



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/36922/2014

**THE IMMIGRATION ACTS**

Heard at Manchester  
On 24<sup>th</sup> May 2018

Decision & Reasons Promulgated  
On 25<sup>th</sup> May 2018

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR QAISER TIKKA  
(ANONYMITY DIRECTION NOT MADE)

Respondent

**Representation:**

For the Appellant: Mr C Bates (Senior Home Office Presenting Officer)

For the Respondent: Ms D Sellwood (instructed by M & K Solicitors)

**DECISION AND REASONS**

1. This is a resumed hearing after the Court of Appeal remitted the matter to the Upper Tribunal to be re-decided.
2. I can do no better than quote the judgment of Lord Justice Hickinbottom (with whom Lord Justices Coulson and Kitchin agreed) in the Court of Appeal (Tikka v SSHD [2018] EWCA Civ 642) which sets out the background as follows:-

**“Factual Background**

- (1) The Appellant is a Pakistan national, born on 29 August 1990. He is a Muslim. He entered the United Kingdom on 8 July 2010 with leave to enter as a Tier 4 (General Student), valid to 8 September 2011.
- (2) Whilst in the United Kingdom he met Josita Simta Rajoria, a British citizen. Ms Rajoria is a Hindu. The Appellant and Ms Rajoria married on 22 August 2011.
- (3) On 6 September 2011, the Appellant applied for leave for remain as the spouse of a person present and settled in the United Kingdom. On 21 December 2011, whilst that application was pending, he was unfortunately involved in a road traffic accident. Whilst he was at work delivering food from a takeaway restaurant, a man stepped out in front of his vehicle and was killed. There is no suggestion that the Appellant’s driving was in any way at fault; but, although he had vehicle insurance, it did not cover use of the vehicle for work purposes. So, at the time of the accident he was driving whilst uninsured.
- (4) The Appellant was duly prosecuted for causing the death of another person by driving a motor vehicle whilst uninsured, contrary to section 3ZB of the Road Traffic Act 1988. The maximum sentence for such an offence is two years’ imprisonment. The Appellant was convicted on 22 November 2012; and, on 17 April 2013, he was sentenced to a community order with 180 hours’ unpaid work.
- (5) On 10 May 2013, without reference to his conviction, the Secretary of State refused his application for leave to remain, on the basis that the Appellant had failed to produce the required English language certificate. The Appellant appealed and, having produced that certificate, his appeal was allowed by the First-tier Tribunal (Immigration and Asylum Chamber) (First-tier Tribunal Judge Lever) on 11 February 2014. On 11 September 2014, the Secretary of State implemented that decision by granting the Appellant leave to remain until 10 September 2016.
- (6) However, that same day (11 September 2014), in the light of his driving conviction, the Secretary of State curtailed his leave to remain under paragraphs 322(5) and (5A) and 323(i) of the Immigration Rules. Paragraph 323(i) provides that a person’s leave to enter or remain may be curtailed on any of the grounds set out in paragraph 322(2)-(5A), which are headed as grounds upon which leave to remain “should normally be refused”. The grounds set out in paragraph 322(5) and (5A) are, so far as relevant to this appeal, as follows:

“(5) the undesirability of permitting the person concerned to remain in the United Kingdom in the light of his conduct (including convictions which do not fall within paragraph 322(1C)), character or associations or the fact that he represents a threat to national security;

(5A) it is undesirable to permit the person concerned to enter or remain in the United Kingdom because, in the view of the Secretary of State:

(a) their offending has caused serious harm;...”

Paragraph 322(1C) concerns particularly serious offences, into which the Appellant’s offence did not fall. In the decision letter of 11 September 2014, the Secretary of State concluded that the Appellant’s offence had caused “serious harm”, as a result of which his leave had been curtailed under paragraph 322(5A) and also paragraph 322(5).

