability; ties)* [2015] UKUT 42 (IAC). In particular he referred to [16] which summarises Strasbourg jurisprudence to the effect that a tribunal or court must take into account as a relevant consideration "whether ties that are dormant can be revived".

25. It was also argued that the FtJ's analysis of whether the appellant had in fact any ties or could integrate into Kosovo on return is flawed, and her conclusions on the facts were ones that she was not entitled to come to. It was contended that what she regarded as an immaterial discrepancy in terms of the response to a tracing enquiry was not immaterial at all

because what the appellant's circumstances would be on return was material, and this was a matter that went to that issue.

26. Mr Denholm contended in reply that the FtJ's conclusions were open to her on the evidence and that whichever way one looked at the FtJ's decision, she had applied the correct test, or had looked at the matter in alternative ways.

27. I consider that there is merit in the respondent's argument in relation to *YM (Uganda)* and that the FtJ ought to have looked at the assessment of the Rules in terms of whether there were very significant obstacles to the appellant's integration into Kosovo rather than in terms of no ties.

28. However, in the light of the further conclusions I have come to in relation to the FtJ's decision, I am not satisfied that any error of law in that respect is material. That is because it is evident that the FtJ looked at the matter in the alternative. She considered the question of no ties, referring to the decision in *Ogundimu*, and said at [46] that the appellant has no meaningful ties to Kosovo. But she also went on to state that she was "also satisfied" that there would be very significant obstacles to his integration into Kosovo without family or friends there to support him.

29. I am satisfied that the FtJ was entitled to conclude that the appellant does not have connections with Kosovo that would allow him to integrate there. That really is the effect of her decision. It is not the case that the FtJ was only focusing on the appellant's circumstances in the UK. She took into account that the appellant on his own evidence, which she accepted, attends no Kosovan activities or cultural events and effectively had lost his cultural connection to Kosovo in any meaningful sense that would allow him to reintegrate on return there.

30. She was entitled to take into account the evidence of Ms James whose evidence the FtJ found of assistance in that regard.

31. So far as the revival of dormant ties are concerned and the decision in *Bossadi***,** the effect of the FtJ's decision is that there were no ties there, dormant or otherwise.

32. To summarise, the FtJ took into account that the appellant arrived at the age of 16 and that he had spent almost half of his life here. She accepted that there was no evidence of any ties to Kosovo and that informed her assessment of whether there were very significant obstacles to his integration there. She referred to the extent of the appellant's integration in the UK which must be a factor to be considered.

33. In all those circumstances, whilst it could be said that another judge might have come to a different conclusion, and whilst it is also the case as in many reasons challenges that more could have been said by the FtJ on one aspect of the case or another, I am not satisfied that there is an error of law in the FtJ's decision which requires the decision to be set aside.

The error of law highlighted by the decision in *YM (Uganda)* is not a material error of law.

34. Accordingly the decision to allow the appeal under the Immigration Rules is to stand.

Upper Tribunal Judge Kopieczek 28/07/16