SPECIAL IMMIGRATION APPEALS COMMISSION

Appeal No: **SC/188/2021**
Hearing Date: **14th, 15th & 16th May 2024**
Date of Judgment: **28th August 2024**

Before

THE HONOURABLE MR JUSTICE GARNHAM
UPPER TRIBUNAL JUDGE KEITH
MR NEIL JACOBSEN

Between

ISUF DAUTAJ (E9)

Appellant

and

THE SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Respondent

OPEN JUDGMENT

Anthony Metzer KC and Sanaz Saifolahi (instructed by Gulbenkian Andonian Solicitors) appeared on behalf of the Appellant.

Will Hays (instructed by the Government Legal Department) appeared on behalf of the Secretary of State.

Bilal Rawat (instructed by the Special Advocates' Support Office) appeared as Special Advocate.

Introduction

1. By this appeal, Mr Dautaj challenges a decision of the Secretary of State for the Home Department ("the SSHD") dated 13 August 2021 to refuse him indefinite leave to remain in the UK. The Secretary of State based that decision, ultimately, on an assessment by the National Crime Agency ("NCA") that Mr Dautaj is a leading member of an organised crime group active in the UK.
2. Isuf Dautaj was initially given the cypher "E9" in these proceedings. At the end of the hearing, we lifted the order restricting publication of his name because no good reason for such a restriction was advanced by any party. We refer to him in this judgment as "Isuf Dautaj" or "the appellant".

The Essential Background

3. Isuf Dautaj was born on 13 November 1991 and is a citizen of Albania. He is the younger brother of B9, who was the subject of an exclusion order on 2 September 2019, pursuant to the Immigration (European Economic Area) Regulations 2016 ("the 2016 Regulations"). B9's appeal against that exclusion decision was dismissed by the Commission in a judgment dated 25 March 2021 (SC/165/2019). We refer to that decision not because the conclusion that B9 was involved in serious and organised criminality and so posed a risk to public safety, establishes that the appellant had, or has, any similar involvement. Rather, because we take the findings of fact in B9 as our starting point, as those facts are relevant and overlap with Isuf Dautaj's case.
4. Put shortly, it was the respondent's case that B9 and Isuf Dautaj were both involved in serious organised crime, as part of the same family group, and that upon B9's exclusion from the UK, Isuf Dautaj has taken a more active role in the group's UK activities. The SSHD asserts that that role has involved the appellant in the importation and distribution of Class A drugs, money laundering and the facilitation of illegal migration, and that he poses a risk of violence as he pursues his criminal activities. The appellant denies any such conduct.

The relevant parts of the Statutory Scheme

5. A person in the position of the appellant is given a right of appeal against the refusal of ILR by regulation 3 of the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations 2020 ("the Exit Regulations") which provides as follows:

> 3 (1) A person ("P") may appeal against a decision made on or after exit day…(d) not to grant indefinite leave…to remain in the UK in response to P's relevant application.
>
> (2) In this regulation, "relevant application" means an application for leave to enter or remain in the UK made under residence scheme immigration rules (a) on or after exit day or (b) before exit day if a decision was made on that application on or after 8 May 2023

6. Exit day was 31 January 2020, so the refusal of ILR occurred after exit day. It is agreed that the appellant made a relevant application.
7. Regulation 7 of the Exit Regulations provides that an appeal under the regulation lies to SIAC if the decision is certified under schedule 1, as this decision was.
8. Regulations 8 and 9 of the Exit Regulations set out the potential grounds of appeal. Regulation 8 provides, as is material:

> (1) An appeal under these regulations must be brought on one or both of the following two grounds:

(2) The first ground of appeal is that the decision breaches any right the appellant has by virtue of (a) Chapter 1 of …Title II … of Part 2 of the withdrawal agreement…

(3) The second ground of appeal is that…(b) where the decision is mentioned in regulation 3(1)(c)…it is not in accordance with residence scheme immigration rules.

9. Under Regulation 9 it was open to the appellant to make a "section 120 statement" (a statement under s120(2) of the Nationality, Immigration and Asylum Act 2002), specifying additional grounds of appeal, which might include a refusal of a human rights claim under s84 of the 2002 Act, but only in response to a notice served by the SSHD under s120. No such notice was served by the SSHD.

10. As to the first of the Regulation 8 grounds, the Agreement on the withdrawal of the UK from the European Union (the "Withdrawal Agreement") required the UK to preserve certain rights, including under the Citizens Rights Directive (2004/38/EC). Article 13(3) of the Withdrawal Agreement provides that:

> Family members who are neither Union citizens nor UK nationals shall have the right to reside in the host State under Article 21 TFEU and as set out in …Directive 2004/38/EC, subject to the limitations and conditions set out in those provisions.

