Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/00749/2011

THE IMMIGRATION ACTS

Heard at Stoke	**Determination Promulgated**
on 14th August 2013	**On 2nd October 2013**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

M A A
(Anonymity order made)

Appellant

and

ENTRY CLEARANCE OFFICER – (UKVISA Section)

Respondent

Representation:

For the Appellant: Mr Bradshaw instructed by French & Company Solicitors.
For the Respondent: Mr Lister – Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This appeal was remitted to the Upper Tribunal by the Court of Appeal in an order dated 15th April 2013. The statement of reasons is in the following terms:

The Respondent accepts that the decision of the Deputy UT Judge Garrett of 26 March 2012 was flawed in that it failed to take into account of the decision of UT Judge Goldstein of 25 October 2011 that none of the Article 8 findings of the Immigration Judge in the decision of the First Tier Tribunal of 22 August 2011 would be preserved and, having found an error of law, re-made the decision on

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submissions only without informing the parties or seeking their agreement and when the Appellant had previously indicated his intention to call further evidence .

Accordingly, the Respondent accepts that this matter should be remitted to the Upper Tribunal for a further hearing.

2. It is accepted before me that the matter is to be reheard in relation to the Article 8 ECHR issue *de novo*.

Background

3. The Appellant was born on the 1 January 1965 and is a national of Pakistan. He applied for leave to enter the United Kingdom for the purposes of settling with his wife and sponsor, CS, who is present and settled in this country. The refusal is dated 1 December 2010 and is endorsed as having been received by the Appellant on 9th December 2010.

4. The Entry Clearance Officer (ECO) was not satisfied that the relationship between the Appellant and Sponsor was subsisting or that they intended to live together as required by paragraph 281 (iii). The offer of third-party support was not found to be sufficient and it was only offered for a limited period. No evidence of job offers available on arrival had been provided and in light of the fact the Sponsor was in part reliant upon what was described as public funds, it was not accept that the Appellant had shown he was able to satisfy the maintenance requirements without recourse to public funds as required by paragraph 281 (v).

5. The appeal under the Immigration Rules was dismissed by First-tier Tribunal Judge Gurung-Thapa in her determination promulgated on the 22nd August 2011 as the Judge was not satisfied, having considered the evidence, that the parties were able to maintain themselves and any dependents adequately without recourse to public funds. The issue regarding the existence of a subsisting marriage was conceded by the Entry Clearance Manager on review. The Judge also dismissed the appeal under Article 8 ECHR.

6. Permission to appeal to the Upper Tribunal was granted on 19th September 2011 which led to the hearing on 25th October 2011 before Upper Tribunal Judge Goldstein who determined that there was an error of law in relation to the Article 8 ECHR decision. There is no evidence permission was granted to challenge the findings under the Immigration Rules which, in accordance with the statement of reasons from the Court of Appeal, is not an issue before me in any event. This is, therefore, a preserved finding.

The evidence

7. The bundle of evidence relied upon for the purpose of this hearing is that sent undercover of a letter dated 15th February 2012 together with additional evidence such as a letter from the Sponsor's GP dated 20th February 2012, documents relating to the Sponsor's medical situation dated 16th May 2013, and other related documents. In addition to this I heard oral evidence from the Sponsor and her eldest son. All the written and oral evidence has been considered in detail.

Discussion

8. As this is an appeal against the refusal of an ECO the Article 8 appeal has to be considered in light of the situation appertaining at the date of decision.

9. The impact of the Appellant's inability to be able to satisfy the provisions of paragraph 281 so far as they relate to maintenance is a relevant factor. Whilst an inability to meet the Rules is not, per se, determinative; if the Appellant was permitted to enter the United Kingdom without being able to show the family would not become dependent on public funds there would be a potential cost to the public purse. Mr Lister referred to the decision in AAO v Entry Clearance Officer [2011] EWCA Civ 840 which involved an elderly Somali mother living in Kenya supported by a daughter in the UK from benefits who she had not seen for 12 years. The Court of Appeal held that, given the weakness of family life and the lack of a positive duty which imposed on the UK an obligation that went beyond making systematic allowance for a right of entry which was governed by carefully composed Immigration Rules and an overriding consideration of Article 8 on a case-by-case basis, it was not possible to say that there had been a breach of Article 8. As Strasbourg and domestic jurisprudence had consistently emphasised, states were entitled to have regard to their system of immigration control and a requirement that an entrant should be maintained without recourse to public funds was a fair and necessary limitation on what would otherwise be an overwhelming burden on all its citizens.

