Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/02203/2020 (V)

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre Working Remotely by Skype	**Decision & Reasons Promulgated**
On 22 April 2021	**On 18 May 2021**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

AKBAR HOSSEINI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms L King, instructed by Qualified Legal Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is the decision of the Upper Tribunal remaking the decision in the appellant's appeal under Art 8 of the ECHR following the UT's decision sent on 8 January 2021 that the decision of the First-tier Tribunal (Judge Rhys-Davies) should be set aside as its decision involved the making of an error of law.

2. Working remotely, the appeal was heard at Cardiff Civil Justice Centre on 22 April 2021. The appellant was represented by Ms King and the respondent by Mr Walker both of whom joined the hearing by Skype. The appellant also joined the hearing by telephone and briefly gave oral evidence.

Background

3. The appellant is a citizen of Iran who was born on 30 April 1991. When aged 15, he arrived in the United Kingdom on 18 January 2007 and claimed asylum. His claim was subsequently refused but he was nevertheless granted discretionary leave until 29 April 2009. On 29 April 2008, he made an in-time application for further leave but this was refused on 11 October 2010. He subsequently lodged an appeal to the First-tier Tribunal which was dismissed on 6 December 2010 and the appellant became appeal rights exhausted on 21 January 2011. Thereafter, his leave expired and he became an overstayer.

4. On 4 March 2011, the appellant made further submissions which were refused on 13 August 2012. Then, on 28 April 2013 the appellant again made further submissions. As a result, he was granted discretionary leave under para 353B of the Immigration Rules (HC 395 as amended) from 28 April 2013 until 28 October 2015 for a period of 30 months. On 5 October 2015, he made a further in-time application for discretionary leave and on 10 December 2015 he was again granted discretionary leave under para 353B of the Immigration Rules until 10 June 2018.

5. On 14 March 2017, the appellant was convicted of possession of an indecent photograph of a child. He was sentenced to an Offenders Rehabilitation Act Community Order for a period of 36 months. He was subject to supervision by the Probation Service until 4 April 2020 and, thereafter, will be subject to supervision by the Gwent Police Public Protection Unit until 2022. He was also, as part of the Community Order, ordered to undertake 200 hours of unpaid work. It would appear that the appellant pleaded guilty to the offence which related to a single indecent photograph which was sent to him and found on his computer. Unfortunately, no further information was available to me, and none is referred to in the Secretary of State's decision letter, concerning the court in which the appellant was convicted or any further details of the offence.

6. On 16 May 2018, the appellant made a further in-time application for leave. This application was refused by the Secretary of State on 23 January 2020.

7. The Secretary of State refused the appellant's application, based upon the private life rule in para 276ADE(1), on the basis that the appellant had not established that there were "very significant obstacles" to his integration in Iran on return and further that the suitability requirement in S-LTR.1.6 of Appendix FM of the Immigration Rules applied because of his conviction. The Secretary of State considered that, as a result of that conviction, the appellant's presence in the UK was not conducive to the public good having regard to his conduct, character, associations, or other reasons and it was undesirable to allow him to remain in the UK. Further, as regards Art 8 the Secretary of State concluded that there were no "exceptional circumstances" to justify

the grant of leave outside the Rules. Finally, as the appellant had previously been granted discretionary leave on two occasions for periods of 30 months under para 353B, the Secretary of State concluded that that provision did not apply as there had been a change of circumstances, namely his criminal offending which made it undesirable to allow him to remain in the UK as his conduct was not conducive to the public good. That was a significant change of circumstances such that the appellant's discretionary leave should not be extended.

8. The appellant appealed to the First-tier Tribunal. In his determination, Judge Rhys-Davies found that there were not "very significant obstacles" to the appellant's integration in Iran under para 276ADE(1)(vi) of the Rules and also that the appellant fell within the suitability requirement in S-LTR.1.6 on the basis of his criminal conviction. Finally, as regards Art 8 outside the Rules, the judge found that any interference with the appellant's private life was proportionate.