11. Article 15 provides that

> Union citizens and UK nationals, and their respective family members, who have resided legally in the host State in accordance with Union law for a continuous period of 5 years…shall have the right to reside permanently in the host State…

12. As to the second ground in Regulation 8, s17 of the European Union (Withdrawal Agreement) Act 2020 provides that the expression "*residence scheme immigration rules*" means, (subject to certain qualifications which are not relevant here), Appendix EU to the Immigration Rules.

13. Appendix EU sets out the basis on which an EU citizen and his or her family members will be granted ILR. It provides, as is material:

> EU2. The applicant will be granted …indefinite leave to remain…where
> - A valid application has been made in accordance with EU9;
> - The applicant meets the eligibility requirements for (ILR) in accordance with …EU12
> - The application is not to be refused on grounds of suitability in accordance with paragraph EU15...

14. It is not in dispute the eligibility requirements and the requirements of EU9 were met.

15. EU 15 provides

> EU 15. An application made under this Appendix will be refused in grounds of suitability where any of the following apply at the date of decision:…
>
> (b) The applicant is subject to an exclusion…decision.

16. An "exclusion decision" is defined in Annex 1 of Appendix EU as being where the decision is justified in Regulation 27 of the EEA Regulations.

17. Regulation 27 of the Immigration (European Economic Area) Regulations 2016 ("the 2016 Regulations") provided as follows:

> (1) In this regulation a "relevant decision" means an EEA decision taken on grounds of public policy, public security or public health.
> (2) A relevant decision may not be taken to serve economic ends.

(3) A relevant decision may not be taken in respect of a person with a right of permanent residence under regulation 15 except on serious grounds of public policy and public security.

(4) A relevant decision may not be taken except on imperative grounds of public security in respect of an EEA national who (a) has a right of permanent residence under regulation 15 and who had resided in the UK for a continuous period of at least 10 years prior to the relevant decision…"

The impugned decision and grounds of appeal

18. Isuf Dautaj appeals against one of three decisions against him, namely the refusal of indefinite leave to remain ("ILR") under the EU Settlement Scheme ("EUSS"), the requirements of which are set out in Appendix EU to the Immigration Rules. That refusal was made on 13 August 2021 on the basis that Isuf Dautaj had been made the subject of an exclusion decision on 19 May 2021. An appeal against that exclusion decision was not available because it was not commenced in the time permitted and this Commission had previously declined to extend time.
19. The SSHD certified the refusal of ILR pursuant to paragraphs 2(b) and 2(c) of schedule 1 to the Exit Regulations with the consequence that the appeal must be to this Commission.
20. In writing, the appellant advanced three grounds of appeal:
    (i) The decision is not in accordance with residence scheme immigration rules.
    (ii) The decision breaches a right the appellant has by virtue of Chapter 1 of the Withdrawal Agreement.
    (iii) The decision was in breach of his rights under Article 8 ECHR
21. The respondent would have been entitled to resist ground 1 on the simple basis that the ground for refusing ILR was the agreed fact that an exclusion order had been made and was not appealed. Accordingly, the decision was in accordance with the residence scheme immigration rules. Generously, the SSHD has not taken that accurate but technical point that as a consequence, the procedural safeguards of the appellant's rights have been met for the purposes of Article 21 of the Withdrawal Agreement. Instead, the SSHD accepts the refusal of ILR needs to be justified, which in turn imports the principles of Chapter VI of the Citizens Rights Directive (Directive 38/2004/EC). That chapter, in turn, includes general principles on the restriction of residence on grounds of public policy and public security (art 27) and protection against expulsion (Art 28). In summary, while there is no challenge to the exclusion decision, the respondent accepts that the appeal against ILR refusal can only be justified on serious grounds of public policy or public security. We do not go behind that concession.
22. The respondent also takes no issue with the period of the appellant's residence in the UK or the validity of his application under Appendix EU, which entitles him to so-called "serious grounds" protection.
23. In practice, that means that the Commission must consider the merits of the factual case that the SSHD relied on both to exclude the appellant and to refuse him ILR. It is common ground that the burden rests on the SSHD to meet that test on the balance of probabilities.
24. Before us, the appellant abandoned the Article 8 ground. As set out above, regulation 9 of the Exit Regulations enables an appellant to advance an appeal on human rights grounds by serving a "section 120 notice" and it is accepted that no such notice was served here. In any event, in our judgment, it is impossible to conceive of circumstances in the present case when the SSHD could fail to resist an Article 8 argument when he had established that there was no breach of the appellant's rights under Chapter 1 of the EU Withdrawal Agreement.

