Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: JR/03376/2019**

Judicial Review Decision Notice

Heard at Field House
On 31 October 2019 **16 September 2020**

Before

MR JUSTICE DOVE
(SITTING AS AN UPPER TRIBUNAL JUDGE)

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

VICTORIA YIGA

Respondent

Representation:
For the Appellant: Ms N Quadi
For the Respondent: Mr J Anderson

DECISION AND REASONS

1. The Applicant is a national of Uganda who came to the United Kingdom in 2002. Shortly after her arrival she made an unsuccessful claim for asylum and, having had her appeal against that decision dismissed, she became appeal rights exhausted in 2004. On the 25th August 2012 she contends that she entered into a marriage by proxy in Benin with a Mr Ayinde who is a French national. That marriage is the subject of dispute as will emerge below. It is evidenced by a marriage certificate and a letter from the Consulate of the Republic of Benin in London confirming its validity. The essence of the position, which is in truth more complex in its chronology, is that on the basis of her marriage to an EEA National the Applicant made an application for an EEA residence card. The date of that application is disputed, as is the question of whether or not it properly fell to be determined under the Immigration (European Economic Area) Regulations 2006 (the "2006" Regulations) or the Immigration (European Economic Area) Regulations 2016 (the "2016 Regulations"). In any event, the Applicant exercised her right of appeal under Regulation 36 of the 2016 Regulations, and the matter was listed for hearing on the 14th June 2018 before the First-tier Tribunal.

2. On the 14th February 2018, prior to the hearing, the Applicant was removed from the UK. The hearing of the 14th June 2018 the case was adjourned with a view to enabling the Applicant to be present at the appeal hearing. The Applicant made an application for a visit visa to attend the UK. That application, which is the subject of this application for judicial review, was refused on the 5th October 2018. The reasons for the conclusion of the Entry Clearance Officer that he or she was not satisfied that the Applicant was genuinely seeking entry as a visitor were expressed in the following terms:

> "You first entered the UK in 2002 and make an application to remain outside the rules on 7/6/2002 which was refused on 22/8/2002. You then appealed and then again before all appeal rights were exhausted on 4/8/2004. You then absconded until 3/1/2012 when you made further submissions which were rejected. There then followed four EEA spouse applications which were all rejected however before removal could take place you lodged a Judicial Review application which was rejected. Two further EEA spouse applications were made the last of which was rejected on 23/1/2017. Further submissions, made on 9/1/2018 were rejected and you were removed on 17/02/2018. Since then

on 31/08/2018 you made a further JR challenge against the removal which was rejected and your final EEA spouse rejection was appealed against and has a new hearing date on 22/10/2018 following two adjournments. This hearing can take place in your absence and given the chronic failure on your part to adhere to UK Immigration Rules as outlined above I am not satisfied that you intend a short visit of one month as indicated.

I further note that you received medical treatment in the UK in 2016 at a time when you had no leave in the UK and state you did not pay therefore I am satisfied there is an NHS debt outstanding which would need to be paid before any future travel to the UK would be favourably considered.

Finally I note that the visit will cost £l500 however the only financial support document submitted is in your name but contains no credits and just one unsourced lump sum carried forward. As such I am not satisfied that such funds are genuinely available for your exclusive use or that you will be able to maintain and accommodate yourself for the duration of the visit without recourse to public funds.

You have produced no further documentary evidence of your personal and financial circumstances. I must take into account your personal and economic circumstances in Uganda when coming to my decision, however given the statements you have made and the documentary evidence you have presented to support your application I am not satisfied that your circumstances in Uganda, coupled with your reasons for wishing to travel to the United Kingdom, are such that you have sufficient intention to leave the United Kingdom at the end of your proposed visit."

3. It appears that the matter was listed before the First-tier Tribunal for a case management review hearing on the 22nd October 2018. At that hearing it was made known that the Appellant had made an application for entry clearance to return to the UK as a visitor and that this application had been refused without reference to the Immigration Judge's earlier direction that the matter should be adjourned to enable the Appellant to return to the UK and participate in her appeal. On the 4th December 2018 a lengthy letter was sent by the Respondent setting out the Respondent's position that there was no legal basis for requiring the Appellant to return to the UK for the purposes of the hearing of her appeal.