### **The Tribunal Proceedings**

- (7) The Appellant appealed to the First-tier Tribunal against the curtailment of his leave and consequent decision to remove him from the United Kingdom, on the basis that it was contrary to the Immigration Rules (ground 1) but was also challengeable outside the Rules on the basis that to remove him would breach the rights of himself and his family under article 8 of the European Convention on Human Rights (“the ECHR”) (ground 2). In respect of article 8, it was submitted on behalf of the Appellant that it would be unreasonable to expect Ms Rajoria to relocate to Pakistan because marriages between Muslims and Hindus were not recognised in that country, and so the Appellant and his wife would be treated as being unmarried. By living together as an unmarried couple in Pakistan, they would be committing a criminal offence. Furthermore, it was submitted that it would be unreasonable to expect Ms Rajoria to relocate to Pakistan because of her medical condition. She suffers from Type II diabetes.
- (8) On 3 March 2015, after an oral hearing, First-Tier Tribunal Judge Law dismissed the appeal on ground 1, but allowed it on ground 2 (the free-standing article 8 ground) on the basis that Ms Rajoria would be unable reasonably to relocate to Pakistan as his wife. The judge found that “the marriage that had taken place would, in effect, be destroyed by the operation of [the Appellant’s] removal” (see [18]), and that “the separation of the parties [would not be] proportionate... because of the inability of the Appellant’s wife to travel to Pakistan” (see [20]). On that basis, the judge concluded that the Appellant should be allowed to remain in the United Kingdom on article 8 grounds outside the Immigration Rules.
- (9) The Secretary of State appealed to the Upper Tribunal on several grounds, including that Judge Law misdirected himself when considering the question of leave outside the Rules on article 8 grounds by failing to take into account the public interest considerations listed in section 117B of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”), as required by section 117A(2)(a) of that Act.
- (10) At a hearing on 30 November 2015, Deputy Upper Tribunal Judge Birrell (“the Deputy Judge”) found that Judge Law had materially erred in law, and he set aside his decision. The Deputy Judge retained the matter in the Upper Tribunal, and, after a further

hearing, he remade the decision in a determination promulgated on 3 March 2016. He refused the Appellant's appeal on all grounds.

- (11) In considering the article 8 claim outside the Rules, the Deputy Judge found (as had Judge Law) that it would be unreasonable to expect Ms Rajoria to relocate with the Appellant to Pakistan, because of their respective religions. He also considered and took into account some of the circumstances of this case which might be seen as favourable to the Appellant, e.g. that the offence committed by the Appellant did not reflect on the manner of his driving, and was the subject of a non-custodial sentence. However, he found that the separation of the Appellant and Ms Rajoria that would result from the Appellant's removal, whilst he reapplied for entry clearance as her spouse, would not be a disproportionate interference with their article 8 rights. For entry clearance purposes, he proceeded on the basis that the test would be different from that in paragraph 322(5A) of the Immigration Rules, the relevant provision which he identified (paragraph S-EC.1.5 of Appendix FM to the Rules) merely providing that exclusion of an applicant is conducive to the public good because his conduct and character make it undesirable to grant them entry clearance. The Deputy Judge declined to speculate about how that different test would be applied by the Secretary of State in this case, and noted that, in Sabir (Appendix FM – EX.1 not free standing) [2014] UKUT 63 (IAC) at [33], the Upper Tribunal held that “the likelihood or otherwise of being able to meet the requirements of the rules for entry clearance is not a relevant consideration” in these circumstances.
- (12) The Appellant applied for permission to this court on two grounds, namely (i) the Deputy Judge erred in the manner he dealt with the claim under the Immigration Rules; and (ii) he erred in dealing with the claim outside the Rules, because he proceeded on the basis that the separation of the Applicant and Ms Rajoria would be temporary although it would inevitably be permanent, because of a combination of the finding that Ms Rajoria could not reasonably be expected to relocate to Pakistan and the fact that, contrary to the Deputy Judge's analysis, the suitability requirements the Appellant would have to meet for re-entry are materially identical to those upon which his leave was curtailed. The relevant provisions for re-entry are found in, not paragraph S-EC.1.5, but paragraphs S-EC.2.1 and 2.5. Paragraph S-EC.1.1 provides that an applicant will be refused entry clearance on grounds of suitability if any of paragraphs S-EC.1.2 to 1.8 (and therefore including S-EC.1.5) apply. On the other hand, paragraphs S-EC.2.1 and 2.5 provide as follows:

“S-EC.2.1. The applicant will normally be refused on grounds of suitability if any of paragraphs S-EC.2.2. to 2.5. apply.

....

S-EC.2.5. The exclusion of the applicant from the UK is conducive to the public good because:

...

(b) in the view of the Secretary of State:

(i) the person's offending has caused serious harm;..."

