



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/02748/2016

THE IMMIGRATION ACTS

Heard at Glasgow
on 3 July 2017

Decision & Reasons Promulgated
on 4 July 2017

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

ELVIS ZEKA

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: no appearance

For the Respondent: Mrs R Pettersen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Kosovo, known by the above name and by numerous aliases. The respondent made a deportation order against him for reasons explained in a letter dated 21 January 2016, which, in summary, are: his immigration history and criminal record; no derivative right of residence under EU law, as his UK citizen children were cared for by their mother, and would not be forced to leave the EEA; under ¶398 of the immigration rules, no very compelling circumstances, over and above those set out at ¶399 and 399A; not unduly harsh for his children to live in Kosovo, or to remain in the UK without the appellant [¶399 (a) (ii)]; and public interest outweighing his right to private and family life.
2. The appellant appealed to the FtT, on the grounds that it would be unduly harsh for the children either to live in Kosovo, or to remain in the UK without him.
3. Judge David C Clapham SSC dismissed the appeal for reasons given in his decision promulgated on 5 December 2016.
4. The grounds of appeal stated in an application dated 16 December 2016 are, in summary:

Ground (1), error re ¶399(a): findings unclear on which paragraphs of the rules they relate to, so that conclusions may have been reached on irrelevant considerations; (2) error finding it not unduly harsh for children to remain in the UK, with regard to (i) no assessment of medical report on one of the children; (ii) no assessment of wife's evidence of impact on children of appellant's detention; (iii) no assessment of wife's evidence she would have to give up work or send children to stay for periods with appellant's parents; (3) no finding on undue harshness of children living in Kosovo.

Ground 2, error re ¶397 / 398: deportation in breach of EU Charter article 24(3), children to have direct contact with appellant unless contrary to their interests.

5. On 31 May 2017 notice was sent to the appellant at his home address, to his solicitors and to the respondent of the hearing fixed for 3 July 2017 at 10.00 a.m.
6. By 12.15 p.m. there was no attendance by or for the appellant. No communication for his solicitors had yet been linked to the file, but I was advised that they have withdrawn from acting on his behalf. The respondent's information was that he was still at the address last specified, and that he had been reporting to the respondent in compliance with conditions, although somewhat erratically. No notification of change of address or other communication had been received from him. In those circumstances, I found it appropriate in terms of rule 38 to proceed with the hearing in his absence.
7. Having heard from Mrs Pettersen, I reserved my decision.
8. There was a stronger case that it would be unduly harsh for the children to live in Kosovo than that it would be unduly harsh for them to remain in the UK without the appellant. To succeed, the appellant had to show both. The decisive issue in practical terms was the latter [¶399 (a) (ii) (b)].
9. The judge came to a clear conclusion on that issue at ¶47, firmly rooted in his other findings and in the evidence which was before him. Ground 1 is in substance no more than disagreement.
10. Ground 2 is far-fetched. The general presumption in favour of contact between children and parents is reflected in the EU Charter and throughout family law, but it does not over-ride the scheme of deportation established by statute and in the rules.
11. The grounds do not disclose that the making of the decision of the FtT involved the making of any error on a point of law, such that it ought to be set aside. That decision shall stand.
12. No anonymity direction has been requested or made.



3 July 2017
Upper Tribunal Judge Macleman