25. It follows that the single question for the Commission is whether the respondent has satisfied us, on the balance of probabilities, that the decision to refuse the appellant ILR was justified on serious grounds of public policy or public security.
26. The parties accept that if any of the issues which were the basis for the exclusion decision were proven by the respondent, this could, in turn, satisfy the test of "serious grounds" under the Withdrawal Agreement and for the purposes of Appendix EU. Given the gravity of the allegations, the parties made no submissions on proportionality, and did not place any reliance on the exclusion decision being disproportionate. In any event, we conclude on the facts that if any of the respondent's principal allegations are made out, exclusion was plainly a proportionate response.

The Background

27. The appellant entered the UK clandestinely, sometime in 2012. He claimed to have met his Bulgarian national wife in the UK, who was said to be exercising Treaty Rights, in or around July 2012. The couple claim to have entered a relationship very shortly 0thereafter, although precisely when is unclear. He was encountered leaving the UK on 16 June 2013, admitting to having entered the UK illegally from Belgium about a year previously.
28. On 31 March 2014, the appellant and his wife were married at a UK Register Office. The appellant applied for a residence card under the 2006 Regulations on 22 April 2014 and he was granted this on 2 June 2014.
29. The appellant's wife applied on 23 April 2019 for a permanent residence card under the 2016 Regulations, which was issued on 19 October 2019.
30. The appellant also applied for a permanent residence card under the Regulations, on a date which is unclear but his application was refused on 18 October 2019, due to his absences from the UK. He appealed against that refusal, while also applying for ILR under Appendix EU on 4 November 2019. He then modified that application to one for pre-settled status under Appendix EU on 27 February 2020, which was granted on 15 March 2020, for five years until 15 March 2025. He withdrew his appeal against the refusal of a permanent residence card on 18 March 2020. He applied for indefinite leave to remain on 29 December 2020.
31. The couple remain married although his wife has since entered a new relationship and has a child by that new relationship, born on 18 May 2020. It is unclear when the appellant and his wife ceased living together and the appellant was unable to confirm this in OPEN evidence to us.
32. Prior to his brother's exclusion in September 2019, at the start of September 2018, the appellant began to be observed more frequently in the observation of his brother.
33. During the summer of 2020, the National Crime Agency prepared a recommendation to the respondent that the appellant be excluded, when the appellant was outside the UK. At the same time, the Metropolitan Police Service undertook a check of the appellant on 31 August 2020. Before it could be considered, the appellant re-entered the UK on 31 August 2020. In October 2020, the NCA undertook further research on the Police National Database.
34. The appellant left the UK via Folkstone on 24 April 2021. He was stopped and explained that he was visiting his ill mother in Albania.
35. On 7 May 2021, the NCA submitted its exclusion recommendation to the respondent. By 19 May 2021, the respondent made the exclusion decision.
36. On 1 July 2021, the respondent cancelled the appellant's limited leave to remain under Appendix EUSS (page A1/OB), giving a right of appeal under Reg 15 of the CRA Regulations. On 13 August 2021, the respondent refused the appellant's application for ILR under Appendix EUSS.
37. On 16 October 2021, the appellant first filed a notice of appeal.

The evidence

38. In OPEN, we received written and oral evidence from the appellant. We were provided with a witness statement from his wife and we heard from the Respondent's witness, SV.

The Appellant

39. The Appellant told us that he had been born in Albania on 13 November 1991. He first came to the UK in 2012, but, before that, had always lived in Albania. He said he was an aspiring lawyer and had studied law at Krystal University in Tirana. He told us that the earnings he could expect as a lawyer in Albania were not likely to be sufficient to enable him to support himself and his parents, and so he dropped out of university in the second year of his degree. He then worked in a café in Tirana. During this period, he said he got in touch with cousins who lived in the UK. They told him that they had been able to stand on their feet quickly once they had arrived in the UK by working hard in the construction industry. They told him that, if he came to the UK, they would help him find work. In the light of those assurances, he came to the UK.
40. He agreed that he had entered the UK illegally via Belgium. He used money borrowed from his parents to pay for his travel to the UK. He simply found someone who was able to transport him with a number of others into the UK. He denied he had been assisted in that enterprise by his elder brother, [B9]. However, on his arrival, he contacted his brother, who took him to his home and made him comfortable. He was able immediately to start work in the construction industry and, within a few months, was able to rent his own accommodation in London.
41. Soon after his arrival in the UK, he met the woman who would subsequently become his wife, Ms Irena Rumenova Bodurova, a Bulgarian citizen. They married on 31 March 2014. He was thereafter granted limited leave to remain in the UK until 15 March 2025.
42. The appellant denied the suggestion that his marriage to Irena Bodurova was entered into for the purpose of obtaining leave to remain. He said, on the contrary, that he and she had fallen in love prior to getting married in March 2014 and, having married, were very happy together for many years. He acknowledged that, as they got older, they drifted apart and that they agreed to separate in 2021. He said they did so on good terms.
43. He said that Irena had been working as a cleaner but also did other jobs. He agreed that, when he had applied for a national insurance number in 2015, he had been asked by the interviewing officer for his wife's surname and date of birth. He agreed that he could not remember either.
44. The appellant told us that he rented a number of properties in London. First, he rented 42 Gilson Place, Muswell Hill; second, Flat 4, 118 Palmerston Road, N22; third, Flat 4, 6 Hillfield Park, Muswell Hill; fourth, 18 Bolton Studios, 17B Gilston Road, SW10; and fifth, Flat 14B Donovan Avenue, Muswell Hill.
45. He was asked in detail about the payment of rent for the various properties that he and his wife had occupied. He maintained that all the rent was paid by him or his wife from legitimate sources or by friends or members of their family, who had agreed to assist them financially. We note that there was no evidence to the effect that any of these lenders were ever repaid.
46. In cross-examination, the appellant denied that his family owned much property in Albania. He said they only had one property there.

