Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/35189/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21st December 2017	**On 4th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

MRS. THI CAM TU NGUYEN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Briddock, Counsel, instructed by Visa Legal
For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal ("F*t*T") Judge Kainth promulgated on 29th March 2017. The Judge dismissed the appellant's appeal against the respondent's decision of 10th December 2015 refusing her application for leave to remain in the UK as the spouse of a British Citizen.

2. The appellant is a national of Vietnam. She arrived in the United Kingdom on 23rd May 2011 as a Tier 4 student and subsequently secured extensions of leave to remain until 26th October 2015. On 17th June 2015, her leave to remain was curtailed

so as to expire on 11th September 2015. On 25th August 2015, she made an application for leave to remain in the United Kingdom on family and private life grounds, primarily relying upon her relationship with Mr Vu Cao Ly Nguyen. It was the refusal of that application on 10th December 2015 that gave rise to the appeal before the F*t*T.

3. In her decision, the respondent accepted that the suitability requirements set out in Appendix FM of the immigration rules are met by the appellant. The application was refused by the respondent because the appellant failed to provide the specified documents to evidence that she and her spouse had an annual income of £18,600 prior to the date of her application. The respondent noted in her decision, that the appellant had only submitted wage slips for her spouse for May, June and July 2015, and bank statements covering the period 2nd July until 31st July 2015. In her decision, the respondent accepted that the appellant has a genuine and subsisting relationship with her partner, but considered that there are no insurmountable obstacles to the appellant and her partner continuing their family and private life together, outside the United Kingdom, in Vietnam. Having concluded that the requirements of the immigration rules are not met by the appellant, the respondent went on to conclude that the appellant's application does not raise any exceptional circumstances that might warrant a grant of leave to remain in the UK outside the requirements of the immigration rules.

4. In his decision, the F*t*T Judge noted that the only ground of appeal available to the appellant is whether the decision is unlawful under section 6 of the Human Rights Act 1988. The Judge notes at paragraph [5] of his decision, that he must consider evidence up to the date of the hearing. At paragraph [7] of his decision, the Judge records that he did not hear oral evidence because it was agreed amongst the parties that the appeal could proceed on submissions alone.

5. The Judge then adopted the five-stage approach set out in **Razgar**. The Judge was satisfied that the appellant enjoys a family life with her sponsor and that the decision to refuse leave to remain may have consequences of such gravity as

potentially to engage the operation of Article 8. The Judge found that because the requirements of Appendix FM were not met by the appellant, the respondent has acted in accordance with the law.

6. I pause to note that the appellant accepted that not all of specified evidence required by Appendix FM-SE of the immigration rules, had been provided at the time of the application. The appellant contended that an innocent error had been made because the appellant and her partner, were not familiar with the requirements of the rules. The Judge noted at paragraph [15] of his decision that there was in the evidence before him, a letter from HMRC that confirms that the appellant's sponsor earned £25,602 for the year ending 2014, £19,999 for the year ending 2015 and £22,750 for the year ending 2016. The Judge states "*.. the requisite financial documentation was not provided as per the requirements under the rules as at the date of the application.*".

7. Having found that the original decision to refuse the application was correct and in accordance with the law, the Judge considered whether the decision is proportionate to the legitimate end sought to be achieved. The Judge states, at [28], that;

> "*.. the law requires me to consider whether her personal circumstances, which include those of other family members, are enough to outweigh the public interest considerations justifying the refusal decision. There is insufficient evidence or argument for me to find the appellant's personal circumstances outweigh the public interest considerations that justify maintaining the decision. The appellant has relied primarily on a belief that her application should have been granted under the immigration rules because her sponsor earnings were above the required minimum threshold at the time of the application. I reject that argument for the reasons which have been enunciated in the body of this decision.*"

8. The Judge concluded that the decision to refuse the appellant leave to remain is proportionate in all the circumstances.