10. When considering Article 8 issues it is necessary to considered the questions set out by Lord Bingham in paragraph 17 of the judgement in the case of Razgar [2004] UKHL 27 are which are:

(1) Will the proposed removal be an interference by a public authority with the exercise of the applicant’s right to respect for his private or (as the case may be) family life?
(2) If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?
(3) If so, is such interference in accordance with the law?
(4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well- being of the country, for the prevention of disorder or

crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
(5) If so, is such interference proportionate to the legitimate public end sought to be achieved?

11. The Respondent accepted that family life recognised by Article 8 exists between the Appellant and Sponsor as it has been conceded that they have a subsisting marriage. It was not, however, accepted before me that the relationship between the Appellant and the children is as claimed.

12. The history of this family unit shows that the Sponsor married the Appellant on 12th October 1990. It was an arranged marriage after which the parties lived together at the Appellant's father's property in Pakistan. There are three children of the marriage WH born 19th February 1994, AH born 20th October 1996 and B-U-H born 10th May 1991. At the date of decision the children were approximately 16, 14 and 9 respectively.

13. In a witness statement dated 19th July 2011 and re-dated 8th February 2012 the Sponsor states that as a result of conflict between her husband and his brother her husband sustained injuries after which he ran off abandoning the Sponsor and the children. The brother-in-law then began to be unpleasant to the children resulting in injury to AH. The police took no action, despite the attacks being reported to them, as a result of which the Sponsor brought the children to the United Kingdom on 23rd September 2006. The Sponsor and children are British citizens.

14. The Sponsor returned to Pakistan in April 2009 to see an aunt who was ill and who eventually passed away. She was told by a relative that between February and March 2009 her husband had returned home. She states she was asked by relatives to meet her husband and to give him another chance although she returned to the United Kingdom after only a few days in Pakistan. Shortly after returning the Appellant rang her to apologise to her and the children. He wanted to speak to the children and said he missed them. The relatives and family got together to reconcile the relationship. In August 2010 the Sponsor took the children on holiday to Pakistan to see their father. After returning to the United Kingdom the youngest child in particular missed his father. The Sponsor returned on 13th April 2011 and she and the Appellant travelled together to Saudi Arabia on a pilgrimage.

15. The evidence is therefore that family life between the Appellant and his children existed as they formed part of the same household from the date they were born until 2006 when their father left home. There is then a period where there was no contact until 2010. At that time their father telephoned the family in the United Kingdom and spoke to the children, leading to indirect contact being re-established and

direct contact when they visited him in August 2010. In relation to the existence of family life after re-establishing contact and evidence of ongoing contact I accept Mr Lister's submission that this is somewhat vague. I do accept, however, that it has been established that family life recognised by Article 8 exists between the Appellant and his biological children although the quality of that family life is limited to indirect contact on the basis of the available evidence.

16. In Shamin Box [2002] UKIAT 02212 the Tribunal said that in entry cases, Adjudicators should not treat the Article 8 question as "one of whether there had been an unjustified interference with the right to private and family life", but should consider whether there had been an unjustified lack of respect for private and family life; and that the focus should be on whether, in the light of the positive obligations on the UK to facilitate family reunion, there has been a failure to act in the particular circumstances of the case. Nonetheless, the Tribunal said that, in interference and lack of respect cases, similar principles applied. In conducting the necessary balancing exercise, it remains relevant that a State does not have a general obligation to respect an immigrant's choice of country of residence. It also remains relevant to consider whether there are insurmountable obstacles to the family enjoying family life elsewhere.

17. Mr Bradshaw submitted that if the appeal is rejected it will have the effect of splitting this family. He argued that the children as British citizens cannot be expected to return to live in Pakistan especially when their lives are now established in the United Kingdom. I accept this proposition as they are also EU citizens and accept that their situation has to be considered, especially in light of the decision of the House of Lords in Beoku-Betts [2008] UKHL 39.

18. The argument that dismissing the appeal means Article 8 is not engaged as the status quo will be preserved ignores the important element referred to above, namely the positive obligation of the State to facilitate family reunion within its borders. It was also accepted by the advocates that the issue in this case is that of proportionality.