47. The allegations made by the NCA were put to the appellant. He "categorically denied" the allegation that he had been involved in the facilitation of illegal migrants. He acknowledged that he spent time with his brother, B9, and that he had casual meetings with B9's friends. However, he denied being part of any organised criminal group. He also categorically denied any involvement in the drugs trade. He said that he had never been involved in any criminal activity, either alone or with others. He said that he had no criminal associates and had never been involved in any form of violence. He denied that he was a significant and controlling facilitator within his family's organised crime group.
48. When asked about his associates in the UK, he said that he could not imagine that his brother, B9 was a drug trafficker. He said that he had met Gee Mason in 2015 or 2016, but had not asked him why he had been sentenced to 18 years' imprisonment some years earlier. He said that he knew Azgan Dauti as a distant cousin. He had met him two or three times in the UK and knew that he had been sentenced to five years' imprisonment for possession of a gun. But he did not know the details of that and had had nothing to do with him. He said that he had met Alfred Malaj, but he did not know about his criminal conviction. He denied that any of these men were part of a criminal network of which he was a member.
49. In his first witness statement, the appellant had said that he lived in the UK "*continuously from 2012 until April 2021 when I returned to Albania to visit and spend time with my parents*". In his second witness statement, he said that he visited Albania in 2018 and 2020 for up to two and a half months. He explained that it was not uncommon for Albanians who live in the UK to spend their summers in Albania with their parents. He also confirmed in his second statement that, between 2018 and 2020, he visited France, Belgium, The Netherlands and Italy, in addition to his visits to Albania. He said these were road trips with friends.
50. In oral evidence he said that he had only entered the UK illegally on "one or two" occasions. On the second occasion, he used the same system to enter the UK as he used on his first visit, having returned to Albania to visit his mother who was sick.
51. He acknowledged in his second statement that he worked in the UK without permission between 2012 and 2014. He also acknowledged that, until 2017, he worked cash in hand, an apparent reference to working without paying tax or national insurance. He said that his primary employer in the construction industry was a firm called Hudson by whom he was paid £175 per day. He also said that he was entitled to paid annual leave.
52. He was asked in detail about his earnings, both from Hudsons and elsewhere. He agreed that he was paid £175 per day gross of tax by Hudsons. He agreed that he was self-employed and was able under his contract with Hudsons to send others to carry out work in his place. He denied the suggestion that money was paid to him for work done by others. The money he received was his money only. He said that he had no right to holiday pay but was sometimes paid when on holiday. He agreed that he was out of the country for periods during 2018. He was not paid at all by Hudsons in June or July because he was absent. He was then paid for three weeks in August. During that period he agreed that he must have been in Albania and that it must have been another person covering his work on that occasion. Nonetheless, he maintained that, when others covered for him, they would receive payment rather than him and, as a result, he could not explain why he had been paid for three weeks in August 2018.
53. The appellant said that, for some periods, he did work for another construction company, in addition to Hudsons. For this he would be paid between £2,000 and £5,000 per month. He had no records particularising those payments. He agreed that he had said in one witness statement that he had saved £50,000.

54. The second factual witness relied upon by the appellant was his former wife, Irena Bodurova. She had prepared and signed a witness statement in April 2024, but she did not attend to give oral evidence. It was explained on her behalf that she cared for her young child and had been unable to find alternative childcare.

55. In her statement, she explained that she was a Bulgarian citizen who first entered the UK in January 2010. She holds settled status in the UK. She explained that she met Isuf Dautaj in July 2012 in a bar where she worked in Finsbury Park. She explained how their relationship had developed and how she invited the appellant to stay with her at her home at 198 Downshill Way, London, N17. In October 2013, she said, they had become engaged and, on 31 March 2014, were married.