The First-tier Tribunal rescheduled the appeal hearing for the 16th April 2019. Although questions were raised as to whether or not that hearing should be adjourned, it nevertheless proceeded, and the First-tier Tribunal Judge gave the following directions:

> "It is understood the Appellant has been refused entry clearance to attend any hearing. The Appellant's solicitors are forthwith to confirm to the Respondent and the tribunal what, if any, action the Appellant is taking in relation to direction 1 above.
>
> If no action is taken the matter will be listed for a substantive hearing of all issues. This is not a deportation case so AJ (s94B: Kyarie and Byndloss questions) (2018) UKUT 115 (IAC) will have no application.
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> Application can be made to the Tribunal for permission for the Appellant to give evidence by electronic means. The Respondent is forthwith to file and serve all documentary evidence to support the several allegations made in the reason for refusal.
>
> A response to the letter of 9 December 2016 from the Benin Consul in London about the validity of the Appellant's Marriage or Skeleton argument why the Tribunal should not accept it at face value.
>
> The Appellant is forthwith to file and serve an expert opinion on the validity of her marriage under Benin Law."

4. Following the issuing of the directions the Applicant gave instructions for these proceedings by way of judicial review to be pursued. A pre-action protocol letter was sent to the Respondent on the 13th May 2019 and proceedings were commenced on the 21st June 2019. Permission to apply for judicial review and an extension of time was granted by Deputy Upper Tribunal Judge McGeachy on the 26th July 2019. The application as originally formulated was pleaded as a single ground. Within that ground a number of submissions were advanced. Firstly, it was contended that the wrong regulations had been applied in refusing the application for an EEA residence card: the application should have been considered under the 2006 Regulations and not the 2016 Regulations. Secondly, it was contended that the marriage which the Applicant had entered into was valid under the law of Benin. Thirdly, it was contended that, although the Applicant's relationship with her husband had broken down, she was nevertheless entitled to have the application

for an EEA residence card granted under the 2006 Regulations. In respect of attendance at the hearing, paragraph 20 of the Applicant's pleadings stated that it was submitted "that the Applicant is entitled by law to attend her appeal hearing". Furthermore, in paragraph 23 it was submitted "that the Defendant's refusal to grant the Claimant entry clearance to attend her hearing was arbitrary and not in accordance with the law".

5. It is clear from the documentation that there were extensions of time granted for the filing of the detailed grounds of defence on two occasions. The original deadline for the provision of this document was the 9th September 2019, but that was extended, firstly, to the 30th September 2019, and then to the 8th October 2019, bearing in mind that the hearing had been listed for the 3 1 October 2019. Thereafter on the 30th October 2019, the day prior to the hearing, a consolidated trial bundle and a skeleton argument was filed and served. A witness statement was provided from the Applicant at the same time dated 25th October 2019. At the hearing, for reasons which are set out below, procedural issues were raised by the Respondent in addition to the substantive hearings raised in the judicial review.

Procedural issues

6. Nothing which follows should be taken as any reflection upon either counsel who appeared in this case, and indeed I am greatly indebted to both of them for their careful and focused written and oral submissions. In particular Ms Quadri was instructed very late in the day, and it stands greatly to her credit that she was able to rapidly assimilate the relevant materials and produce her skeleton argument, which was extremely helpful, at very short notice.

7. At the hearing the Respondent complained that as a consequence of the skeleton argument produced the day prior to the hearing the Applicant's case had fundamentally changed. In effect, it was submitted, the Applicant had abandoned the grounds associated with the question of the correct regulations under which the EEA Regulations application had been determined and the point in relation to the validity of the marriage was no longer pursued. Instead the skeleton argument focused upon a single contention, namely that the failure to allow the visit visa application amounted to a breach of the requirements of procedural fairness at common law. This new allegation is based upon the contention that the requirements of common law fairness warranted the Applicant's appearance in person in the UK at her forthcoming appeal. It was submitted that the

Applicant had no permission to amend her pleadings to raise this point nor did she have permission to apply for judicial review in relation to it. The Respondent relied in particular upon the observations of Singh LJ in the case of R (on the application of Talpada v Secretary of State for the Home Department) [2018] EWCA Civ 841. At paragraph 67-69 Singh LJ observed as follows:

> "67. I turn finally to the question of procedural rigour in public law litigation. In my view, it cannot be emphasised enough that public law litigation must be conducted with an appropriate degree of procedural rigour. I recognise that public law litigation cannot necessarily be regarded in the same way as ordinary civil litigation between private parties. This is because it is not only the private interests of the parties which are involved. There is clearly an important public interest which must not be overlooked or undermined. In particular procedure must not become the master of substance where, for example, an abuse of power needs to be corrected by the court. However, both fairness and the orderly management of ligation require that there must be an appropriate degree of formality and predictability in the conduct of public law litigation as in other forms of civil litigation.
>
> 68. In the context of an appeal such as this it is important that the grounds of appeal should be clearly and succinctly set out. It is also important that only those grounds of appeal for which permission has been granted by this Court are pursued at an appeal. The Courts frequently observe, as did appear to happen in the present case, that grounds of challenge have a habit of "evolving" during the course of the proceedings, for example when a final skeleton argument comes to be drafted. This will in practice be many months after the formal close of pleadings and after evidence has been filed.
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> 69. These unfortunate trends must be resisted and should be discouraged by the courts, using whatever powers they have to impose procedural rigour in public law proceedings. Courts should be prepared to take robust decisions and not permit grounds to be advanced if they have not been properly pleased or where permission has not been granted to raise them. Otherwise there is a risk that there will be unfairness, not only to the other party of the case, but potentially to the wider public interest, which is an important facet of public law litigation."

8. In response to these submissions the Applicant contends that in fact there has been no change in the Applicant's pleaded case since the case in relation to common law fairness was foreshadowed within paragraph 20 set out above. Permission had been allowed on the basis of the material which was lodged with the application and therefore permission existed to argue the point relating to common law fairness. In the circumstances there had been no prejudice to the Respondent as the argument in relation to common law fairness raised no new issues of fact, and was based upon propositions of law addressed by authorities that were already in large measure before the Tribunal. In the circumstances, therefore, the Applicant was entitled to raise the arguments which were presented.

9. Having considered the submissions made I am quite unable to accept that the argument now raised by the Applicant is one which is properly pleaded in the application which launched these proceedings. To suggest that an argument based upon the requirements of common law fairness, and in particular the authorities set out below in that connection, was properly encompassed by the wholly unparticularised assertion in paragraph 20 of the original Grounds is a proposition which is in my view unsustainable. The purpose of providing pleaded grounds in an application for judicial review is to set out, amongst other matters, the legal provisions or relevant legal doctrines which justify the conclusion that the decision under challenge is unlawful, and the facts and submissions that are pertinent to that contention. Paragraph 20 does not begin to accomplish that task. It fails to set out what the "law" required and how it had been breached by the failure to grant the visit visa and permit the Appellant to attend her appeal hearing. It is quite inadequate for a pleading to simply assert that the decision is unlawful without setting out in detail the specifics of why that is the case. Whilst this occurred on this occasion through no fault of counsel appearing for the Applicant, that is no remedy for, and cannot excuse, the procedural default in which the Applicant finds herself.

10. The observations of Singh LJ in Talpada with respect to the need for procedural rigor in public law cases is clearly relevant to the present case. I am not minded to grant any permission to amend the pleadings in this case so as to advance the argument based upon common law fairness. It has arisen extremely late in the day, in circumstances where these proceedings have been on foot for a considerable period of time. I note what is said by the Applicant in relation to the absence of any unfairness in allowing the argument to be presented. However, it needs to be recalled that the late service of papers were accompanied by the provision on an additional witness statement from the Applicant,

which was relied upon by the Applicant in respect of some of the arguments associated with common law fairness, and which the Respondent has had no opportunity to deal with at all. It is obviously in principle unfair to admit a new argument accompanied by evidence in circumstances where a Respondent has no opportunity to address the material by investigating the issues raised and providing further evidence of its own as necessary. Furthermore, although not a dimension of unfairness, it undermines the objective of holding an efficient and comprehensive hearing if, as here, the opportunity has to be afforded to a party served with a late change of tack in the Applicant's case, to produce further submissions in writing after the hearing which the court does then not have the opportunity to examine at the oral hearing specifically convened for the case. Such a procedure does not serve the overriding objective well. For all of these reasons I am not minded to allow any amendment to the Applicant's pleadings in order to advance the argument based upon common law fairness.