19. Mr Bradshaw submitted that the needs of the children are a primary consideration. He sought rely upon the decision of the Upper Tribunal in Mundeba [2013] UKUT 00088 which examined the duty on an ECO, when assessing an application under the Immigration Rules, to consider whether there were family or other considerations making a child's exclusion undesirable. The Tribunal reiterated the established starting point in such a case that the best interests of the child are usually best served by being with both or at least one of their parents. The appeal was an appeal by a minor living in Kinshasa in the DRC who made application to settle in the United Kingdom with his sponsor who had ILR. The 'exclusion undesirable' issue was therefore an important element whereas in this appeal the children are already in

the United Kingdom and the Appellant is attempting to join them here. The right of an individual to enter in such circumstances is regulated by the Immigration Rules, in relation to which the Appellant was unable to succeed, and it is settled jurisprudence that Article 8 is not a mechanism to be used to circumvent the requirements of the Rules.

20. I accept that the best interests of the children are normally to be brought up by both parents. Mr Bradshaw submitted that the refusal to grant entry clearance would lead to a permanent breakdown in the physical relationship between the Appellant and his children save for the possibility of contact during visits. That is a factor I have noted and take into account, although there is the possibility of a further application if the Appellant was able to meet the requirements of the Rules at a future date. Mr Bradshaw also submitted that the absence of regular physical contact between the Appellant and the children was over four years at the date of decision and is now just short of seven and that the separation came at an important time in the development of the children's lives as they were all at an age where emotionally they would have benefited from such support. It was further submitted that such support is still needed for the family as the children move onto important milestones in their personal lives. I note this comment but it was not as a result of any action by the State that contact was lost for the period 2006 – 2010 but as a result of the Appellant abandoning his family. I have considered the evidence reflecting the children's views in relation to this element of the appeal.

21. Even though it may have been in the children's best interests for their father to have remained with them and to now join them and to re-establish the family life they had prior to his abandoning the family in 2006, that is only one factor within the balancing exercise.

22. Another element relied upon by the Sponsor is her claim that she is disabled and unable to care for her children properly as she suffers with depression and severe arthritis and has restricted mobility. She claims in her witness statement, [A's bundle Page 3, paragraph 14] that her son WH has to help with all the housework although she gets some help from Social Services and someone comes every morning to help her take a bath and with the preparation of the breakfast. She claims her youngest son has been neglected due to her medical problems and she cannot give him meals at times, cannot pick him up from school, and has not attended parents or teachers evenings which his father could do if he arrived in the United Kingdom.

23. The medical evidence provided shows that the Sponsor registered at the Radford Medical Practice in June 2011 and was diagnosed as suffering from:

    i. Multiple joint pains

ii. Fibromyalgia

iii. A high BMI which in July was 35.9.

24. The letter from the Practice, dated 20th February 2012, notes the Sponsor has attended on several occasions since registration, mostly due to joint or back pains and that she has been accompanied by her son as she says she cannot attend without support. The Sponsor also told the surgery she needs help with basic self-care and is unable to come to the surgery without physical support from her son. The GP states in her professional opinion it is appropriate to get a further opinion as it was difficult to know how much help and physical support the Sponsor required with regard to her day-to-day living.

25. At pages 116 to 122 of the bundle is a copy of an Occupational Therapy Assessment dated 30th June 2011. This notes that the Sponsor has been re-housed to her current address, which is local authority accommodation, where she lives with her three sons. It is noted her sons are very supportive and that she has extended family living in Nottingham. It is noted that her eldest son WH attends college and assists with domestic tasks and that a carer is provided every morning for 30 minutes to assist the Sponsor with getting up, breakfast, and personal care. It is noted that extended family and friends visit occasionally indicating the Sponsor is not isolated. She is able to attend appointment by taxi.

26. In relation to her personal mobility, it is noted the Sponsor has stated she often remains upstairs during the day so she can access toilet facilities which contradicts a statement appearing in a letter dated 30th June 2011 written by NARCO [A’s bundle, page 126] that she said she has to wait for her sons to come home from school/college in the afternoon so they can help her go upstairs if she needs to use the toilet.

27. The Occupational Therapy summary indicates the only action required is a half step to be fitted up front door, an external handrail in the garden, a freestanding toilet frame, a static shower chair and a commode, to meet the sponsor's physical needs.