56. She said that in mid-2018 their relationship "experienced turbulence" and became "very on and off". She said she had now met a new partner and intended to pursue divorce proceedings. Her evidence was that in September 2019, she fell pregnant by this other man. She said that, when it became clear that she was going to keep the child, she and the appellant decided that they should separate for good. He agreed to let her stay at the property they were renting together until she found a new place with her new partner.

57. Ms Bodurova said that, as far as she was aware, the appellant did not engage in any criminal activity. She said that she had known him for almost a decade and had always found him honest, trustful and law abiding.

58. She explained that the appellant was hard working and would always "save a lot". She, too, would save money. She said they did not indulge in "very many daily luxuries and always lived within their means". She said that she would, on occasions, use her savings to cover their financial needs. Additionally, their families have always been very supportive. She said that, when need arose, the appellant "*would speak with his family, friends and, because they are tight knit, they were always willing to help*". She confirmed that the funds used to cover their rental bills were provided from legitimate sources.

SV

59. The respondent's witness, an NCA officer known as "SV", gave evidence in accordance with SV's OPEN witness statement. SV also confirmed the contents of the NCA's first, second and third OPEN submissions. SV was cross-examined by Mr Metzer on behalf of the appellant.

60. SV said that there were three classes of criminality with which it was assessed the appellant was involved. First it was assessed that, like his brother B9, he had an established and ongoing involvement in the importation and distribution of Class A drugs into and within mainland UK. The NCA were aware that he and B9 had significant links to the near continent, including to criminals based there. They also were assessed as having significant links to Albanian criminals, including to a man named Mason, who was convicted (under the previous identity of Gokhan Houssein) of the importation of 200kg of heroin for which he was sentenced to 18 years' imprisonment in 2005. Mason was released in 2014.

61. The NCA also assessed, on the basis of intelligence available to them, that the appellant was involved in money laundering and organised immigration crime.

62. SV said that the NCA's assessment was that the appellant's marriage to Ms Bodurova was likely to have been for the purpose of gaining leave to remain in the UK. When applying for a national insurance number in 2015, the appellant was unable to confirm the date of his marriage, did not know his wife's date of birth and could only provide her first name. The view that the marriage was for the purpose of gaining leave to remain in the UK was not based on his alleged criminality. SV accepted that he had been granted pre-settlement status, but pointed out that those making that decision

would not have had the information SV now has at the time they gave that leave. SV agreed that the reason SV had concluded that his marriage to Bodurova was not genuine was based on wider intelligence.

63. In cross-examination, SV said that the appellant was not of primary interest to the NCA until further identified after surveillance of those believed to be involved in the organised criminal group run by the appellant's brother, B9. SV said that, in August 2020, the MPS were conducting an inquiry into that group and SV became aware that the NCA and MPS had an interest in the appellant. SV subsequently confirmed that between September and December 2020 information was passed between the NCA and the MPS relating to the appellant. SV agreed that, if the MPS's investigation revealed reasonable grounds to suspect the commission of a criminal offence, the MPS investigation would take priority. SV confirmed that the material that had been passed by the NCA to the MPS did not result in an arrest. SV said that the appellant was not the main focus of the MPS' enquiry, although SV accepted that that did not dispose of the question as to the possibility of his arrest.

64. SV said that intelligence in itself does not lead to an arrest because it needs to be corroborated, but evidence gathering can flow from intelligence received. SV said that at no stage to date had it been suggested that the appellant would be arrested on a criminal charge. SV also agreed that the mere fact that his brother had been involved in criminality did not mean that the appellant was involved too, but SV said the assessment made in respect of the appellant was independent of the fact that he and B9 were brothers. The NCA assessment was that both brothers were part of a familial crime group, that they had other criminal associates and that they were together involved in criminality.

65. The NCA assessed that Isuf Dautaj was affiliated to the same OCG as his brother and that he is personally active within the drugs trade in the UK as a controlling member of the OCG. In consequence, the NCA assessed that Isuf Dautaj's presence in the UK represented a genuine, present and sufficiently serious threat to the UK's overall security. It was on that basis that the NCA recommended his exclusion on grounds of public security. It had been the NCA's assessment that the appellant assumed a position of responsibility for the OCG in the UK when his brother was excluded.

66. Finally, SV said that, in their view, without the CLOSED material, the Secretary of State could not have asserted, on any of the grounds it relied on, that there was material sufficient to justify its conclusions.

Our view of the witnesses

67. Before turning to the merits of this appeal, we set out our views on the witnesses from whom we have heard.

68. The Appellant gave evidence by video link from Albania. He speaks very little English and so relied on the services of an interpreter. For reasons never adequately explained by his representatives, he did not have access to the court bundle as he gave evidence. The result was that he could not be referred to the detail of the documentary material relied on by either party. There were a number of occasions when we lost audio or video connection with him, and he with us, which made coherent answers problematic. The absence of a trial bundle also made it more difficult for him to follow the questions being put.