9. Following a hearing on 10 December 2020, in my decision sent on 8 January 2021 I set aside Judge Rhys-Davies' decision on the basis that he had erred in law in applying the suitability provision in S-LTR.1.6. to the appellant and in finding that the appellant's removal was proportionate.

The Law

10. Article 8 of the ECHR provides as follows:

> "**Article 8 – Right to respect for private and family life**
>
> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

11. In R (Razgar) v SSHD [2004] UKHL 27 at [17], Lord Bingham set out the 5-satge approach when applying Art 8:

> "In considering whether a challenge to the Secretary of State's decision to remove a person must clearly fail, the reviewing court must, as it seems to me, consider how an appeal would be likely to fare before an adjudicator, as the tribunal responsible for deciding the appeal if there were an appeal. This means that the reviewing court must ask itself essentially the questions which would have to be answered by an adjudicator. In a case where removal is resisted in reliance on article 8, these questions are likely to be:
>
> (1) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or (as the case may be) family life?
>
> (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of article 8?

(3) If so, is such interference in accordance with the law?

(4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?

(5) If so, is such interference proportionate to the legitimate public end sought to be achieved?"

12. The burden of proof lies upon the appellant to establish, on a balance of probabilities, a breach of Art 8. However, once Art 8.1 is engaged it is for the Secretary of State to establish any justification under Art 8.2.

13. Question (5), and the issue of proportionality, (per Lord Bingham at [20]):

> "… must always involve the striking of a fair balance between the rights of the individual and the interests of the community which is inherent in the whole of the Convention. The severity and consequences of the interference will call for careful assessment at this stage."

14. Further, in determining the issue of proportionality, a court of tribunal must have regard to the factors set out in s.117B of the Nationality, Immigration and Asylum Act 2002 (as amended) (see s.117A(2)) which provides as follows:

"**117B Article 8: public interest considerations applicable in all cases**

(1) The maintenance of effective immigration controls is in the public interest.

(2) 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.

(3) 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.

(4) Little weight should be given to—

(a) a private life, or

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—

> (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
>
> (b) it would not be reasonable to expect the child to leave the United Kingdom."

15. Ultimately, whether the case is considered to concern a positive or a negative obligation, the question for the European court is whether a fair balance has been struck. As was explained in *Hesham Ali* at paras 47-49, that question is determined under our domestic law by applying the structured approach to proportionality which has been followed since *Huang*.

16. Where an individual meets the requirement of an Immigration Rule, then that will be determinative of an Art 8 claim – providing Art 8.1 is engaged. In TZ (Pakistan) v SSHD [2018] EWCA Civ 1109, the Senior President of Tribunals (Sir Ernest Ryder, with whom Longmore and Moylan LJJ agreed) said (at [34]):

> "The policy of the Secretary of State as expressed in the Rules is not to be ignored when a decision about article 8 is to be made outside the Rules. ….where a person satisfies the Rules, whether or not by reference to an article 8 informed requirement, then this will be positively determinative of that person's article 8 appeal, provided their case engages article 8(1), for the very reason that it would then be disproportionate for that person to be removed."

17. Where an individual cannot meet the requirements of any of the Rules, then a claim outside the Rules will succeed under Art 8 if, striking the 'fair balance', the public interest does not outweigh the individual's circumstances where the individual's removal will have "unjustifiably harsh consequences" for the individual (see R (Agyarko) and another v SSHD [2017] UKSC 11 at [60] per Lord Reed).

18. Paragraph 276ADE(1) of the Immigration Rules, so far as relevant to this appeal, provides:

> "The requirements to be met by an applicant for leave to remain on the basis of private life in the UK are that at the date of application, the applicant:
>
> …
>
> (vi) …is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK."

19. The relevant suitability rule relied on by the Secretary of State is S-LTR.1.6. of Appendix FM which provides as follows:

> "The presence of the applicant in the UK is not conducive to the public good because their conduct (including convictions which do not fall within paragraphs S-LTR.1.3. to 1.5.), character, association, or other reasons, make it undesirable to allow them to remain in the UK".