28. A further letter from Nottinghamshire Healthcare dated 16th May 2013 refers to a memory assessment undertaken on that date and a referral for an MRI scan. A Community Occupational Therapist was to contact the Sponsor directly for investigation. The Care Plan attached to that letter indicates a comprehensive assessment by the Working Age Dementia Diagnostic Service is to be conducted as well as other enquiries undertaken including an appointment with the Cognitive Disorders Clinic, but this is post decision evidence.

29. The Sponsor's oral evidence was that as a result of her health issues and difficulties that she encountered it was necessary for her to have to give up work which is a further reason why she needed the Appellant’s support. The Sponsor was asked in evidence in chief when she actually stopped working. It was noted that she had told the First-tier Tribunal Judge that this was in February 2011 [determination of Judge Gurung-Thapa para 11]. The Sponsor confirmed this is the evidence she gave and clarified that the refusal is dated approximately two months before she finished work. Arthritis was diagnosed on 22nd October 2010 and Fibromyalgia on 17th January 2011.

30. The Sponsor was asked about her health at the date of decision in reply to which she claimed that the time she had to move to only working 25 hours a week as she could not work longer as she was very tired from the job and could not look after herself at home. She claimed she saw a doctor at that time as her condition was severe. The doctor advised her to rest from her job but things became worse after which she went to hospital. The Sponsor claimed that she was not well and wished to return to work but was not able to do so as a result of which she lost her job. She claims to have been suffering from severe health problems and to have been mentally distressed. She also claims that her sons were disturbed due to her condition and that she has remained unwell and mentally disturbed since.

31. The Sponsor was asked about what she could undertake regarding shopping and she claimed that her eldest son used to make food for them and do the shopping and that it was his responsibility to book all appointments. I note this contradicts the entry in the OT Assessment [A’s bundle page 117] that the Sponsor stated she enjoys cooking for the family who also assist. The Sponsor also claims her youngest son had problems and was the responsibility of her eldest son as he was very good helping, but there is no independent expert evidence of the nature of such problems or consequences, if any, for the child.

32. The picture the Sponsor was attempting to paint for the Upper Tribunal is of somebody whose health problems existed before the decision and which deteriorated rapidly once the entry clearance application had been refused. The Sponsor claimed as a result she needed help which was provided by the children and that it was not in their best interests to have to perform such a role, especially as they had their own educational needs to attend to. The Appellant should therefore have been permitted to join the family as he could fulfil this role.

33. As noted above there are elements of the Sponsors case that are contradicted by other evidence. Having considered the evidence as a whole, and whilst accepting the sponsor has medical conditions and needs, I find that she has embellished elements of her claim to try and

present the picture referred to above which is not supported by the evidence. I do not find the Sponsor to be a credible witness. The existence of the medical conditions is supported by the letter from the GP. I accept there is evidence of the Sponsor received medication and some limited form of help within her home from support services. I do not accept the sponsor's evidence that as a result of her condition she was required to reduce her working hours to twenty five hours a week due to ill health around the time of the refusal, as the copy wage slips provided at pages 189 – 193 of the bundle clearly show a different picture. Those wage slips start with tax period 11, 26/02/2010 and end with tax period 9 dated 07/12 2010. They appear to cover four weekly pay periods and for all bar 13/08/2010 and 08/10/2010 show the number of units worked as one hundred indicating one hundred hours in a four-week period, or twenty five hours per week. The payslips indicate that rather than reducing her working hours to twenty five as a result of illness, these were in fact her normal weekly hours. For a reason that was not properly explained the Sponsor failed to provide her P 60 for the tax year ending 5th April 2011 and only provided that for 5th April 2010. Is therefore not possible to ascertain whether she was telling the truth regarding the date she ceased her employment.

34. The Sponsor was also asked why the letter from the GP makes no mention of her eldest son having to provide family support. The Sponsor claimed this was because at the time he was busy with his studies and accused her of disturbing his studies.

