**Upper Tribunal (Immigration and Asylum Chamber)** **Appeal Number: DC/00025/2018**

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On the 15 October 2021** | **On the 17 November 2021** |

**Before**

**UPPER TRIBUNAL JUDGE BLUNDELL**

**Between**

**MOHAMMED KHALIFA**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the Appellant: Mr S Muquit, instructed by Farani Taylor Solicitors
For the Respondent: Mr D Clarke, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals, with permission granted by First-tier Tribunal Judge Davidge, against the decision of First-tier Tribunal Judge Brannan, who dismissed his appeal against the respondent's decision to deprive him of his British citizenship under s40(3) of the British Nationality Act 1981 ("BNA 1981").

**Background**

2. The appellant was born in Egypt on 8 October 1955. On 27 September 1995, he married a British woman, SL, in Egypt. They had three children, all of whom were born in Egypt. Child A was born on 9 July

1996. Child Y was born on 13 August 1999. Child S was born on 19 April 2003. The children are all dual Egyptian/British citizens.

3. The appellant applied for entry clearance as SL's husband on 18 September 2001. That application was granted on 18 November 2001 and the resulting entry clearance was valid until 18 November 2002. He subsequently applied for Indefinite Leave to Remain ("ILR") as the spouse of a British citizen. That application was granted on 19 February 2003 (shortly before S was born, therefore). On 6 March 2008, the appellant applied for naturalisation as a British citizen and, on 22 September 2008, he was granted British citizenship on that basis.

4. On 30 May 2013, SL sent an email to the Home Office's Public Enquiries email address. In the six paragraphs of that email, she made a number of serious allegations against the appellant. She alleged, amongst other things, that she had been the victim of serious domestic violence during her relationship with him. She was bemused about the way in which the appellant had been granted British citizenship and she stated that he had never lived in England and that he only visited the country for three or four days a year.

5. The respondent's Status Review Unit ("SRU") entered into correspondence with SL in 2013. That correspondence is not before me. It is apparent from a letter from the SRU to SL dated 4 April 2014, however, that she had written to that unit on more than one occasion, the most recent of which was 10 March 2014. She responded to the SRU's letter promptly, on 10 April 2014. In the course of that letter, she stated that she and the appellant had separated due to domestic violence in 2001; that she did not know that he had applied for ILR or British Citizenship; that he had never lived in England; that she had not supplied him with her passport to support his applications; and that he had forged her signature on Home Office applications. She stated that the appellant was more usually known not by the name Mohammaed Khalifa but as Mohammed Sedki Farag. SL provided a number of documents in support of her allegations.

6. In due course, SL confirmed in writing that she was content for the SRU to proceed with its investigation, knowing that she might be suspected by the appellant to be the source of the information. In that letter of 9 May 2014, she asked the respondent to note that she had changed her name by Deed Poll and that neither her new name nor her address in the United Kingdom were known to the appellant.

7. On 15 May 2014, the SRU contacted the appellant in writing, using an address in London NW1. The letter stated that there was reason to believe that the appellant had obtained British citizenship by fraud. The allegation was put in these terms:

> The Secretary of State has received information that suggests the Naturalisation application submitted by you on the grounds of your relationship to a British citizen contained false information. The Secretary of State has reason to

> believe that at the time your application was submitted, you had seized [sic] to be in a relationship with your wife, [SL].
>
> The Secretary of State is in possession of evidence which suggests you falsified your relationship in order to gain British Citizenship.

8. The appellant was asked to respond within 21 days. He responded on 21 November 2014 and apologised for the delay, which had come about because the respondent's letter had not been promptly forwarded to him in Cairo. He confirmed that the marriage between him and SL did not work and that she had returned to the UK in June 2004, although she had never sought a formal divorce. He had provided SL and the children with 'generous financial support'. He had visited them in the UK on numerous occasions and he had attempted to retain 'friendly, if formal, relations' with SL. He had been through a second marriage in Egypt since SL had left the country but polygamous marriages were legal in Egypt. The letter was signed in the name of Mohamed Alla Eldin Sedki Farag.

9. The appellant also made a Statutory Declaration on 20 November 2014, confirming that he had never given false information to the authorities in the United Kingdom. The declaration was signed by 'Mohamed Khalifa AKA Mohammed Alaa Eldin Sedki Farag'.