11. Furthermore, although it was submitted on behalf of the Applicant that permission existed to advance this argument, I am unable to accept that that is the case. To start with, as I set out above, I am unable to accept the submission that this argument was properly pleaded in the original grounds in this case, and therefore could not have formed pan of the consideration on the papers given to this case by Deputy Upper Tribunal Judge McGeachy. In any event it appears to me that the basis upon which he granted permission is set out in paragraph 3 of his decision in the following terms:

> "The application for the visit visa related to the much wider issue of whether or not the Applicant was entitled to return to Britain to attend her immigration appeal. This is a matter in which a Designated Judge in the First-tier Tribunal had adjourned the Applicant's EEA appeal and given orders that she be returned to Britain. Furthermore, I consider that given the assertion that the Applicant made the EEA application in December 2016 it may be that it cannot be said that the decision was unarguable. I therefore grant permission."

12. It appears that the grant of permission related to the directions given by the First-tier Tribunal which I have set out above, and also the contentions raised in relation to the correct regulations in play. In so far, therefore, as it is clear as to the basis upon which Deputy Upper Tribunal Judge McGeachy granted permission it does not appear to have related to any contention that the requirements of common law fairness demanded that

the application should be granted. Clearly the need for judicial review proceedings to be subject to a preliminary scrutiny on the papers and the formal grant of permission is an important discipline in the proceedings. Allowing arguments to be developed at a late stage has the further potential mischief of bypassing that preliminarily scrutiny. In this case permission was not granted for the argument raised as a new point in the Applicant's skeleton argument and thus the element of preliminarily scrutiny provided for at the permission stage was side stepped.

13. For all of these reasons in my view the Respondent's points in relation to procedure are sound. I am unwilling to permit the Applicant permission to advance the new argument which is raised on her behalf in relation to common law fairness. I would not allow her to amend her pleadings to raise the point. That is sufficient to dispose of these proceedings as the Applicant does not contend that she is entitled to succeed on any other basis. Nevertheless, and in the light of the fact that I have heard submissions on the point and consider that it is a matter which can be disposed of relatively succinctly, I set out below my conclusions in relation to the substance of the argument which has been raised.

Common law fairness

14. At the outset it is important to record a number of concessions which were made as part of the background to the argument. They are as follows:

    (a) it is conceded on behalf of the Applicant that questions related to the legality of the Applicant's marriage, and whether or not her application was dealt with under the correct regulations, are not matters which can properly be explored as part of the present application. There are cogent reasons for this, which include the fact that the decision reached in relation to her EEA regulations application is not the subject of these proceedings and, in any event, she has an appropriate alternative remedy in relation to her complaints in connection with that decision, namely her appeal which is currently before the First-tier Tribunal. Thus to the extent that the judicial review was originally launched on the basis of these contentions it was misconceived.

    (b) By virtue of regulation 40(2) and (3) of the 2016 Regulations certain appeals against certain "EEA decisions" (of which the Appellant's appeal before the First-tier Tribunal is one) cause any removal directions to be cease to have effect. In R (Ahmed) v Secretary of State for the Home Department [2016] EWCA Civ 303 the Court of

Appeal held that an appeal against a decision to refuse a residence card under the 2006 Regulations did not have suspensive effect. In the case of R (Shote) v Secretary of State for the Home Department [2018] EWHC 87 the High Court confirmed that the decision in Ahmed applies with equal effect in connection with decisions under the 2016 Regulations, as there is no material difference between the 2006 and the 2016 Regulations in this respect. The case of Shote was applied in subsequent case of R (Dogbey) v Secretary of State for the Home Department [2018] EWHC 1165. Thus it is conceded that the Applicant's appeal does not have suspensive effect.

(c) Furthermore, the categories of case where a right of temporary admission is given pursuant to regulation 41 of the 2016 Regulations does not apply in the Applicant's case: this is because the Applicant is not subject to a decision to remove her made pursuant to regulation 23(6)(b).

(d) it is not open to an Applicant to ventilate an Article 8 claim in an appeal against the refusal of an EEA residence card; this underpins the reliance by the Claimant upon the principle of common law fairness since no reliance could be placed upon any procedural requirements of Article 8 in the context of this appeal.

15. Against that background the Applicant submits that the requirements of common law fairness are such that the Applicant's visit visa should have been granted so as to enable her to attend her appeal in person. There are a number of strands to the Applicant's argument. Firstly, the Applicant relies upon the decision of the Supreme Court in R (Kyarie and Byndloss) v Secretary of State for the Home Department [20171 UKSC 42, at least by analogy with the present case. In particular, the Applicant draws attention to, firstly, the fact that at the heart of the refusal by the Respondent was the contention that the marriage she had entered into was "a marriage of convenience", which is a factual issue which would need to be resolved having heard the evidence of the Appellant and, secondly, the practical constraints upon giving evidence from abroad which Lord Wilson drew attention to, for instance at paragraph 73 of his judgment. The Applicant submits that these constraints would apply equally in relation to the Applicant's appeal in which questions of fact will need to be resolved.