20. Paragraphs S-LTR.1.3. to 1.5. provide for offences, and a basis for concluding that an individual's presence in the UK is not conducive to the public good, when an

individual has been sentenced to imprisonment for at least four years (S-LTR.1.3.); to a period of imprisonment for less than four years but at least twelve months (S-LTR.1.4.) and where an individual's offending has caused serious harm or they are a persistent offender who shows particular disregard for the law (S-LTR.1.5.).

21. It will be immediately apparent that it is not suggested that the appellant's offending falls within S-LTR.1.3.-1.5. His sentence falls below the thresholds in the first two provisions and it is not suggested that he has caused serious harm or is a persistent offender.

22. In my earlier error of law decision, I found – and indeed it was accepted by the Secretary of State – that in determining whether an individual's presence was "undesirable" under S-LTR.1.6. there must be (i) reliable evidence of; (ii) sufficiently reprehensible conduct; and (iii) an assessment, taking proper account of all the relevant circumstances known about the individual at the date of decision, or whether his or her presence in the UK is undesirable and that this should include evidence of positive features of their character (see paras 36-39 of my decision). That should include taking into account any risk of future offending (see para 38).

The Submissions

23. At the resumed hearing to remake the decision, Ms King relied upon a skeleton argument which she developed in her oral submissions.

24. Mr Walker made oral submissions to the extent that he relied upon the original refusal decision and indicated that he was not conceding the appeal. Mr Walker accepted that the appellant had established private life in the UK based upon his almost fourteen years residence since the age of 15. I understood Mr Walker to accept Art 8.1 was engaged but not that the appellant's removal would be disproportionate. Mr Walker accepted, in response to a question from me, that it was probably the case that the appellant would have been granted further discretionary leave under para 353B if it had not been for his criminal conviction. Indeed, that is clear from the respondent's decision letter at paras 23-26.

25. Ms King submitted that, as the requirement in para 276ADE(1)(vi) was not met due to the preserved finding made by Judge Rhys-Davies, it was unnecessary to make a finding in relation to the suitability requirement in S-LTR.1.6 as the appellant could not rely upon the Immigration Rules. The issue of his conviction, Ms King submitted, had to be taken into account in assessing whether his removal would be proportionate under Art 8 of the ECHR. The simpler course, she submitted, was to make no finding in relation to S-LTR.1.6.

26. Ms King submitted that the appellant had established private life in the UK but not at the bare minimum. He has been here since the age of 15 and has spent most of his teenage years and all his adult life in the UK. The evidence was that he worked and continued to work for a restaurant in Newport. She submitted that his private life was no less meaningful than a claim based upon family life. Ms King accepted that the appellant had not been lawfully in the UK for the whole period since his arrival

in 2007. She accepted that there was a gap between 21 January 2011 (when his previous leave expired) and 28 April 2013 when he was granted discretionary leave under para 353B. She submitted, however, that throughout his period in the UK, the appellant had engaged with the process having made further submissions, albeit unsuccessfully, on 4 March 2011 shortly after his leave initially expired. She submitted that the appellant had twice been granted discretionary leave since that gap in his leave and he now had nearly eight years lawful continuous leave.

27. Ms King submitted that the only reason his discretionary leave had not been extended was because of the single offence. She accepted that it was not proper to lessen the gravity of the offence but she noted that he had pleaded guilty and his offending could be described as "passive". He had complied with the requirements of his Community Order, including with the Probationary Service and had completed courses relevant to his rehabilitation. His risk of reoffending had been described by his Probation Officer, Deborah Wood, in her email of 31 March 2020 as a "low risk". That email also set out the appellant's engagement with the Probation Service and the process for his rehabilitation. She submitted that this was a single offence relating to a single photograph. The nature of the penalty was low and the level of rehabilitation was extensive. She submitted that the appellant had shown multiple factors relevant to his private life and integration in the UK, including friends, work and activities. His private life was significant and his removal was, she submitted, disproportionate.

Discussion

1. The Evidence

28. The appellant's evidence is set out in his witness statement and brief oral evidence before me. His witness statement (at pages 4-6 of the FTT bundle) is dated 3 April 2020.