10. The respondent's enquiries continued thereafter. Amongst other things, she obtained legal advice from the British Embassy's legal advisers, Zaki Hashem and Partners, regarding a divorce certificate dated 1 July 2007. The legal advisers stated that a valid divorce could be obtained in the absence of the wife and that the appellant had validly divorced SL on that date.

11. The respondent sought the appellant's clarification of various matters on 13 May 2016. Those matters included: the addresses given for SL at various stages of the appellant's dealings with the respondent; the use of the name SL during those dealings (whereas SL had changed her name); the divorce certificate (which predated the appellant's citizenship application by one day); and the appellant's use of English addresses at times when he appeared to be living in Egypt.

## The Respondent's Decision

12. On 24 February 2018, the respondent issued the decision under challenge before the First-tier Tribunal ("FtT"). She had concluded that the appellant had obtained British citizenship fraudulently and that he should be deprived of that citizenship under s40(3) BNA 1981. She considered that the appellant had made false representations in his dealings with the respondent, in that:

    (i) He had given the wrong address for his wife when he made his application for entry clearance in 2001, since she was living in a women's refuge at that time.
    (ii) He had falsely represented that he was in an ongoing relationship and was cohabiting with SL when he made his ILR application.

(iii) He had stated in his application for naturalisation that his wife was resident in Egypt in 2008 when the evidence suggested that she was in a women's refuge in the UK.
(iv) SL had confirmed that she did not sign the ILR application form and the signature on it was accordingly considered to be false.
(v) The appellant had made a settlement application on the basis of marriage when the marriage was no longer subsisting and the application was not supported by SL.
(vi) The appellant had been required in his application for ILR to establish that he had been residing with SL in the UK for twelve months, although none of the documents adduced supported that contention.
(vii) A letter from a firm of accountants suggested that the appellant was the director of a company called Charles Richard & Co, whereas there was no such company registered with Companies House.
(viii) The appellant had never lived in the UK and his representations to the contrary in his prior dealings with the respondent were untrue.
(ix) A letter adduced by the appellant, which was supposedly written by SL in 2009, was a forgery as she was no longer using that name in 2009 and was not at the address given on the letter.
(x) The appellant had divorced SL in 2007 and had falsely represented himself as continuing to be married to her.
(xi) The appellant had failed to produce his passports as evidence that he had been in the UK at the material times.

13. The respondent concluded that the appellant had practised fraud and that it was appropriate, in the exercise of her discretion, to deprive him of citizenship. She did not consider that to be contrary to Article 8 ECHR or to render the appellant stateless.

**The Appeal to the First-tier Tribunal**

14. The appellant appealed to the FtT and his appeal was heard by the judge, sitting at Taylor House, on 28 April 2021. The appellant was represented by Mr Muquit, the respondent by a Presenting Officer. The judge heard evidence from the appellant, the appellant's daughter and the appellant's cousin. Each attended remotely, with the appellant giving his evidence from Egypt and the two witnesses being in the same location in the UK. After submissions from the representatives, the judge reserved his decision.

15. In his reserved decision, the judge made reference to what had been said in KV (Sri Lanka) v SSHD [2018] EWCA Civ 2483; [2018] 4 WLR 166 and R (Begum) v SIAC [2021] UKSC 7; [2021] AC 765 before turning to consider the specific allegations of fraud made by the respondent. He detailed seven allegations of fraud and considered each in turn. In respect of the first six allegations, the judge decided either that the appellant had not misled the respondent or that any deception was immaterial to the acquisition of British citizenship: [24]-[69].

16. At [70]-[103], the judge considered whether the appellant had misled the respondent regarding his divorce from SL. The respondent's case in this respect was that the appellant had falsely claimed to be married to SL when he made his application for naturalisation. That conclusion was based on the divorce document and the respondent's analysis of it. The appellant's case was that he had indeed divorced his wife in 2007 but that he had taken her back, as he was permitted to do under Islamic law, and that they remained married when the application for naturalisation was made.