9. The appellant claims that the Judge erred in a number of respects. The first and second grounds of appeal are linked. The appellant claims that it was open to the Judge to consider all of the evidence available up to the date of the hearing in accordance with s85A(4) of the 2002 Act. The Judge erred in finding that the minimum income requirement was not met, when the evidence before him, was that the sponsors income had exceeded the minimum income requirement during the three years preceding the application. The appellant also submits that the Judge erred in his assessment of the respondent's failure to exercise discretion to request further documentation and in his assessment of the public interest considerations and whether the decision to refuse the application is proportionate to the legitimate end sought to be achieved. In amended grounds of appeal, the appellants current representatives refer to the decision of the Supreme Court in MM (Lebanon) [2017] UKSC 10, and submit that the Supreme Court confirms at paragraph [99] of its decision, that there is nothing to prevent the Tribunal on appeal, from looking at matters more broadly by judging for itself, the reliability of any alternative sources of finance in the light of the evidence before it.

10. Permission to appeal was granted by Deputy Upper Tribunal Judge Chapman on 11th October 2017. She noted:

> *"I find arguably material errors of law in the decision of FtT Judge Kainth, in light of the fact that at the date of the hearing evidence was available to show that the appellant met the financial requirements of the rules for the previous three years, [15], which was the only reason for refusing the application to extend leave and in his assessment of the proportionality of the decision in light of the judgement of the Supreme Court in MM (Lebanon) [2017] UKSC 10, which inexplicably played no part in the Judges consideration of the appeal"*

11. The respondent has filed a rule 24 response dated 17th of November 2017. The respondent does not oppose the appeal and invites the Tribunal to determine the appeal with a fresh oral hearing to consider whether the appellant meets the income threshold, although not meeting the specified evidence requirements.

The hearing before me

12. The parties agreed that the only issue in this appeal is whether the appellant is able to demonstrate that the minimum income requirement is met. If that requirement is met, it is agreed by the parties that that would weigh heavily in favour of the appellant in any assessment of proportionality.

13. Mr Briddock accepts that the relevant specified evidence referred to in Appendix FM-SE of the rules was not provided in support of the application. It is accepted that the appellant had failed to provide the evidence required for the permitted sources of income. That is, the required 6 months wages slips with corresponding bank statements, and a letter from the sponsor's employer that satisfies the requirements of Appendix FM-SE A1(2)(b). The rules require a letter from the employer who issued the payslips, confirming: the person's employment and gross annual salary; the length of their employment; the period over which they have been or were paid the level of salary relied upon in the application; and the type of employment (permanent, fixed-term contract or agency).

14. In readiness for the appeal before the F*t*T, the appellant had filed a bundle comprising of 29 pages. Mr Briddock refers to the 11 months' payslips and the corresponding bank statements for the period between January 2015 and November 2015 that were before the F*t*T Judge at pages [13] to [25] of the appellant's bundle. There was also evidence before the Judge in the form of a letter from HMRC that confirms that the appellant's sponsor earned £25,602 for the year ending 2014, £19,999 for the year ending 2015 and £22,750 for the year ending 2016. Mr Briddock submits that the appellant had provided payslips covering a period of 6 months prior to the date of the application, albeit the corresponding bank statements for the same period showed a different sum credited to the account than stated in the payslips. Mr Briddock refers to the letter from the employer, Ms Thu Hanh Tran dated 27th November 2017 explaining that discrepancy.

15. Ms Trans explains that she had set up a standing order from the business account for exactly £1,379.82 to be paid to the appellant's partner on the same day of every

month. He was given a pay rise in June 2015 and his salary went up to approximately £1,560.71 each month. However, she had not changed the standing order until August 2015 and so there remains a discrepancy between the income shown on the payslips, and the sum paid into the bank account.

16. Mr Briddock submits that the combination of the evidence that was before the F*t*T in the form of payslips, bank statements, and the letter from HMRC should have been sufficient to establish that the appellant is able to meet the minimum income requirement. In any event, the appellant has now also provided her partner's payslips and the corresponding bank statements for the period February 2017 to October 2017 that show that the appellant continues to meet the minimum income requirements. The appellant has also provided a further letter from her partner's employer, but Mr Briddock accepts, rightly, that the further letter from the employer does not confirm the period over which the appellant's partner has been or was paid, the level of salary relied upon in the application.

17. Mr Briddock submits that even if the specific requirements of the rules cannot be met, paragraph GEN.3.2(2) of Appendix FM requires that a decision maker must consider, on the basis of the information provided by the applicant, whether there are exceptional circumstances which would render refusal of entry clearance, or leave to enter or remain, a breach of Article 8 of the European Convention on Human Rights, because such refusal would result in unjustifiably harsh consequences for the applicant, their partner, a relevant child or another family member whose Article 8 rights it is evident from that information, would be affected by a decision to refuse the application. He submits that the evidence establishes that the minimum income requirement is met, and that the appellant has waited a considerable period of time for matters to be resolved causing her distress and impacting upon her mental health.