69. It appeared that the appellant gave evidence via a handheld device of some type. He had originally positioned himself in some sort of public place and other persons appeared in view behind him; there were also occasions when we could hear other persons speaking to him as he gave evidence. As a result, we had to ask him to move location so that he could speak in private. We accept that having to hold the device whilst speaking must

have been a real distraction. Furthermore, the Appellant had a tendency to speak quickly and at length and, despite our repeated requests, he appeared to have difficulty slowing down and breaking up his answers so that the interpreter could translate all he said.

70. In considering and evaluating the appellant's evidence we have been careful to make proper allowance for all these difficulties.

71. Nonetheless, and having made these allowances, we still found much of his evidence thoroughly unsatisfactory. On occasions, notably when asked how often he had entered the UK unlawfully and whether he was entitled to holiday pay, he gave oral answers which contradicted those in his statement. He often failed to answer the questions put to him, stating instead that he did not think the question was relevant. He was frequently vague on topics on which we would have expected a degree of clarity, notably on how he was able to finance his relatively expensive lifestyle on what were modest earning. We were left with the clear impression that he was not willing to give detailed answers to these questions and was not seeking to assist the Commission.

72. The appellant's wife tendered a written statement but did not attend to give evidence. Her explanation was that she had child care difficulties. We are not in a position to judge the veracity of that explanation but observe that the weight we can attribute to her statement was reduced by the fact that it was not tested in cross-examination.

73. By contrast, we found witness SV to be an exemplary witness. SV gave their evidence clearly and succinctly. SV had good knowledge of the topics on which they gave evidence. SV acknowledged frankly when they could not assist us. When pressed on the conclusions SV thought could be drawn from their evidence, SV gave an answer which was contrary to SV's employer's position but which SV plainly thought was appropriate. Whether it was or was not is plainly a matter for us. But SV was clearly a witness of truth and the contrary was not suggested by the appellant's advocate.

The Merits of the Appeal

74. The question for the Commission is whether the SSHD has shown, on the balance of probabilities, that the decision to refuse the appellant ILR was justified on serious grounds of public policy or security, and was proportionate. The SSHD seeks to do so by establishing that the appellant was a leading member of an organised crime group ("OCG"), was involved in the importation and distribution of cocaine, was involved in money laundering and in the facilitation of illegal migration, and that the appellant posed a risk of violence. In support of that case in OPEN, he relied on the evidence of witness SV, on the three OPEN submissions and on the documents produced and disclosed in OPEN.

75. The appellant's challenge to the SHD's decisions turns primarily on his own evidence, written and oral, together with that of wife, Ms Bodurova. He submits that the SSHD has not discharged the burden on him.

76. In this OPEN judgment we consider whether the SSHD has made out his case on the OPEN evidence alone, merely noting our conclusions on the CLOSED material where necessary to make sense of our ultimate conclusions.

Background

77. It is common ground that the appellant arrived in the UK in 2012 illegally. He accepted in evidence that he subsequently left the UK and then returned by the same unlawful means.

78. Within a month or so of arriving he had started a relationship with Ms Bodurova and in March 2014 they married. It appears they lived together in a number of properties. The appellant says he worked in the construction industry and Ms Bodurova worked in a number of jobs including in a bar and as a cleaner.

79. We are surprised at the absence of any supporting evidence from the appellant, whether documentary or testamentary, evidencing the shared life he had with his wife. Whilst it is unlikely, but just about conceivable, that a husband would not know his wife's date of birth two years after their marriage, we regard it as an impossible submission that he did not even know her surname. The appellant provided no adequate explanation for this.
80. Although it is not necessary for us to reach a concluded view on this issue, and we are also conscious that the burden is on the SSHD, it seems to us highly likely that the marriage was one of convenience, the purpose of which was that the appellant could circumvent the immigration rules applying to non-EEA nationals. We say that because of the paucity of any independent evidence that they enjoyed any life together, and the nature of the answers the appellant gave about his wife when he was interviewed as part of the process of applying for a National Insurance number.