35. The Sponsor's claim her health deteriorated to the extent it did as a result of the refusal also has to be considered in light of a letter dated 19th July 2010 [A’s bundle pages 124 -125] written by a person described as the sponsor's tenancy support worker, which indicates she is suffering from depression, has been depressed for three year, and is taking antidepressants. It also states the Sponsor has mobility problems, the living room has been converted to a bedroom as she finds it difficult to climb stairs, that she cannot climb stairs in the house without assistance and has to wait for her children to come home from school so they can help her to go upstairs, as otherwise she would have to use the outside toilet. The letter also states that her attendance at a computer training scheme ended as she does not feel well enough to go out and cannot stand and sit for long periods which means cooking and washing can be difficult. I note at this time the Sponsor was, according to the wage slips provided, working and able to maintain that employment of which there is no mention in the support workers letter [A’s bundle, page 191, wage slip for four week period ending 16/7/10 showing one hundred hours worked up to that date and wage slip dated 18/8/10 showing ninety eight hours worked in that four week period].

36. The Tribunal also heard oral evidence from the Sponsor's son WH who submitted a letter to the First-tier Tribunal [A’s bundle page 24] and

who has written an additional statement dated 15th February 2012 [A's bundle page 273]. He was asked whether he recalled the time his mother stopped work and although he remembered she did stop work he was not able to recall the exact date. He was aware his mother was working at the time of the refusal and became stressed when she discovered that the application had been refused. He confirmed his mother was working at the date of the refusal. He recalled his mother was not working the time of the First-tier Tribunal hearing in July 2011 and that his mother's condition deteriorated after the refusal.

37. WH was asked why his mother's health deteriorated. He stated she was working every day in the morning and caring for them which meant she was tired and became worse when she found out that their father was not going to be allowed to join them.

38. WH was asked about the assistance he gave to which he stated that he would occasionally do shopping. He was a student and needed to study although he would help at home. He stated he tried to do his best but did not want to miss life by caring for family and later he worked too. WH confirmed his academic history including completing his diploma course with no issues regarding attendance and that his brothers had a normal time in attending school with no problems in attendance either. WH started work in 2011.

39. I did not find the evidence of WH supported the claim made by the Sponsor that she was so dependent upon the children that their upbringing was adversely affected or that the needs of the family were not met.

40. I accept the evidence is that the Sponsor has medical conditions and that the family were required to adapt to meet those requirements to enable them to function as they wished to do. It appears however the children's education was not affected adversely and there is no evidence they were neglected or that their basic needs were not met. There is clear evidence that the needs of the children were met between 2006 and 2010 by their mother and, if the disappointment of not having her husband join her resulted in a deterioration in her condition, there is insufficient evidence to show that the impact upon the children were such that there needs were not met or that they suffer disproportionately as a result of their father's exclusion.

41. I do not find it proved that the children who have remained in the United Kingdom have lost any rights to which they were lawfully entitled as a result of their citizenship of the United Kingdom or the European Union.

42. Whilst accepting that a lot of evidence that has been developed before the Tribunal was not available to the ECO, relating to the period around the date of decision, I do not find it proved on the evidence

that the best interests of the children are the determinative factor in this appeal. They are a paramount consideration as reflected in the case law and I have considered this together with the positive obligation on the State to facilitate family reunion and the future development of family life it at all possible.

43. I find there is insufficient evidence to support the claims that WH or his brothers suffered to their detriment to any material degree as a result of having to help their mother and indeed many single parent families where the mother is unable to fully function require the assistance of able children. I note that the State is providing additional support indicating that the Sponsor's needs are being met with input and help from the NHS to which she is lawfully entitled. I do not find it has been shown that the Sponsor's condition is such that she is likely to become totally debilitated although I accept that her condition indicates that she is in pain. Mr Bradshaw argued that the provision of support by the NHS lessens the economic argument relied upon by the Secretary of State, but the State has a substantial margin of appreciation in terms of controlling entry of non-nationals and if the Secretary of State’s decision that there is a requirement to meet a minimum income standard to avoid reliance on public funds results in a consequence that some funds have to be incurred providing State assistance such as home help, that is a matter for the Secretary of State.