17. The judge did not accept the appellant's account. He gave a number of reasons for that conclusion. The fatwa in which it was recorded that the appellant had taken SL back had not been provided until after the decision under challenge: [74]-[78]. Despite certain difficulties with the respondent's evidence, he considered her to have discharged the initial, evidential burden of proof upon her: [80]-[84]. The judge then detailed various difficulties with the appellant's account: his explanation for not mentioning the renunciation of the divorce any earlier was problematic: [85]; there was no contemporaneous record of the event: [86]; the appellant's evidence had been inconsistent, for example, as to the timing, basis and witnessing of the renunciation: [89]-[92]. Payments made to SL in 2011 were not supportive of the appellant's account that he remained married to her: [93]. At [94], the judge concluded as follows:

> I find that the reason the appellant is so unclear about the renunciation and has been so inconsistent in his explanation of it over time is because it did not happen. The appellant divorced [SL}. He never renounced that divorce. By the time of the application for naturalisation, he was not married to a British citizen.

18. At [95]-[103], the judge explained why he considered the deception to be material. He noted, correctly, that the appellant had been naturalised under s6(2) of the BNA 1981 and that the residence requirements for that category of applicant were different from those who had no such family association. His overall conclusion in that regard, the reasoning in support of which appears at [99], was summarised at [103], as follows:

> Overall I find that the appellant made a misrepresentation in his application for naturalisation by stating he was married to a British citizen. This misrepresentation was material because it meant that the respondent did not need to scrutinise the place where the appellant was five years before he submitted the application. There is no evidence that he was in the UK on that date, as required under the BNA. The appellant's naturalisation was therefor obtained by means of false representation.

19. At [104] *et seq* the judge concluded that the respondent's discretion had been exercised appropriately and that depriving the appellant of his citizenship was proportionate under Article 8 ECHR.

## The Appeal to the Upper Tribunal

20. In grounds of appeal settled on 20 May 2021, Mr Muquit advanced four challenges to the judge's decision. *Firstly*, he submitted that the judge had misdirected himself in law in failing to follow the three stage test for deception described in cases such as Muhandiramge [2015] UKUT 675 (IAC). Secondly, the judge had acted irrationally in concluding that the respondent had discharged the legal burden of proof. Thirdly, that the judge had overlooked relevant evidence in concluding that there was 'no' evidence that the appellant was in the UK on 18 April 2003. Fourthly, the judge had erred in failing to resolve a submission that the appellant would have been eligible for citizenship under s6(1) BNA 1981 and that any deception in relation to the application under s6(2) was consequently immaterial.

21. I was informed at the start of the hearing that there was a measure of agreement between the parties and I was invited to hear from Mr Clarke first, which I did.

22. Mr Clarke submitted that the judge's decision could not stand. The basis upon which he made that submission may be summarised quite shortly. Firstly, the judge had erred in law, in that he had not asked himself whether the respondent had made findings of fact which are unsupported by any evidence or based on a view of the evidence that could not reasonably be held, as required by Ciceri [2021] UKUT 238 (IAC). Secondly, the judge had considered matters not raised by the respondent and had failed to consider matters which had been raised by the respondent. In the circumstances, Mr Clarke submitted that the proper course was for the appeal to the Upper Tribunal to be allowed and for the appeal to be remitted to the FtT for hearing afresh.

23. For the appellant, Mr Muquit submitted that R (Begum) v SIAC and Ciceri had been misunderstood by Mr Clarke. Neither [71] of Lord Reed's judgment nor [30](1) of the Upper Tribunal's decision required the FtT to undertake only a Wednesbury review of the respondent's decision on the question of deception. More deference might be given to the respondent in a s40(2) case such as Begum v SIAC but the proper approach, in any deprivation case, was for the Tribunal to review all the evidence and to reach its own conclusions upon it. The judge had not erred in his approach, and had clearly applied R (Begum) v SIAC. Where the judge had erred, Mr Muquit submitted, was in his approach to the seventh aspect of his analysis. The proper course, in his submission, was for the findings in respect of the first six allegations to be preserved and for the decision on the appeal to be remade insofar as it concerned the divorce.

24. I reserved my decision.

## Analysis

25. I do not consider the judge to have erred in the ways alleged in the first two grounds of appeal. Whilst Mr Muquit is undoubtedly correct in asserting that the judge cited no authority on the three-stage enquiry required in cases of this nature, it is the substance of his analysis

which must be examined. In doing so, I accept that the judge did not state in terms that he was required to consider whether the respondent had discharged the evidential burden of showing a *prima facie* case of fraud; whether the appellant had provided an innocent explanation for the same; and whether ultimately, the respondent had discharged the legal burden upon her. It would have been better for him to do so, in order that the relevant parts of his enquiry were clearly delineated.