29. In para 4 of that that statement, the appellant states that:

> "I pleaded guilty in court as I accepted the image was received by me. Even though I deleted the image after receiving it, I cannot justify the wrongdoing on my part. I deeply regret it."

30. Then at paras 5-9, the appellant deals with his post-offending conduct:

> "5. As part of my community service, I was required to assist in trimming the grass at various places such as churches, social clubs and councils. I had to do this twice a week and in total I completed 200 hours of community service. I would attend regularly and ensure that I always completed my task.
>
> 6. I started working after I finished community service. I was working in Papa John's as a Chef making pizza. Initially I worked part-time hours, and then after two months it was full-time. My employer noted my commitment and reliability to the work and offered me to take up a management course which I successfully completed.

7. After my community service ended, I attended a course at the Probation Centre situated in Orchard Street, Swansea. I attended the course once a week and it was of one year in duration. During the course I had to explore the reasons surrounding the committal of my offence. I also became aware of what is legal and illegal. I learned that possessing any indecent pictures of children was illegal. I also taught about managing finances, anger management, social intimacies and empathy etc. Sometimes, I was given tasks to complete for homework, which included various questions relating to the reasons before and after committing the offences. I also did presentations on topics such as having to talk about my past, my childhood, and how I was brought up etc.

8. The course helped me in changing my thoughts and made me aware of the boundaries that had been set in the criminal justice system as to what is and is not permissible by law. By completing this course I was able to change the introvert part of my personality and I learnt to socialise and make friends rather than be sat at home for the majority of the time and surfing the internet.

9. My probation began in April 2018 and I have always attended all of my appointments with the Probation Officer bar one that I missed due to a mix up with the dates."

31. At paras 10-13, the appellant sets out his circumstances in the UK:

"10. I have been living in this country since I was a teenager. I have made my life here and I have several friends whom I regard as family. I have never travelled outside the UK in the last thirteen years. I do not have any other offences against my name except this one. I have tried my level best to make amends since my committal of the offence.

11. I have faced the consequences of my conviction. I wanted to study a course in healthcare at college leading to a career in nursing, and was advised I could not do it as I would inevitably have to work with children in the nursing profession.

12. At present I am working as a Chef at Peri Peri Cottage in Newport. It has been two months since I started working there. I have had to compromise on my career goals because of my conviction.

13. The UK is my home. It is all I know and I am very much used to my life here. Iran is an alien country for me and I have no desire of returning there. I wish I could change what I did in the past, but unfortunately I cannot. I am deeply disgusted by what I did and I would never do it again. I learnt the hard way and I humbly request the Tribunal to exercise compassion in my circumstances and allow my appeal."

32. In the same bundle there are a number of documents such as payslips relating to the appellant's employment (pages 10-16) and certificates of achievements including English language certificates and proof of employment (pages 30-96).

33. In his brief oral evidence, the appellant said that he had not undertaken the Knowledge of Life in the UK test because he had not had the relevant ID documents to do it. He had been studying in college including skills for life but he had not done anything more. He confirmed that he was still employed full-time as a chef. Outside of work, the appellant accepted that during the pandemic he had not been able to

socialise as much as before. He had seen a few friends on the weekends or days off but that he planned to meet up again with them after the pandemic. He had work colleagues, he played football and he enjoyed going for meals and to the cinema.

34. The appellant was not cross-examined by Mr Walker.

35. Ms King placed reliance upon the email by Deborah Wood, the appellant's Probation Officer (pages 7-8 of the appellant's bundle). In that email, Ms Wood confirms that the appellant has "attended all his Probation appointments and has engaged well throughout".