18. In reply, Mr Jarvis submits that on any view of the evidence, the appellant cannot satisfy the requirements of the immigration rules. The immigration rules set out specific evidential requirements that must be met, and they are not met by the

appellant. Mr Jarvis submits that Appendix FM-SE (2)(b) requires that an applicant provides a letter from the employer who issued the payslips relied upon to evidence salaried employment, confirming specific information. The letter from the employer that is to be found at page [29] of the appellant's bundle before the F*t*T does not confirm the length of the employment or the type of employment. Furthermore, the bank statements relied upon do not correspond to the payslips and thus do not establish that the salary has been paid into an account in the name of the appellant or in the name of the appellant and her partner jointly, as required by Appendix FM-SE (2)(c) of the rules. He refers to the decisions of the Court of Appeal in SS (Congo) -v- SSHD [2015] EWCA Civ 387 and the Supreme Court in Agyarko -v- SSHD [2017] UKSC 11 to support his submission that there is no good reason here, to depart from the requirement in the immigration rules that in respect of salaried employment, the specified evidence referred to in Appendix FM-SE A1(2) is required for the permitted source of income relied upon.

DISCUSSION

19. The only ground of appeal available to the appellant is that the respondent's decision is unlawful under s6 of the Human Rights Act 1998. As to the Article 8 claim, the burden of proof is upon the appellant to show, on the balance of probabilities, that she has established a family and private life in the UK, and that her removal from the UK as a result of the respondent's decision, would interfere with that right. It is then for the respondent to justify any interference caused. The respondent's decision must be in accordance with the law and must be a proportionate response in all the circumstances. I can take into account circumstances at the date of the appeal hearing before me.

20. In considering whether the respondent's decision is unlawful under s6 of the Human Rights Act 1998 on Article 8 grounds, I have adopted the step by step approach referred to by Lord Bingham in Razgar -v- SSHD [2004] UKHL 27.

21. The respondent accepts that the appellant is in a genuine and subsisting relationship with her partner, who is a British citizen. The Judge of the F*t*T found,

at [8], that the appellant enjoys family life with her partner. At [9], the Judge found that the decision to refuse the appellant leave to remain may have consequences of such gravity as potentially to engage the operation of Article 8. It was uncontroversial that the appellant had not provided the evidence required by the immigration rules in support of the application and the Judge of the F*t*T found, at [20], that the interference is in accordance with the law. The Judge also found that the interference is necessary to protect the economic well-being of the country. None of those findings is, rightly in my judgment, challenged by the respondent.

22. The issues in this appeal, as is often the case, is whether the interference is proportionate to the legitimate public end sought to be achieved. It is common ground between the parties that although the appellant's ability to satisfy the Immigration Rules is not the question to be determined by me, it is capable of being a weighty, though not determinative, factor when deciding whether such refusal is proportionate to the legitimate aim of enforcing immigration control.

23. Paragraph E-LTRP.3.1(a)(i) of Appendix FM of the Immigration Rules requires that the appellant must provide specified evidence of a gross annual income of at least £18,600. Insofar as is relevant, Appendix FM-SE A1(2) provides as follows:

> *In respect of salaried employment in the UK (except where paragraph 9 applies), all of the following evidence must be provided:*
>
> *(a) Payslips covering:*
>
> *(i) a period of 6 months prior to the date of application if the person has been employed by their current employer for at least 6 months (and where paragraph 13(b) of this Appendix does not apply); or*
>
> *(ii) any period of salaried employment in the period of 12 months prior to the date of application if the person has been employed by their current employer for less than 6 months (or at least 6 months but the person does not rely on paragraph 13(a) of this Appendix), or in the financial year(s) relied upon by a self-employed person.*
>
> *(b) A letter from the employer(s) who issued the payslips at paragraph 2(a) confirming:*
>
> *(i) the person's employment and gross annual salary;*

(ii) the length of their employment;

(iii) the period over which they have been or were paid the level of salary relied upon in the application; and

(iv) the type of employment (permanent, fixed-term contract or agency).