26. The judge reached a clear conclusion that the respondent had discharged the evidential burden upon her but he failed thereafter to relate his factual conclusions to the three stage framework required in such a case. I do not consider that failing to represent an error of law, however, as it is appreciably clear that the judge did not consider the appellant to have adduced an innocent explanation in response to the respondent's prima facie evidence of fraud. In this case, just as in MA (Nigeria) [2016] UKUT 450 (IAC), the respondent was able to discharge the legal burden precisely because the appellant had fallen at the second of the three hurdles. There is no other logical way of reading the judge's decision.

27. It is for that reason (and not because he misunderstood the burden or standard of proof) that the judge focused on the appellant's evidence at [85]-[94] of his analysis. He was required, at that stage of his analysis, to consider the appellant's attempt to answer the respondent's evidence that he had divorced his wife in 2007 and had misrepresented the true position in his application for naturalisation. That required him to consider in some detail the stage at which the appellant had relied on the existence of the fatwa in which he had renounced the divorce. The analysis undertaken in those paragraphs of the judge's decision was focused precisely as it should have been, therefore, and I do not accept that the respondent was improperly relieved of her burden of proof or that the appellant was required to shoulder that burden.

28. I do not consider the judge's decision to be irrational insofar as he concluded that the appellant had given unclear evidence about who had witnessed the renunciation of the divorce. It is clear from the evidence summarised by the judge at [58] of his decision that there was some obfuscation on the part of the appellant as to whether his family or SL's family were present at the renunciation. The narrow point taken by Mr Muquit at [14] of the grounds of appeal fails, with respect, to recognise that the judge was particularly well placed to evaluate the appellant's oral evidence. He was entitled, immersed in the sea of evidence as he was, to come to the conclusion that the oral evidence he had heard lacked clarity and that it was suspicious for that reason.

29. Like Judge Davidge, who granted permission to appeal to the Upper Tribunal, I consider that Mr Muquit's third ground is more meritorious. With respect to the judge, it is apparent that he overlooked material evidence when he concluded that there was 'no evidence' to show that the appellant was in the United Kingdom at the start of the qualifying period for naturalisation. He made no reference to the partial copies of three Egyptian passports in the papers before him. The judge took the

date in question to be 18 April 2003 and he overlooked, in particular, the passport copy which appeared at B6 of the respondent's bundle, which seemingly showed that the appellant had entered the UK on 16 April 2003.

30. There were also other matters which militated (somewhat) in favour of a conclusion that the appellant was in the UK at that particular time. The judge had found that the appellant and SL were in a genuine and subsisting relationship at that time and their youngest daughter was born in Hampstead on 19 April 2003. The appellant and SL were known to have attended a Home Office interview together in November 2002. And the appellant's passport was due to expire on 19 April 2003. None of these points were taken into account by the judge in reaching the conclusion he did at [103] of the decision under challenge, as reproduced above.

31. There is therefore an error of law in the judge's assessment of whether the appellant's deception was material to his acquisition of British citizenship. That is an error on a narrow point and it might well be thought that the narrowness of that error should inform the scope of any future analysis required in this case, whether in the FtT or the Upper Tribunal.

32. I have however concluded that the only proper course in this case is for the appeal to be reheard as a whole. In deference to the determined submissions made by Mr Muquit, I shall explain why I reach that clear conclusion. There are three reasons.

33. The first reason is that the judge failed to resolve a highly material issue in this case. He was undoubtedly not assisted by the respondent's decision letter, which jumps from issue to issue and fails to articulate with proper clarity the specific allegations of deception made against the appellant. Not only does it fail in that regard, it also contains an error in the paragraph numbering. It reaches [23] on page 5, after which the paragraph numbering 'resets' to [13]. Despite these problems, it is absolutely clear that one of the concerns expressed by the respondent was that the appellant had lied about his residence in the UK during the years preceding his naturalisation application. At [17] on page 4 of the decision letter, she said this:

> The Secretary of State is in receipt of information to the effect that you have never lived in the United Kingdom and that you used [address given] and [address given] purely for correspondence purposes, assisted by the occupants, while you were actually living in Egypt (Annex GG). You were invited to comment on the allegation that you were not resident in the UK and requested to provide evidence to show that you lived in the UK prior to acquiring British citizenship (Annex RR). To date you have not responded.