44. Having weighed up the competing interests I find that the economic welfare of the United Kingdom, the legitimate aim relied upon by the Secretary of State to be found in Article 8 (2) which can be obtained by having valid and workable immigration controls is the determinative factor. Whilst I accept on the facts this case is more finely balanced than some, the elements in support of the Appellant have not been proved to be determinative. I find the Respondent has discharged the burden of proof upon him/her to the required standard to show that the decision under Article 8 is proportionate to the legitimate aim relied upon in this appeal. As stated in FK & OK (Botswana) v Secretary of State for the Home Department [2013] EWCA Civ 238 by Sir Stanley Burnton:

> 11. The second reason is that the maintenance of immigration control is not an aim that is implied for the purposes of article 8.2. Its maintenance is necessary in order to preserve or to foster the economic well-being of the country, in order to protect health and morals, and for the protection of the rights and freedoms of others. If there were no immigration control, enormous numbers of persons would be able to enter this country, and would be entitled to claim social security benefits, the benefits of the National Health Service, to be housed (or to compete for housing with those in this country) and to compete for employment with those already here. Their children would be entitled to be educated at

the taxpayers' expense (as was the second appellant). All such matters (and I do not suggest that they are the only matters) go to the economic well-being of the country. That the individuals concerned in the present case are law-abiding (other than in respect of immigration controls) does not detract from the fact that the maintenance of a generally applicable immigration policy is, albeit indirectly, a legitimate aim for the purposes of article 8.2.

12. The third reason for rejecting this submission is that it is inconsistent with binding authority. For present purposes, it is sufficient to refer to *R (Razgar) v Secretary of State for the Home Department* [2004] UKHL 27 [2004] 2 AC 368 and to *Huang v Secretary of State for the Home Department* [2007] UKHL 11 [2007] 2 AC 167. in *Razgar*, Lord Bingham of Cornhill cited the judgment of the European Court of Human Rights in *D v UK* (1997) 24 EHRR 423, in which the Court said, at paragraph 48, in relation to the deportation of the appellant to Algeria, that:

> "such interference may be regarded as complying with the requirements of article 8, namely as a measure 'in accordance with the law', pursuing the aims of the protection of *the economic well-being of the country* and the prevention of disorder and crime, as well as being 'necessary in a democratic society' for those aims."

The italics are mine. In *Huang,* Lord Bingham said, at paragraph 18, in relation to the article 8 claim in that case:

> "... The Strasbourg court has repeatedly recognised the general right of states to control the entry and residence of non-nationals, and repeatedly acknowledged that the Convention confers no right on individuals or families to choose where they prefer to live. In most cases where the applicants complain of a violation of their article 8 rights, in a case where the impugned decision is authorised by law for a legitimate object and the interference (or lack of respect) is of sufficient seriousness to engage the operation of article 8, the crucial question is likely to be whether the interference (or lack of respect) complained of is proportionate to the legitimate end sought to be achieved."

45. Mr Bradshaw also relied upon the Upper Tribunal decision in MA and SM [2013] UKUT 000380. This is an appeal in which notwithstanding the inability of the appellant to meet the maintenance requirements it was held in the children's best interests that the appeal be allowed. The first appellant is an Iranian national who lived in Turkey with a British national child and therefore issues relating to child’s nationality as a British and European citizen had to be considered. The second appeal involves a family where two siblings were split one living with the appellant in Thailand and the other in the United Kingdom. The children are British citizens and therefore European nationals and on

the facts of the case, having conducted the balancing exercise it was felt that as a result of legal issues, including the European case law, the appeals succeed when focusing on the issue of the proportionality of the decision. Whilst that determination and finding can be distinguished, as the children in this appeal are in the United Kingdom as stated above, in paragraph 72 of the determination the Tribunal acknowledged that "The Secretary of State is undoubtedly entitled to rely on economic considerations as justification for accepted interference". In paragraph 75 the Tribunal recognised the economic considerations of the United Kingdom where there are real economic pressures on overstretched welfare system and in paragraph 76 that “The absence of any misconduct by the parties did not diminish the weight to be given to the economic well-being of the United Kingdom although its place in the measure of proportionality needs to be carefully evaluated in the face of the impact of continued separation of this family". In these appeals it was found there was a compelling need for the family to be reunited on the facts which has not been proved to exist to the same degree in this appeal.

46. The family can visit and, if circumstances permit, a fresh application can be made. There is no evidence that any ongoing contact of an indirect nature cannot continue and the children are of course a lot of older and of more independent mind and resources and may be able to make their own decision regarding whether they visit their father and if so when in the future.

Decision

47. **The First-tier Tribunal Judge has been found to have materially erred in law and her determination set aside. I remake the decision as follows. This appeal is dismissed.**

Anonymity.

48. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008) to protect the identity of the children.

Signed…………………………………………………
Upper Tribunal Judge Hanson

Dated the 30th September 2013