- (13) Permission to appeal on both grounds was granted by Sir Kenneth Parker on 11 December 2016. However, the Appellant subsequently conceded that the first ground was unarguable; and, on 8 September 2017, Sir Kenneth Parker set aside permission to appeal on the first ground whilst maintaining permission in respect of the second ground. Thus, the appeal is before us on the basis of only that second ground.

#### **The Parties' Submissions**

- (14) Mr Ó Ceallaigh for the Appellant submitted that Deputy Judge Birrell ought not to have been considering the question of whether it would be disproportionate for him to return to Pakistan to make a re-entry application, because cases such as Chikwamba v Secretary of State for the Home Department [2008] UKHL 40; [2008] 1 WLR 1420 and Secretary of State for the Home Department v Hayat [2012] EWCA Civ 1054; [2013] Imm AR 15 stress that the public interest in sending an individual back to their home country to make an application to re-enter arises because they are in the United Kingdom unlawfully; and, to determine their right to be in the United Kingdom without sending them back to their home state, would result in their cases queue-jumping and would undermine the immigration system as a whole which requires an individual to obtain entry clearance before arriving in the United Kingdom. That does not apply here. The Appellant's presence in the United Kingdom has always been lawful. There is force in that argument; but, as with all issues concerning the right to private and family life, the issue as to whether removal in circumstances in which the relevant individual has the ability to apply to re-enter would be in breach of article 8 is necessarily fact-specific.
- (15) Mr Ó Ceallaigh's submissions on the application of article 8 to the facts of this case were powerful. He submitted that the Deputy Judge erred in law by proceeding on the basis that the suitability test on curtailment of leave is different from the suitability test on re-entry; and that therefore the separation between the Applicant and his wife would be temporary, in the sense that it would be from the moment of his removal until his application to re-enter the United Kingdom has been processed. On the basis of Sabir, the Deputy Judge said that could not speculate on the outcome of that application. However, Mr Ó Ceallaigh submitted, no speculation was required, because the suitability test on re-entry was the same as that on curtailment, and so any application to re-enter is bound to fail. Therefore, given the finding that it would be unreasonable for Ms Rajoria to relocate to Pakistan, if the Appellant were removed to Pakistan, the separation of the Appellant and his wife would not be temporary, but permanent. The Upper Tribunal's decision was thus wrong in law, and should be set aside.
- (16) Mr Payne for the Secretary of State accepted that the Deputy Judge erred in law in the manner identified by Mr Ó Ceallaigh, namely that

he proceeded on the basis that the suitability criteria for curtailment of leave and for re-entry were different whereas they are in fact the same. However, he boldly contended that that error of law was immaterial, i.e. that we could be confident that, even had the Deputy Judge approached the issue lawfully, he would have come to the same conclusion that removing the Appellant is proportionate in article 8 terms. He stressed that, in [54] of his determination, the Deputy Judge set out various matters relating to the Appellant's offence upon which the Appellant might submit further evidence in an application for leave to re-enter with a view to showing that the offence was less, rather than more, serious. In any event, circumstances might change by the time that application is made. Therefore, although the relevant suitability criteria for the consideration of any application for leave to re-enter made from Pakistan would be identical to those for curtailment, it could not be said that such a future application would be bound to fail; and the Deputy Judge's observations about not speculating about the merits of any such application equally apply. Mr Payne thus submitted that this court could be confident that, if the Deputy Judge had applied the law correctly, the result would have been the same. The appeal should therefore be refused.

### **Discussion**

- (17) I am unable to share Mr Payne's confidence, for the following reasons.
- (18) So far as the facts are concerned, at all times since his entry into the United Kingdom in 2010, the Appellant has had leave to enter and remain. Since 2011, he has been married to Ms Rajoria. Whilst I understand that, if the matter is remitted, the Secretary of State reserves the right to argue that the marriage is a sham, both the First-tier Tribunal and the Upper Tribunal found as a fact that it was genuine; and, for the purposes of this appeal, I shall proceed on that basis, i.e. the Appellant and Ms Rajoria share a family life together as man and wife. Furthermore, although again as I understand it, if the matter were remitted, the Secretary of State reserves the right to argue that it would be reasonable to expect Ms Rajoria to live in Pakistan, both the First-tier Tribunal and the Upper Tribunal found as a fact that it would not be reasonable; and, for the purposes of this appeal, I shall proceed on that basis.
- (19) The Appellant now accepts that, despite that family life, he does not satisfy any set of criteria within the Immigration Rules that would entitle him to remain in the United Kingdom. Any challenge to the curtailment decision depends upon the Secretary of State's residual discretion as governed by her obligations under section 6(1) of the Human Rights Act 1999 and article 8 of the ECHR. For the reasons I have given, if the Appellant were removed, any application for re-entry into the United Kingdom would be subject to the same criteria.
- (20) Given that it would be unreasonable to expect Ms Rajoria to move to Pakistan, the removal of the Appellant to that country would interfere with their respective article 8 rights, even if the Appellant were able to apply from Pakistan for leave to re-enter and irrespective of the merits