34. At [21], on page 8 of the letter, directly underneath a definition of deception from the respondent's Good Character guidance in Annex D of the Nationality Instructions of April 2008, there is also the following:

> You have failed to respond to the Home Office letter dated 13 May 2016 (Annex R) in which the allegations were presented to you in detail. You have failed to provide your passports as requested so that your declared absences during the nationality qualifying period could be checked against the stamps in your passports. If you had been living in the UK as claimed, you would be able to evidence this by submitting your passports. Your failure to engage with the serious allegations put to you on 13 May 2016 further damages your credibility.

35. At [100] of his decision, however, the judge stated that the respondent's case was based on the appellant's misrepresentations regarding his relationship with SL and not 'on misrepresentation regarding the time spent by the appellant in the UK'. I do not understand the foundation of that statement.

36. The appellant's witness statement in the FtT responded to the allegations which I have set out above. Mr Muquit had also produced a skeleton argument for the hearing before the FtT. At [10] of that skeleton, Mr Muquit set out a list of nine allegations made by the respondent in her decision. The sixth and ninth of those allegations were that '[the appellant] cannot demonstrate that he was living with his spouse in the UK for 12 months prior to his ILR application' and that '[the appellant] has never lived in the UK and used [addresses given] for correspondence only'.

37. It was clearly understood by those representing the appellant, therefore, that it was asserted by the respondent that the appellant had lied on Form AN when he stated that he had only been absent from the UK for a total of 23 days in the preceding five years and that his only address in that period had been in London N7. That the respondent queried those entries in section 2 of the form (as reproduced at Y8-Y9 of the respondent's bundle) was clear from the decision letter. Given what had been said by SL in her first letter, the respondent had a proper basis to query those entries and to ask for the appellant's passports, which were not produced to her in rebuttal of the concerns. It would be wholly wrong to preserve various aspects of the judge's analysis when that analysis fails clearly or at all to resolve a concern (the appellant's location during the qualifying period) which is fundamental to the case as a whole.

38. The second reason that it would be inappropriate to narrow the focus of any future enquiry in this appeal is that I agree with Mr Clarke when he submits that the FtT adopted the wrong approach to the allegations made by the respondent. The judge approached those allegations as if it was for him to conduct a full merits appeal. Try as I might, I am unable to conclude that he was correct in proceeding on that basis.

39. In R (Begum) v SIAC, Lord Reed stated at [71] that SIAC has a number of important functions in considering an appeal against a decision under s40(2) BNA 1981. The first was that SIAC can 'asses whether the Secretary of State has acted in a way in which no reasonable Secretary of State could have acted, or has taken into account some irrelevant

matter, or has disregarded something to which he should have given weight, or has been guilty of some procedural impropriety.' It seems to me that these remarks were directed at the discretionary decision taken by the Secretary of State under s40(2) and not at her analysis of the facts.

40. The second function which Lord Reed described at [71] of R (Begum) v SIAC, however, was that it could 'consider whether the Secretary of State has erred in law, including whether he has made findings of fact which are unsupported by any evidence or are based upon a view of the evidence which could not reasonably be held.' Those remarks are self-evidently directed at the respondent's factual analysis, and not on the discretionary decision which is based on that factual analysis. It seems to me that Lord Reed intended, in other words, to set out what he considered to be the proper scope of SIAC's analysis of the facts. It was not to start with a blank slate and to conduct what Flaux LJ had described in the Court of Appeal as a full merits appeal; the respondent had set out her findings and the Commission's task was to consider whether those findings were not based on any evidence or could not reasonably be reached. As Mr Clarke noted in his submissions, the use of administrative law phraseology by the President of the Supreme Court is obviously no accident and was intended to provide the clarity which is absent from the BNA 1981 itself.

41. In Ciceri, the President and the Vice President of this Tribunal concluded that the same approach must apply in an appeal against a decision under s40(3). That must, with respect, be correct. The condition precedent to the exercise of discretion in both s40(2) and s40(3) is that 'the Secretary of State is satisfied that…' and not that SIAC or the IAC is satisfied. Lord Reed's reasoning at [67] of R (Begum) v SIAC must apply equally, therefore, to the analysis required in an appeal of this nature, just as it applies in an appeal against a s40(2) decision. I do not accept Mr Muquit's submission that what was said in R (Begum) v SIAC should be confined to national security cases or that there is some form of sliding scale review depending on the subject matter. I am unable to read Lord Reed's judgment as being confined in that way.