Drug trafficking and membership of an Organised Crime Group

81. The heart of the SSHD's case that the appellant was a leading member of an OCG turns on his involvement in illegal drug importation and distribution. It is convenient therefore to consider these two elements of the SSHD's case together.
82. The appellant admitted that he knew a number of those associated with his brother who the SSHD asserted had criminal convictions or associations. Notable amongst the names of those he agreed he knew were his brother, B9 who was excluded from the UK because of his involvement in the drug trade, Gee Mason who was released from an 18-year prison sentence for drug trafficking in 2014, and Mentor Maci, Azghan Dauti and Madrid Lleshi, criminal associates of B9.
83. But a decision to refuse ILR must be based on the personal conduct of the appellant. Mere association with others guilty of criminal conduct is not, in itself, sufficient. It is asserted that the appellant and his brother had an established and continuing involvement in the importation and distribution of class A drugs but there is no OPEN evidence of any significant weight in support of that assertion. The OPEN evidence does not, in our judgment, enable the SSHD to satisfy the statutory test and establish that the appellant himself had such an involvement. In the absence of such evidence, in addition, we cannot conclude that he was an active member of an OCG. In our view, SV was right to say that on the OPEN evidence alone the SSHD's case in this regard is not made out.
84. However, the position is different on the basis of the CLOSED material. For the reason we set out in our CLOSED judgment, but which cannot be set out in OPEN, the SSHD's case on this issue succeeds and we conclude that the Appellant was a leading member of an OCG and was involved in the unlawful importation and distribution of Class A drugs. We say no more about this than that the gisting provided in the OPEN Submissions is fair and accurate.

Money Laundering

85. Whilst the SSHD does not make out his case in OPEN on the appellant being directly involved in drug trafficking himself, he does make out a case that the appellant had connections with those who were so involved and therefore with the proceeds of that trade. And for the reasons we now set out, the SSHD was justified in concluding that the appellant was involved in laundering the proceeds of that trade.
86. According to the appellant, he and his wife financed their life in the UK, and in particular their accommodation in London, from their legitimate earnings and with legitimate assistance from friends and family. Ms Bodurova worked in various jobs, including in a bar and as a cleaner. The appellant said he worked throughout the period from 2012 to 2021 as a self-employed carpenter in the construction industry. Until 2017 he said he worked "cash in hand" and was able to save money.

87. After 2017, it appears, he was paid under the Construction Industry Scheme ("the CIS"), a scheme under which contractors, like Hudson, deduct money from the wages of sub-contractors, like Isuf Dautaj, and pay it to HMRC as an advance on the sub-contractor's tax and national insurance liabilities. If the advance amounted to an overpayment, the sub-contractor would eventually receive a refund. The appellant agreed that he visited Albania during the summers of 2018 and 2020 and his earning documents demonstrate that he was not paid for two months during each of those summers. He also told us that he went on "road trips" to Europe with friends.

88. The appellant further explained that he and his wife had friends and family who were, on occasions, able to lend or give them money, or pay their rent.

89. The respondent provided us (at page 272A in the Open bundle) with a series of tables showing the gross and net income of the appellant and his wife in the years 2017-2022. The table sets out the appellant's income before tax, the tax and national insurance payable, the CIS tax paid and any refund paid. Ignoring pennies, in 2017-18 the appellant's gross income was £26,451 and his net income was £21,666. In that year his wife's net income was £4,087, making a joint net income of £25,753. In 2018-19 the figures for the appellant were £18,388 (gross) and £16,030 (net) and their joint net earnings were £24,240. In 2019-20, the appellant's income was £23,489 (gross) and £19,795 (net) and the joint net income £28,393.

90. According to the table provided to us, the figures for 2020-21 were based on CIS payments rather than self-assessment. The appellant earned £66,240 (gross) and £60,400 (net, after a self-employed income support scheme payment) and the joint net income £64,193. In 2021-22 the appellant's figures were £4,800 and £3,840 and the joint income £5,935.

91. For present purposes, the most important figures are those for the joint net income in the period 2017 to 2020, namely £28,021, £25,753 and £28,393. We note that we had no explanation from the appellant for the significantly higher earnings in 2020-2021.

92. The only potential additional and legitimate earnings the appellant referred to for the period 2015 – 2021 was a wholly unparticularised and undocumented income from additional contracting work for a different, unidentified, construction company. Their pay rates were, according to the appellant, somewhat higher than those of Hudson; the appellant said he could earn between £2,000 and £5,000 per month with this company. But the suggestion appeared to be that the appellant was doing this work by way either of overtime or in replacement for Hudson's earning during the periods he was in the UK (so not in those summer months when he said he returned to Albania). That being so, we are unable to accept that the appellant had significant additional, legitimate income.

93. During this period, the appellant and his wife were renting property in London. The respondent produced a series of tables of payments made by, or on behalf of, the appellant and his wife between 10 September 2015 and 25 June 2021. For the period 10 September 2015 and 29 June 2016, the appellant and his wife paid £20,525 in rent. Between 26 October 2016 and 3 May 2019, they paid £58,020. Between 13 May 2020 and 25 June 2021, they paid £28,200.