(c) Personal bank statements corresponding to the same period(s) as the payslips at paragraph 2(a), showing that the salary has been paid into an account in the name of the person or in the name of the person and their partner jointly.

…

24. The appellant made her application on 25th August 2015. She was required to provide payslips covering a period of 6 months prior to the date of application (i.e. February 2015 to August 2015), and personal bank statements corresponding to the same period. For the relevant 6 months prior to the application, I now have in the evidence before me, the payslips and bank statements relating to the appellant's partner than demonstrates the following:

Date of Payslip	Amount paid	Date of payment into Bank Account	Amount paid into the Bank Account
05.01.15	£1379.82	26.01.15	£1379.82
05.02.15	£1379.82	23.02.15	£1379.82
05.03.15	£1379.82	30.03.15	£1379.82
05.04.15	£1379.82	27.04.15	£1379.82
05.05.15	£1390.90	26.05.15	£1379.82
05.06.15	£1560.71	29.06.15	£1379.82
05.07.15	£1560.91	27.07.15	£1379.82
05.08.15	£1560.71	01.09.15	£1560.91
05.09.15	£1560.71	28.09.15	£1560.91
05.10.15	£1560.71	26.10.15	£1560.91
05.11.15	£1560.71	30.11.15	£1560.91

25. There is plainly a discrepancy between the earnings shown on the payslips and the sums credited to the bank account for May, June and July 2015, with smaller discrepancies continuing thereafter. The appellant's partner provides no

explanation for that discrepancy in his witness statements dated 21st February 2017, and 11th December 2017. I do however have a letter dated 27th November 2017 from the employer explaining why the pay slips and bank statements do not match exactly every month. She states she set up a standing order from the business account for exactly £1,379.82 to be paid into his bank account on the same day of every month and that the appellant's partner was given a pay rise starting from June 2015 when his salary went from approximately £1,379.82 per month to approximately £1,567.91. She claims that the June and July payslips showed the previous salary because she did not change the standing order until August 2015. She acknowledges that there is a small difference between what is shown on the payslips and what is paid into the bank account for the remaining months, and claims it was easier for her to pay the same amount in every month. She states that she did not think the slight difference would really matter too much.

26. As can be seen from the table I have prepared, it is the pay slips that are all dated the 5th of each month, not the payments into the bank account. The relevant payment into the bank account, is made on the last Monday of every month.

27. The appellant's case is not assisted by the deficient letter provided in support of the application by the employer. Even now, the letter from Ms Hannah Tran dated 4th December 2017 simply confirms that the appellant's partner started his employment from 5th April 2012, that his current salary is £23,000 and his position is permanent. The letter still fails, as Mr Briddock accepts, to set out the period over which the appellant's partner has been or was paid the level of salary relied upon in the application.

28. On any view, the appellant has failed to provide the specified evidence of a gross annual income of at least £18,600 as required by Appendix FM-SE of the Immigration Rules. It follows that the requirements of Appendix FM and Appendix FM-SE of the Immigration Rules could not be met by the appellant.

29. In SS (Congo) -v- SSHD [2015] EWCA Civ 387, the Court of Appeal considered the proper approach to applications for leave to enter the UK outside the Immigration

Rules on the basis of ECHR Article 8 following the Court of Appeal's decision in MM (Lebanon) -v- SSHD [2014] EWCA Civ 1985. In each of the six conjoined cases, the applicants had applied for leave to enter as the family member of a British national or recognised refugee living in the UK. Each had been refused leave because the sponsor's income did not meet the minimum requirements in the Immigration Rules Appendix FM and Appendix FM-SE. The Entry Clearance Officer rejected SS's application for leave to enter, on the grounds that her sponsor husband's income was below the £18,600 required, and that documents submitted in support of her application did not meet the requirements set out in Appendix FM-SE. At paragraphs [50] to [53] of his judgment, Lord Justice Richards considered the evidential requirements set out Appendix FM-SE which stipulate the form of evidence required to substantiate claims that the substantive financial requirements under Appendix FM have been met. He stated:

> *"51. In our judgment, the approach to Article 8 in the light of the Rules in Appendix FM-SE should be the same as in respect of the substantive LTE and LTR Rules in Appendix FM. In other words, the same general position applies, that compelling circumstances would have to apply to justify a grant of LTE or LTR where the evidence Rules are not complied with.*
>
> *52. This is for two principal reasons. First, the evidence rules have the same general objective as the substantive rules, namely to limit the risk that someone is admitted into the United Kingdom and then becomes a burden on public resources, and the Secretary of State has the same primary function in relation to them, to assess the risk and put in place measures which are judged suitable to contain it within acceptable bounds. Similar weight should be given to her assessment of what the public interest requires in both contexts.*
>
> *53. Secondly, enforcement of the evidence rules ensures that everyone applying for LTE or LTR is treated equally and fairly in relation to the evidential requirements they must satisfy. As well as keeping the costs of administration within reasonable bounds, application of standard rules is an important means of minimising the risk of arbitrary differences in treatment of cases arising across the wide range of officials, tribunals and courts which administer the system of immigration controls. In this regard, the evidence Rules (like the substantive Rules) serve as a safeguard in relation to rights of applicants and family members under Article 14 to equal treatment within the scope of Article 8 : compare AJ (Angola) , above, at [40], and Huang , above, at [16] ("There will, in almost any case, be certain general considerations to bear in mind: the general administrative desirability of applying known rules if a system of*

immigration control is to be workable, predictable, consistent and fair as between one applicant and another; the damage to good administration and effective control if a system is perceived by applicants internationally to be unduly porous, unpredictable or perfunctory; … the need to discourage fraud, deception and deliberate breaches of the law; and so on …"). Good reason would need to be shown why a particular applicant was entitled to more preferential treatment with respect to evidence than other applicants would expect to receive under the Rules. Moreover, in relation to the proper administration of immigration controls, weight should also be given to the Secretary of State's assessment of the evidential requirements needed to ensure prompt and fair application of the substantive Rules: compare Stec v United Kingdom , cited at para. [15] above. Again, if an applicant says that they should be given more preferential treatment with respect to evidence than the Rules allow for, and more individualised consideration of their case, good reason should be put forward to justify that."

30. In MM (Lebanon) -v- SSHD [2017] UKSC10, the Supreme Court considered, inter alia, the validity of the approach adopted by the SSHD to alternative sources of funding such as third-party support. The Court held that the SSHD had adopted a stricter approach to alternative funding sources for reasons of practicality rather than policy, reflecting the difficulty of verification of such sources. That was not irrational in the common law sense. However, operation of the same restrictive approach outside the Rules was much more difficult to justify under the 1998 Act. It was inconsistent with the evaluation which Article 8 required. Lady Hale and Lord Carnwath (With Whom Lord Kerr, Lord Wilson, Lord Reed, Lord Hughes and Lord Hodge Agreed) stated

"*76. … Not everything in the rules need be treated as high policy or peculiarly within the province of the Secretary of State, nor as necessarily entitled to the same weight. The tribunal is entitled to see a difference in principle between the underlying public interest considerations, as set by the Secretary of State with the approval of Parliament, and the working out of that policy through the detailed machinery of the rules and its application to individual cases. The former naturally include issues such as the seriousness of levels of offending sufficient to require deportation in the public interest (Hesham Ali, para 46). Similar considerations would apply to rules reflecting the Secretary of State's assessment of levels of income required to avoid a burden on public resources, informed as it is by the specialist expertise of the Migration Advisory Committee. By contrast rules as to the quality of evidence necessary to satisfy that test in a particular case are, as the committee acknowledged, matters of practicality rather than principle;*

and as such matters on which the tribunal may more readily draw on its own experience and expertise.

99. …As has been seen, avoiding a financial burden on the state can be relevant to the fair balance required by the article. But that judgment cannot properly be constrained by a rigid restriction in the rules. Certainly, nothing that is said in the instructions to case officers can prevent the tribunal on appeal from looking at the matter more broadly. These are not matters of policy on which special weight has to be accorded to the judgment of the Secretary of State. There is nothing to prevent the tribunal, in the context of the HRA appeal, from judging for itself the reliability of any alternative sources of finance in the light of the evidence before it. In doing so, it will no doubt take account of such considerations as those discussed by Lord Brown and Lord Kerr in Mahad, including the difficulties of proof highlighted in the quotation from Collins J. That being the position before the tribunal, it would make little sense for decision-makers at the earlier stages to be forced to take a narrower approach which they might be unable to defend on appeal.