of any such application. That interference will be disproportionate unless the Secretary of State can justify it by reference to the legitimate aims of the public interest.

- (21) Mr Payne, upon taking specific instructions, said that the public interest aims of the curtailment provisions of paragraph 322(5A) were, in general, the prevention of crime and disorder by migrants and the maintenance of effective and consistent immigration control in relation to those who offend in the United Kingdom, which contributes to the economic well-being of the country. He was, however, unable to articulate the public interest of requiring the Appellant in particular to leave the United Kingdom and apply from Pakistan to re-enter. The strong public interest in requiring those who enter the United Kingdom to have entry clearance before doing so – to avoid, amongst other things, queue-jumping – has no place in the Appellant’s case, because he had entry clearance when he entered the United Kingdom and has had leave to remain since. It cannot sensibly be suggested that his removal would deter others from entering the United Kingdom unlawfully; indeed, possibly, the opposite may be true. Prevention of crime and disorder also does not seem to be applicable here: the Appellant has only been convicted of the single offence to which I have referred, and there is no evidence that he is likely to offend again. Certainly, his conviction of that particular offence is not, in itself, such evidence.
- (22) In those circumstances, it is difficult to see how the Secretary of State can be said to have justified the interference with the article 8 rights of the Appellant and his wife that his removal and their consequent separation pending an application to re-enter would entail, irrespective of the merits of such an application. It seems to me that, in the language of Sullivan LJ in MA (Pakistan) v Secretary of State for the Home Department [2009] EWCA Civ 953 at [9] as adopted by Elias LJ in Hayat at [30], the Secretary of State has no sensible reason for requiring the application to be made from the Appellant’s home state. Indeed, there appear to be sound reasons for the Appellant’s underlying article 8 claim to be determined here, if necessary at an appeal hearing before the tribunal at which the Appellant is able to give live evidence (see Chikwamba at [44] per Lord Brown of Eaton-under-Heywood).
- (23) In any event, Mr Payne accepted that, before the Deputy Judge, a main issue was whether the removal of the Appellant would result in a separation from his wife that would be permanent rather than temporary pending an application for leave to re-enter made from Pakistan; and the Deputy Judge’s finding that it would be “temporary” was dependent upon any application to re-enter being considered on the basis of different criteria from the decision to curtail his leave, and (he said) he was “not able to speculate about what position the [Secretary of State] would take about the relevance of the Appellant’s conviction when applying a different test” (see [54]). It is therefore clear that the Deputy Judge relied upon the difference in the criteria as a critical part of his analysis that led to him to the conclusion that the separation would only be temporary, and thus it would not be

disproportionate to remove the Appellant and require him to apply to re-enter.