16. A further strand of the Applicant's argument is reliance upon the case of Ahsan v Secretary of State for the Home Department [2017] EWCA Civ 2009. This case related to the question of whether or not an out of country right of appeal was adequate in a case in

which it was contended by the Respondent that the Appellants had cheated in their English language test. The Court of Appeal followed the decision of the Supreme Court in Kyarie and Byndloss, and held that an out of country appeal would not satisfy the procedural aspect of Article 8 unless facilities for giving evidence via video link were realistically available. In particular the Applicant relies upon the conclusions reached by Underhill LJ in paragraphs 97 and 98 of his judgment as follows:

> "97. For the reasons given above I would hold that an out-of-country appeal would not satisfy the appellants' rights, either at common law or under art.8 of the Convention, to a fair and effective procedure to challenge the decisions to remove them; and that in those circumstances, subject to the human rights claim issue considered below, they were entitled to proceed with such a challenge by way of judicial review.
>
> 98. I emphasise that that conclusion depends on the particular features of the appellants' cases, namely that the nature of the issues raised by their appeals was such that they could not be fairly decided without hearing their oral evidence, and also that facilities for giving such evidence by video-link were not realistically available. Even if those features are shared by the great majority of TOEIC cheating cases, it does not follow that they will be present in all cases where the legislation provides for an out-of-country appeal: in particular, whether it is necessary for the appellant to give oral evidence will depend on the nature of the issues."

17. Further the Applicant observes that the decisions in Shote and Dogbey were not concerned with common law fairness, and therefore the conclusions which they reached do not grapple with the question of whether the requirements of common law fairness are breached in the present circumstances by the failure of the Applicant to be able to attend her own appeal.

18. Having considered the submissions advanced on behalf of the Applicant I am not satisfied that they are correct. Firstly, it must be emphasised that the decisions in Kyarie and Byndloss and Ahsan were made in the context of the procedural rights required by Article 8 in relation to claims of a breach of Article 8. Such claims do not arise in the present case as Article 8 issues cannot be raised in an appeal under the 2016 Regulations (or, for that matter, the 2006 Regulations). The present case therefore arises in a different

context to those cases. That is not to say that considerations of common law fairness do not arise for consideration, but rather that the observations made in Ahsan arose (obiter) in a different legal context. Furthermore, as was observed in Ahsan, the question of whether fairness requires that an Appellant be present to give evidence in person will depends upon the nature of the issues which arise in the particular appeal under consideration (see paragraph 98).

19. I am not satisfied that the refusal of the Respondent to grant the Applicant a visit visa in the present case gives rise to a breach of the requirements of common law fairness, either in principle, or in the particular circumstances of this case as matters stand. In addressing the question of principle, it is important to observe that, whilst the 2016 Regulations made specific provisions for suspensive appeals and temporary rights of admissions where appeals are to be heard, none of those provisions apply in the Applicant's case. Thus, it was clearly not intended in enacting the legislation to provide an Appellant with the opportunity to attend his or her appeal against an EEA decision in the circumstances of this Applicant.

20. In my view, the decisions in Kyarie and Byndloss and Ahsan arose in very different legal circumstances to the decision in the present case. As set out above, those cases related to appeals in relation to Article 8, and the procedural requirements in a case in which Article 8 was directly engaged. The Appellant's appeal under the 2016 Regulations is clearly distinct from this situation, and this conclusion is supported by the decisions in Shote and Dogbey. These arguments were considered again by the High Court in the decision or R (on the application of Md Shafikul Islam) v Secretary of State for the Home Department [2018] EWHC 2939 (Admin) where, at paragraphs 40-44 of his judgment, Mr Andrew Thomas QC sitting as a Deputy High Court Judge dismissed an argument based on Kyarie and Byndloss in the context of an appeal against an EEA decision. In my judgment, against the background of the legislative framework, and the consistent line of authority set out above, it is simply not open to the Applicant to contend that the common law principles of fairness require that, in principle, her visit visa should have been allowed to enable her to attend her appeal in person. The observations upon which she relies in Ahsan are, even if not obiter, conclusions reached in a different legal context. Dealing with the issue in principle, in my view fairness does not require that the Applicant return to attend her appeal. There is no reason in principle why, for instance, giving evidence by live link is not appropriate in an appeal concerning an EEA decision. Whilst I shall turn to