94. If those figures are accurate (and we have no basis on which to doubt them), the rent payable on the property they occupied would amount to something close to two thirds of their total earnings for the period 2017 to 2020. The difficulty they would have had in maintaining any sort of decent lifestyle in those circumstances is obvious. At one stage the appellant suggested that they had substantial savings to which they could have had resort. But that suggestion cannot, in our view, survive what the appellant said in his second witness statement about what he did with his savings. He said that in the period before 2017 he had saved

"around £50,000 which I spent on luxury lifestyle during the time I was with Ms Bodurova. I was very young and like most young people I wanted all the nice things and wanted to enjoy it with my wife. If I could go back in time I would be more responsible with my money which I had saved over many years but at the time, spending my hard-earned money on a life of luxury with the women I loved did not seem like a terrible idea".

95. It follows that the appellant was not saying he used these alleged savings (of which we were shown no supporting evidence) to pay his rent and other essential living expenses.
96. The table of rental payments demonstrates that payments were made on some occasions by debit card by the appellant and Ms Bodurova. Substantial payments were also made in cash. But payments were also made on the appellant's behalf by other persons or companies, including by "Xpress Compu Ltd", Mr Gerard Krasniki, Mr Flamur Berisha, and Mr Edmir Zenelaj. The appellant did not know who Xpress Compu Ltd were, although they paid over £10,000 of his rent in 2017. He said the three men referred to, who each paid over £5,000 in 2018 were family friends.
97. There is no evidence whatsoever from Xpress Compu Ltd or any of the individuals confirming that they paid the appellant's rent for him, or lent him, or gave him or his wife this money. There is no explanation from any of these donors as to why they provided this assistance. There is no documentary evidence to support the making of these gifts or loans. There is no evidence that the appellant or his wife ever repaid any of this money or were under any obligation to repay it. Perhaps most surprisingly of all there is no detailed account in the appellant's witness statement, or in his oral evidence, explaining how it came about that these generous gifts or loans were made. All we have is the bare assertion that it is commonplace amongst the Albanian diaspora to help out fellow Albanians who need financial assistance.
98. All of this seems to us surprising in the extreme. On his account, the appellant in 2017-2020 was a man in regular work, renting his own home, with substantial savings, who was able to afford what he describes as a "luxury lifestyle". He could take off lengthy periods in the summer to return to Albania to see his parents or could go on road trips with friends to Europe. And yet, on his account, companies and individuals were willing to make substantial gifts to him or his wife, without any promise of return or for any good reason beyond a shared nationality. We regard that as simply incredible.
99. In our view, the overwhelming likelihood is that the payments into his accounts with his landlords were a means of laundering the profits made by friends and family members of the appellant in the drugs trade with which they were all connected. In those circumstances we regard this part of the SSHD's case in OPEN as proven.
100. The laundering of the proceeds of the illegal trade in Class A drugs is a pernicious business. It is an essential element of the trade, providing a means by which those who buy and sell illegal drugs can enjoy their profits without attracting immediate suspicion. It is itself unlawful. In our view, refusing a person involved in such money laundering indefinite leave to remain in this country is an entirely proportionate response.
101. We note that it is the SSHD's case that the Dautaj family, including the appellant and his brother B9 own extensive commercial and residential property in Albania. There is no evidence of this in OPEN, beyond mere assertion, and in reaching our conclusion on the OPEN material, we place no reliance on it. However, as we explain in our CLOSED judgment, there is evidence to support it in CLOSED.

Facilitation of Illegal Migration

102. It is the case of the SSHD that the appellant was involved in the facilitation of illegal migration. There is no evidence, beyond bare assertion, in OPEN in support of this case. On the OPEN case, therefore, this argument would fail.

103. For the reason we set out in our CLOSED judgment, but which cannot be set out in OPEN, the SSHD fares no better on this issue on the CLOSED evidence. We are not satisfied that the SSHD makes out his case on the balance of probabilities on the OPEN or CLOSED evidence.

Violence

104. It is the case of the SSHD that the appellant poses a risk of violence. There is no evidence, beyond bare assertion, in OPEN in support of this case. On the OPEN case, therefore, this claim would fail.
105. However, for the reason we set out in our CLOSED judgment, but which cannot be set out in OPEN, the SSHD's CLOSED case on this issue succeeds. We say no more about this than that the gisting provided in the OPEN Submissions is fair and accurate.

Conclusions

106. In our judgment, the SSHD has made out his case on the OPEN evidence as to the appellant's involvement in money laundering.
107. For the reason given in our CLOSED judgment, the SSHD fails in his case that the appellant was involved in unlawful immigration crime but has made out his case on the remaining grounds.
108. In all those circumstances, we have concluded that there were serious grounds of public policy and public security for taking the decisions both to exclude the appellant from the UK and (if that is necessary) for refusing indefinite leave to remain. Those decisions were in accordance with residence scheme immigration rules. They breached no rights the Appellant enjoyed by virtue of Chapter 1 of the EU Withdrawal Agreement and were proportionate.
109. In all those circumstances, this appeal is dismissed.