36. Under the heading "Any Evidence of Rehabilitation", Ms Wood says this:

> "Mr Hosseini has complied with his Community Order and engaged in the CSOG programme. He has a support network and chose a positive attitude towards [] me as his Probation Officer. He is working towards a positive future to be able to have a relationship and stability in his life.
>
> Mr Hosseini has stopped using alcohol and drugs and appears to understand the role they played as a coping mechanism and in his sexual offending. He sees employment as an important element of his life which will enable him to achieve stability.
>
> Through attending the Community Sexual Offending Programme, Mr Hosseini appears to have made connections between his coping strategies and his offending and has made changes in his life by pursuing a lifestyle which enables a desistence from offending such as employment, avoidance of alcohol and drugs and goals for a positive intimate adult relationship in the future.
>
> Mr Hosseini was given the highest level of treatment (which consists of 50-hour induction programme) followed by a 4-module programme which covers relationships and attachment, self-management, empathy and sexual fantasy; followed by the Better Lives Module (relapse prevention based on the 'approach goal' model). There are approximately 80 sessions in total spanning a 12 to 18-month period. Session feedback indicates that although Mr Hosseini missed sessions because of work commitments, he did engage and was able to make useful connections between his coping strategies and his sexual offending."

37. Finally, under the heading "Risk of Re-offending", Ms Wood says that: "I have assessed Mr Hosseini as being Low risk of re-offending."

2. Findings and Conclusion

38. It is accepted by Mr Walker that the appellant has established a private life in the UK so as to engage Art 8 of the ECHR. I agree with that concession. The appellant has been in the UK for almost fourteen years since the age of 15. He has spent most of his teenage years and all his adult life in the UK. He has friends and work colleagues and, I accept, through working and his life in the UK he has established private life for the purposes of Art 8.1. I also accept, indeed Mr Walker did not submit otherwise, that the appellant's removal would interfere with that private life sufficiently to engage Art 8.1.

39. As regards Art 8.2, the appellant's removal would be in accordance with the law, namely the Immigration Rules. Further, his removal would be for a legitimate aim, namely effective immigration control (as he does not meet the requirements of any Rule to remain in the UK) and also for the prevention of disorder or crime given his criminal offending. The crucial issue in this appeal is whether that removal would be proportionate striking a fair balance between the public interest and the interference with the appellant's private life.

40. Mr Walker, in his submissions, simply relied upon the Secretary of State's decision letter. In that decision letter, the Secretary of State concluded that S-LTR.1.6. applied based upon the nature of the appellant's conviction. Paragraph 10 of the decision letter, however, offers no reason other than to state that the conviction made it "undesirable to allow" the appellant to remain in the UK. In relation to Art 8, the decision letter concluded that there were "no exceptional circumstances", despite the appellant having spent twelve years of his life in the UK and having developed friendships in the UK, to warrant the grant of leave outside the Rules. As regards para 353B, the respondent noted the two previous grants of 30 months discretionary leave based upon para 353B. The decision letter went on to note that leave was no longer warranted because of his conviction, at paras 25-26, the decision letter says this:

> "25. As noted above since your last granted Discretionary Leave on 10 September 2015, you have committed one offence on the 09.02.2016. It is considered your criminal history makes it undesirable to allow you to remain in the UK. Your presence in the UK is not conducive to the public good because of the nature of the offences/convictions from 2016.
>
> 26. Therefore, in the light of the above, it is considered there has being a significant change in your circumstances since your previous grant of leave on 10 December 2015. As previously it was stated that there was no evidence of criminality. Therefore, the conditions of the previous grant of leave are no longer prevail, and so further grant of leave should not be granted."

41. As I have already indicated, the respondent has provided no further information concerning the appellant's offending. Ms King accepted, in her submissions, the gravity of the appellant's offence has to be taken into account by its mere nature. However, the offence concerned only one photograph which, and the respondent has not sought to challenge this, was received by the appellant and deleted from his computer subsequently. The offence undoubtedly warrants condemnation and the engagement of the criminal process. However, the best indicator of the seriousness of the offence – certainly absent any other evidence – must be the sentence imposed by the court. This was a community order rather than a custodial sentence whether of immediate imprisonment or a suspended sentence.