- (24) Mr Payne submitted that, even if that were the case, it is not a foregone conclusion that an application to re-enter the United Kingdom made by the Appellant when back in Pakistan is bound to fail because, although the criteria to be applied by the Secretary of State (through the Entry Clearance Officer) will be identical to those applied on the curtailment decision – and it must be assumed that, applying identical criteria to identical material, the Secretary of State will make consistent decisions – the material on an application to re-enter might *not* be the same as the material before the Secretary of State when deciding to curtail the Appellant’s leave. The Appellant may produce further evidence which might show that his offence was less serious, e.g. the sentencing remarks. Circumstances may change. However, in my view, all that is mere speculation. There is no sound foundation for proceeding on the basis that the material that the Appellant will submit on an application to re-enter made if and when he is removed to Pakistan will be any different from that which he submitted to the Secretary of State in relation to this application – it is inherently unlikely that the Appellant has access to further evidence in his favour which he has not yet deployed – or that the circumstances will materially change.
- (25) On the basis of the evidence – and assuming the Secretary of State through the Entry Clearance Officer will make a decision consistent with the decision to curtail the Appellant’s leave – any application for leave to re-enter will be refused. The Appellant accepts that he cannot fulfil any set of criteria within the Immigration Rules that would lead to an entitlement to remain. The only claim that he has is reliant upon the Secretary of State’s discretion as governed by article 8, albeit as guided by the requirements of section 117A(2) and (3). The Secretary of State has already considered her discretion in that regard, and determined that the Appellant should not remain in the United Kingdom. There is no reason to suppose that, on the same material and applying the same criteria, an Entry Clearance Officer on her behalf will come to a different view; indeed, there is every reason to consider that he will come to the same view. That refusal will be the subject of an appeal that will raise exactly the same issues as the appeal to the tribunal in this case, i.e. whether the interference with the article 8 rights of the Appellant and his wife that a permanent separation would entail is justified.
- (26) That not only underscores the futility of removing the Appellant without determining, once and for all, the underlying article 8 issue; it also emphasises the difference between Sabir (where the court expressed concern about tribunals speculating about the merits of any future application to re-enter) and this case (where those merits have already effectively been determined by the Secretary of State in her curtailment decision, and speculation as to the Secretary of State’s assessment of a future application for leave to re-enter is unnecessary). It is noteworthy that Sabir, following SB (Bangladesh) v Secretary of State for the Home Department [2007] EWCA Civ 28; [2007] 1 FLR 2153;



[2007] Imm AR 491, held that whether or not an applicant would satisfy the requirements for entry clearance was not a matter which a tribunal tasked with determining whether an unlawfully-present applicant should be removed and made to apply for re-entry should take into account: it is “a different question, at a different time, in a different country, and in different circumstances” (SB (Bangladesh) at [22] per Ward LJ) . Here, it is uncontroversial that the Appellant cannot satisfy the Rules, and is reliant upon the Secretary of State exercising her discretion in his favour, which is a materially identical exercise whether on the basis of curtailment or application to re-enter.

- (27) Although of course rigorous analysis of an issue is often required, there is in my view sometimes a risk of over-analysis, or at least over-complication, of an issue. In this case, in considering the article 8 balance, the Deputy Judge proceeded on the basis that, if the Appellant were removed, the separation of him from his wife would be temporary in the sense that he would be able to make an application to re-enter which would be dealt with by the Secretary of State on its merits. In fact, the relevant issue on that application has already been determined by the Secretary of State, adverse to the Appellant; so that, subject to the right of appeal, the separation would be permanent. In my view, that clearly puts the issue in a different light, and is clearly a potentially material difference in performing the necessary article 8 balancing exercise.
- (28) In his written submissions, Mr Payne additionally relied upon several other matters, which were not developed in his oral submissions; but, in my view, none assisted his cause. For example, he relied upon the proposition, well-established by cases such as Napp Pharmaceutical Holdings Limited v Director General of Fair Trading [2002] EWCA Civ 796; [2002] 4 All ER 376 especially at [34], that the findings of a specialist tribunal, constituted by Parliament to make judgments in a particular area, deserve especial deference when challenged on appeal; but that principle has no force when the tribunal has acted on a basis that is fundamentally flawed as a matter of law.

### Conclusion

- (29) I am therefore entirely unpersuaded that the error of law relied upon by the Appellant, and conceded by the Secretary of State, is immaterial such that we can say with confidence that, had Deputy Judge Birrell proceeded lawfully, the result of the article 8 balancing exercise would inevitably have been the same, or even would highly likely have been the same. Indeed, with respect to Mr Payne’s submissions, it seems to me to be very clear that the error of law was material; and, in my judgment, this court has no option but to quash the decision of the Deputy Judge. It is common ground that, in these circumstances, this court should remit the matter to the Upper Tribunal.
- (30) I would therefore allow the appeal. I would set aside the decision of Deputy Upper Tribunal Judge Birrell dated 3 March 2016; and I would remit the matter to the Upper Tribunal (Immigration and

Asylum Chamber) for redetermination by a differently constituted Tribunal”.