42. In so concluding, I recognise that the resulting task is a difficult one. I struggle, frankly, to understand the incidence of the burden of proof in such a case. It is uncontroversial, I think, that it is for the respondent to establish that the appellant obtained citizenship by deception (or that deprivation is conducive to the public good). Conventionally, that is a factual analysis, to be undertaken on the balance of probabilities, albeit that serious allegations must be supported by cogent evidence. In accordance with administrative law principles, however, it is simultaneously for the appellant to show that the conclusion reached by the respondent could not reasonably be held. I have been unable in my own mind to comprehend the way in which both tests can apply to the same question.

43. Nor have I been able to comprehend the evidential questions raised by the relevant sentence in [71] of R (Begum) v SIAC. If SIAC or the Tribunal is confined to considering whether the respondent's view *on*

*the evidence* was reasonably held or was based on any evidential foundation, is the appellate body prevented (in accordance with administrative law principles) from considering evidence which was not before the decision maker? To my mind, the silence of the BNA 1981 or the Nationality, Immigration and Asylum Act 2002 on that point is noteworthy. Unlike in other statutory contexts past and present, there is no legislative prohibition on the Tribunal considering evidence which was not before the decision maker, and the Tribunal should therefore consider any evidence adduced before it which is relevant to the establishment of the condition precedent.

44. If I am correct in that conclusion, however, there is a further problem: if the Tribunal is able to consider and reach a conclusion on evidence which was not before the decision maker, how is it to consider whether the decision maker's decision was unsupported by any evidence? Such an approach gives rise to the distinct possibility that the Tribunal might conclude that the respondent's view of the facts was not reasonably held because of evidence that she did not have a chance to examine. For my part, I cannot see how such a conclusion would be logical; the respondent's decision was either rational or it was not, and evidence which was not before her cannot bear on that question.

45. Despite those difficulties, I do find that the judge erred in his application of R (Begum) v SIAC. He should not, in considering the question posed by s40(3) of the BNA 1981, have undertaken a full merits appeal. He should instead have asked himself whether the respondent had made findings of fact which were unsupported by any evidence or based on a view of the evidence which could not reasonably be held. He failed to adopt that approach in relation to any of the allegations he found to be unproven and his decision in those respects cannot stand.

46. The third reason that the appeal must be reheard in full is rather more straightforward and would have applied whether or not I had concluded as I have in respect of R (Begum) v SIAC. I have held above that the judge failed to consider relevant evidence which went to the question of whether the appellant was in the UK at the start of the qualifying period. I have also held above that the judge failed to consider more generally the appellant's presence in the UK throughout. Those questions cannot be untangled from the other issues in the case and it would be wholly artificial to conclude that the favourable findings made by the judge should be preserved or somehow ring-fenced. Evidently, any conclusions reached about the appellant's location in 2003 or at any other material time will be relevant to the resolution of the other issues in this case. Applying the principles articulated by the President in AB (Iraq) [2020] UKUT 268 (IAC), therefore, I decline to preserve any of the findings of fact made by the FtT in this case. Given the scope of the enquiry which is necessary, I shall direct that the appeal be remitted to the FtT to be heard afresh.

47. **I also make the following directions** in connection with the reconsideration of the case by the FtT:

(i) No later than 21 days after this decision is sent to the parties, the appellant shall file and serve upon the respondent (at the relevant Presenting Officers Unit) certified copies of every page of the three passports which were issued on 20.04.96, 19.10.03 and 11.02.08 and a schedule of his absences from the United Kingdom for the calendar years 2003-2008.

(ii) No later than 21 days thereafter, the respondent shall file and serve a counter schedule, identifying any respect in which she intends to submit that the appellant was not in the United Kingdom as asserted by him.

**Notice of Decision**

The decision of the FtT contained errors of law which were material to the outcome of the appeal. That decision is set aside in full and the appeal is remitted to the FtT to be heard afresh.

No anonymity direction is made.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

**2 November 2021**