42. The evidence from the appellant - which is wholly supported by the Probation Officer, Ms Wood - is that the appellant fully engaged with the Probation Service and the measures put in place to rehabilitate the appellant. The appellant was not cross-examined so as to suggest that his evidence concerning his remorse, his learning about and understanding of his offending (set out in his witness statement) was

other than genuine. I accept Ms King's submission that the appellant has complied with his community order fully and has demonstrated considerable rehabilitation post-offending. I note, of course, Ms Woods' assessment that he is still at "low" risk of re-offending. The offending is now over 6 years ago. As I referred to in my earlier error of law decision, as a result of a police raid on his work place, when a cannabis factory was found in the flat above his work, the appellant's possessions were scrutinised and searched and there was no evidence of any repeat offending by him. As I made clear in my earlier decision, the appellant was not, in fact, implicated in the activities of the cannabis factory.

43. I fully take into account the evidence concerning the appellant's offending (including the sentence imposed) and his engagement with his sentence and the Probation Service. I also take into account the positive aspects of his life including undertaking courses and his commitment to work which he continues to undertake.

44. Although Ms King is right that the direct relevance of S-LTR.1.6 falters once para 276ADE(1) cannot be relied upon, it is nevertheless helpful to consider S.LTR.1.6 as it formed the basis for the respondent's adverse Art 8 decision set out in the decision letter which is relied upon by Mr Walker.

45. Taking all the factors I have identified above into account I find that the suitability requirement in S-LTR.1.6 is not met. The presence of the appellant in the UK has not been shown, in my judgment, to be "not conducive to the public good" because his conduct, including his convictions, his character, his associations and other reasons make it "undesirable" to allow him to remain in the UK.

46. While I accept that the appellant's private life has been established when his immigration status was "precarious" within s.117B(5) of the NIA Act 2002, I note that the appellant has on three occasions been granted leave to remain based upon his circumstances in the UK, the latter two falling within para 353B on the basis that there were "exceptional circumstances which mean that removal from the United Kingdom is no longer appropriate". That provision requires consideration of the individual's character, conduct and association including criminal offences; their compliance with conditions of their previous leave; and the length of time spent in the UK. It is clear from the respondent's decision letter, and this was accepted by Mr Walker, that the only reason this provision was not applied to the appellant on his most recent application for further leave was because of his criminal conviction. In my judgment, that conviction is not of sufficient weight to warrant a reversal of the position taken under para 353B previously. The earlier decisions were, undoubtedly, based upon the length of the appellant's time in the UK – which has only been lengthened since those decisions; the fact that he arrived in the UK aged 15 years; and his circumstances in the UK.

47. I accept, of course, Judge Rhys-Davies' unchallenged finding in respect of para 276ADE(1)(vi) that he was not satisfied that there would not be "very significant obstacles" to the appellant's integration on return to Iran. The strength of the appellant's claim is, in my judgment, based not upon the impact to him of living in

his own country but rather of interfering with his life formed in the UK since 2007 as reflected in the earlier grants of discretionary leave for two periods of 30 months. I accept that the appellant has become integrated in the UK over the last 14 years. If removed, the substance of that private life will be lost. In my judgment, given the circumstances of the previous grants of leave to the appellant, his private life in the UK formed since the age of 15 on arrival is entitled to due weight.

48. Under Art 8, I accept that, not only the public interest reflected in the appellant's offending, but also the public interest in effective immigration control, is engaged applying s.117B(1) of the NIA Act 2002. All the evidence, however, establishes that the appellant is able to speak English and is self-sufficient such that the public interest in ss.117B(2) and (3) is not engaged. The contrary was not argued before me.

49. Weighing up the public interest that I have identified above, against the circumstances and impact upon the appellant of removal, I am satisfied that there would be unjustifiably harsh consequences such that the public interest is outweighed and the appellant's removal would be a breach of Art 8 of the ECHR.

Decision

50. The decision of the First-tier Tribunal to dismiss the appellant's appeal was set aside, on the basis of an error of law, in my decision sent on 8 January 2021.

51. I remake the decision allowing the appellant's appeal under Art 8 of the ECHR.

Signed

Andrew Grubb

Judge of the Upper Tribunal
5 May 2021

TO THE RESPONDENT
FEE AWARD

As I have allowed the appellant's appeal, I am satisfied that an award should be made for any fee paid or payable by the appellant.

Signed

Andrew Grubb

Judge of the Upper Tribunal
5 May 2021