3. The Upper Tribunal, on 18th April 2018 directed that the Appellant must file with the Upper Tribunal and serve on the Respondent an indexed and paginated bundle of all evidence to be relied upon, including all evidence previously filed. Any evidence not previously filed must be separately tabulated so that it is readily identifiable. It also directed that the Respondent was to file with the Upper Tribunal and serve on the Appellant’s representatives any further evidence to be relied upon (in a paginated indexed bundle) to be received by no later than 8th May 2018. Both parties were also directed to file skeleton arguments by 14th May 2018.
4. The Appellant’s representatives duly filed a paginated, indexed bundle in five parts, none of which was evidence not previously filed. The Respondent has not filed any further evidence.
5. The Appellant’s counsel has filed a skeleton argument, albeit only on the morning of the hearing. The respondent has not filed a skeleton argument.
6. The Court of Appeal noted that the First-tier Tribunal and the Upper Tribunal accepted that the Appellant and his wife were in a genuine and subsisting marriage and both found as a fact that it would not be reasonable for the Appellant’s wife to live in Pakistan with the Appellant because of their different religions.
7. The Respondent has at no time sought to challenge those findings.
8. Following the Court of Appeal’s decision it is quite clear that the Secretary of State has given a clear indication, in her curtailment decision, of her views on the Appellant’s suitability and thus any application by the Appellant from Pakistan to enter the United Kingdom would be rejected on suitability grounds.
9. Mr Bates before me did not seek to argue otherwise. That being the case it follows that, if the Appellant is removed to Pakistan the relationship with his wife will be permanently at an end. Family life cannot continue in Pakistan and again that much was accepted by Mr Bates.
10. The Appellant accepts that he does not meet the requirements of the Immigration Rules and that this case is about proportionality. So much is also accepted by the Secretary of State.
11. In undertaking a proportionality assessment I am required to take into account section 117 of the Immigration and Asylum Act 2002 which requires me to take into account the matters set out in section 117B.
12. Section 117B (1) states that the maintenance of effective immigration control is in the public interest.
13. Section 117B (2) states that it is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or

remain in the United Kingdom are able to speak English, because persons who can speak English-

- (a) are less of a burden on taxpayers, and
- (b) are better able to integrate into society

In this case, on the basis that the original appeal was allowed by the First-tier Tribunal upon production of an English-language certificate, it is clear the Appellant speaks English.

14. Section 117Bb (3) states that it is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons-
  - (a) are not a burden on taxpayers, and
  - (b) are better able to integrate into society.
15. In this case the Appellant has been in the United Kingdom for a significant period of time and has not been a burden on the taxpayer. He has worked in the past and there is no evidence to suggest that he would not work in the future.
16. Section 117B (4) does not apply in this case because it refers to a person in the United Kingdom unlawfully and the Appellant has been in the United Kingdom lawfully at all times.
17. Section 117B (5) states that little weight should be given to a private life established by a person at a time when the person's immigration status is precarious. Whilst the Appellant's immigration status is precarious in the sense that he does not have settled status, it is not his private life which he relies upon but his family life in this case.
18. Section 117B (6) has no application because there are no children involved in this case.
19. While section 117B (4) indicates that little weight should be given to relationship formed with a qualifying partner whilst the person is in the United Kingdom unlawfully, no mention is made of a relationship formed with such a person while they are United Kingdom lawfully. Given its absence from section 117B it follows that significant weight can be attached to such a relationship.
20. As has been held previously in both the First-tier Tribunal and Upper Tribunal, the Appellant has a genuine and subsisting relationship with his British wife. She cannot be expected to live in Pakistan and so it follows that family life cannot be enjoyed in Pakistan in this case.
21. As the Court of Appeal said at paragraph 20, which I have quoted above, the interference will be permanent and disproportionate unless the Secretary of State can

justify it be reference to the legitimate aims of the public interest. The only adverse matter that can count against the Appellant in this case is his conviction. As has been previously recognised and acknowledged by the Court of Appeal, while driving a vehicle without insurance is a serious matter, the nature of the sentence indicates the view taken by the sentencing judge that this was not at the serious end of offending. The Appellant's vehicle was insured albeit not for purposes of employment. His driving did not cause the victim's death and Mr Bates was able to confirm that there have been no subsequent criminal prosecutions.

22. Mr Bates was not able to refer to anything else to justify removal and so I conclude that the Appellant's removal, bringing about, as it would, the end of this marriage of seven years duration, would be a disproportionate interference with his and his wife's family life as protected by Article 8 of the ECHR.

### **Notice of Decision**

The appeal is allowed on Human Rights grounds (Article 8).

No anonymity direction is made.

Signed

Date 24<sup>th</sup> May 2018

Upper Tribunal Judge Martin