the particular circumstances of the Applicant's appeal shortly, by and large decisions in relation to EEA questions will involve relatively simple and straight forward factual evaluations, often heavily dependant upon the view taken about accompanying documentation. Whilst in some instances there are no doubt practical obstacles to be overcome it is far from unusual for courts and tribunals to receive evidence via a live link, and for questions of the credibility and reliability of witnesses to be resolved in respect of evidence which has been received through that means. In my view, therefore, none of the issues of practical concern raised by the Applicant in this case give rise to an in principle concern that the requirements of common law fairness could not be met, subject to specific measures being taken to accommodate the requirements of fairness in individual cases.

21. Turning to the particular circumstances of this Applicant, I am not satisfied that there would be any basis to conclude the requirements of fairness in her case were breached by the failure of the Respondent to grant her a visit visa to attend her appeal. Firstly, it is clear from the directions given by the First-tier Tribunal on the 16th April 2019 that the First-tier Tribunal contemplates an application for permission to give evidence by electronic means. Nothing in these directions suggest that the view of the First-tier Tribunal is that, bearing in mind the issues in the case, it would not be possible for there to be a fair hearing of the appeal without the personal attendance of the Applicant. Secondly, and related to this issue, it is clear that the issues in the appeal, in particular related to whether or not the Applicant entered into a marriage of convenience, are relatively straight forward and within a narrow compass. They will bear upon the question or whether or not her marriage was a legally valid marriage: an issue which will depend in particular upon an examination of the documentation supporting the Applicant's case and any available expert evidence. Oral evidence will no doubt address the relatively simple issues concerned with the tenancy agreement and the failure to attend interview upon which the Respondent relies. On the face of the material before the Tribunal there is nothing to suggest that these issues are incapable of being explored and evaluated by the Applicant giving evidence over a live link. Whilst in her recent statement the Applicant contends that she has had no help from the British High Commission in Uganda, in my view it is premature to form any conclusion as to the ability of the Appellant to appear at her appeal via electronic means. No doubt those issues will be explored as and when an application for those means are made to the First-tier Tribunal.

For the purposes of this application, however, I am unable to conclude that there is anything about the particular circumstances of this Applicant's case as they stand at present which would support the premise that it would be a breach of the common law requirements of fairness to do anything other than grant her a visit visa in order to attend appeal.

DECISION

22. As set out above in my view there are formidable procedural difficulties in the way of the Applicant presenting her argument in the form in which it was presented at the hearing. In any event for the reasons which I have set out above in my view her arguments could not succeed. For all of these reasons her application for judicial review must be dismissed.

UTIJR5

JR/03376/2019

Upper Tribunal
Immigration and Asylum Chamber

Judicial Review Decision Notice

The Queen on the application of
Secretary of State for the Home Department

Applicant

v

Victoria Yiga

Respondent

Before High Court Judge
MR JUSTICE DOVE

Having considered all documents lodged and having heard the parties' respective representatives, Ms N Quadi of Garden Court Chambers on behalf of the Applicant. Mr J Anderson of 39 Essex Chambers, on behalf of the Respondent. At a hearing at Field House, London on 31st October 2019.

Decision: permission is refused

(1) Permission to apply for judicial review is refused.

Permission to appeal to the Court of Appeal

(2) Permission to appeal to the Court of Appeal is refused.

Costs

(3) There having been no applications and upon enquiry of UTIAC disclosing that there is no evidence of the Applicant being legally aided there will be no order for costs.

Signed: MR JUSTICE DOVE

High Court Judge: MR JUSTICE DOVE

Dated: **19/06/2020**

Applicant's solicitors: [~]

Respondent's solicitors: [~]

Home Office Ref: [~]

Decision(s) sent to above parties on 16/09/2020

Notification of appeal rights

A refusal by the Upper Tribunal of permission to bring judicial review proceedings following a hearing, is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a question of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 7 days** of the Tribunal's decision refusing permission to appeal to the Court of Appeal (CPR 52.9(3)(a)).