100. As already explained, we do not see this as an issue going to the legality of the rules as such. What is necessary is that the guidance to officers should make clear that, where the circumstances give rise to a positive article 8 duty in the sense explained in Jeunesse, a broader approach may be required in drawing the "fair balance" required by the Strasbourg court. They are entitled to take account of the Secretary of State's policy objectives, but in judging whether they are met, they are not precluded from taking account of other reliable sources of earnings or finance. It is open to the Secretary of State to indicate criteria by which reliability of such sources may be judged, but not to exclude them altogether."

31. Although the appellant did not provide all the specified evidence, unusually, I do have in the papers before me, as did the Judge of the F*t*T, the letter from HMRC dated 13th October 2016 that confirms that the appellant's sponsor earned £25,602 for the year ending 2014, £19,999 for the year ending 2015 and £22,750 for the year ending 2016.

32. In my judgement, there is sufficient evidence before me that points to the appellant's husband earning a sum in excess of £18,600 during the six months prior to the application made by the appellant. In fact, he appears to have earned in excess of £18,600 during the tax years ending 2014, 2015 and 2016. I acknowledge

that there are some discrepancies and that it is open to the respondent to set out in the Immigration Rules the criteria by which reliability of the income from salaried employment is to be judged. Weighing up all the evidence before me and having taken into account the discrepancies between the payslips and the sums paid into the bank account, and the explanation provided by the employer, I am satisfied as to the reliability of the income from the salaried employment. I find that the appellant's partner did, at the material time, and continues to, enjoy a salary in excess of £18,600 from salaried employment that is of a permanent nature. His employment has in fact endured for a number of years with the same employer.

33. The judgments of the Supreme Court in Agyarko -v- SSHD [2017] UKSC 11 and in MM (Lebanon) establish that the fact that the rules cannot be met, does not absolve decision makers from carrying out a full merits-based assessment outside the rules under Article 8, where the ultimate issue is whether a fair balance has been struck between the individual and public interest, giving due weight to the provisions of the Rules.

34. The Immigration Rules require the appellant to provide the specified evidence of a gross annual income of at least £18,600. The appeal before me is on human rights grounds and in my judgment, although the appellant is unable to meet the requirements of the immigration rules because the specified evidence has not been provided, the fact that the minimum income requirement is satisfied, is a relevant consideration when taking account of the public interest. As Lord Justice Richards noted in SS (Congo), and the Supreme Court noted in MM (Lebanon), the evidence rules have the same general objective as the substantive rules, namely to limit the risk that someone is admitted into the United Kingdom and then becomes a burden on public resources. There is no doubt that avoiding a financial burden on the state is relevant to the fair balance required by Article 8.

35. I remind myself that section 117A of the Nationality, Immigration and Asylum Act 2002 requires that in considering the public interest question, I must (in particular) have regard to the considerations listed in section 117B. I acknowledge that the

maintenance of effective immigration controls is in the public interest. On the evidence before me, and in light of my findings, I am satisfied that the appellant will not place a financial burden on the state. In my judgment, the appellant is able to meet the substantive part of the rules, but was unable to satisfy the procedural part of the rules in Appendix FM-SE. The appellant has remained in the UK throughout, lawfully. The family life between the appellant and her partner was not formed at a time when the appellant was in the UK unlawfully, albeit that the appellant only had temporary leave to remain.

36. Having carefully considered the evidence before me and taking all the relevant factors into account including those in S117B of the 2002 Act, I am satisfied, on the facts here, that the decision to remove the appellant is disproportionate to the legitimate aim of immigration control. Accordingly, I am not satisfied that the decision to remove the appellant would be in breach of article 8.

37. It follows that I set aside the decision of the F*t*T Judge and the appeal is allowed on Article 8 grounds.

Notice of Decision

38. The decision of the F*t*T Judge involved the making of an error of law such that it is set aside.

39. I re-make the decision and allow the appeal on Article 8 grounds.

40. No anonymity direction is made.

Signed Date 14th March 2018

Deputy Upper Tribunal Judge Mandalia

TO THE RESPONDENT

FEE AWARD

Although I have allowed the appeal on Article 8 grounds, I decline to make a fee award in favour of the appellant. The appeal has been allowed based on the evidence before me, that was not before the respondent at the time of the decision appealed.

Signed Date 14th March 2018

Deputy Upper Tribunal Judge Mandalia