Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01499/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgate**
On 12 January 2021	**On 29 January 2021**

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

AVP (NIGERIA)
[ANONYMITY ORDER MADE]

Respondent

Representation:
For the appellant: Ms Ana Cunha, a Senior Home Office Presenting Officer
For the respondent: Mr Laurence Youseffian, Counsel instructed by Paul John & Co, solicitors

DECISION AND REASONS

Anonymity order

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of A V P who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.

Any failure to comply with this direction could give rise to contempt of court proceedings.

Decision and reasons

1. The Secretary of State appeals with permission from the decision of the First-tier Tribunal allowing her appeal against the Secretary of State's decision on 4 February 2019 to refuse her leave to remain and to refuse to revoke a decision to deport her to Nigeria, communicated to her on 16 December 2014. The claimant is a citizen of Nigeria.

2. The appeal was heard remotely by Skype for Business. There were some technical difficulties in that Ms Cunha, who appears for the Secretary of State, had a very weak broadband signal and her image froze from time to time, but by dint of her leaving and re-entering the hearing, and me telling her the last submission which it had been possible to hear, we were able to complete the hearing.

3. Both Counsel were in a quiet and private place and are well aware that it is a criminal offence to record the hearing. I am satisfied that the hearing was conducted fairly.

Background

4. The claimant was born in 1975 and came to the United Kingdom in 2005, when she was 30 years old. In her statement she says she did so on a visit visa, but the Home Office record shows that on arrival, she told the immigration officer at the Port that she had lost her passport, and was granted 6 months' leave to enter or remain. However, the claimant never substantiated her claim to have lost her passport. She took no steps to regulate her position for 6 years, nor did she embark for Nigeria.

5. In 2007 and 2010, the claimant had children by a British citizen, her children therefore both being British citizens by descent. The claimant was a single mother at all times: her children's father was married to another woman and they also have children. The evidence in documents in the claimant's bundle is that her children are doing well at school and have friendships here. They are now 14 and 11 years old, and have never lived in Nigeria, nor are they familiar with Nigerian culture or languages, on her account.

6. On 27 April 2011, the claimant sought leave to remain in the United Kingdom on human rights grounds, and on 21 June 2011, she was granted discretionary leave until 21 June 2014.

7. Between 2006 and 2012, the claimant obtained state benefits by fraud, using a counterfeit French passport. She is not, and never has been, a French citizen, but the document she was using enabled her to obtain an EEA residence card which would have entitled her to work. However, the claimant did not work and claimed over £83000 of benefits instead during that 6-year period.

8. When the fraud was discovered, the claimant was prosecuted and on 10 October 2013, she was sentenced to 15 months on all of the offences charged, to run concurrently. The charges were that she had made a false statement or representation so as to obtain benefit, used a false instrument and been knowingly concerned in fraudulent activity with a view to obtaining payment of a tax credit to herself or another. The claimant did not appeal either the sentence or the conviction.

9. The claimant's incarceration from October 2013 to May 2015 presented a difficulty as to who should care for her children. The claimant's daughters would have been 6 and 3 years old, at that time.

10. The children's natural father, and his wife, took them in for the 7 months that the claimant spent in prison. It does not seem to have gone well: the children did not like their father's wife, nor her cooking, and said that she treated them badly. Since the claimant left prison and the children returned to her, her evidence is that their father has had minimal contact with them.

11. There is nothing in the evidence before me to confirm that if the claimant left the United Kingdom, he would accommodate and bring them up through their teenage years. On her account, they have not seen much of him for the last 7 years. He pays £100 a month maintenance, and telephones them on their birthdays.

12. The claimant contends that it would be difficult to obtain schooling, accommodation and care for the children in Nigeria if they accompanied her, and that her employment prospects there would be poor.

Sentencing remarks

13. The sentencing remarks of Judge Wilkinson on 10 October 2013 described the claimant's actions as 'serious frauds'. The claimant had entered the United Kingdom in 2005 on false documentation and the frauds began on 6 November 2006, when she was still an illegal immigration from Nigeria. She had received over £83000 in benefits with the assistance of her false French passport and her pretence of being a French citizen:

> "Each claim that you made was fraudulent from the beginning. Inevitably, these offences are so serious that only an immediate custodial sentence can be justified. I take into account on your behalf, first of all, your plea of guilty at the preliminary hearing. I give you full credit for those please. Secondly, I take into account the fact that since June of 2011, you've been granted limited right to remain by the Home Office, though you still continued to claim fraudulently as a French citizen. This was an opportunity for you to regularise your position. You did not take it. No doubt, you considered that to disclose your change of status would reveal your earlier fraudulent conduct. …
>
> Next, I, of course, note the content of the PSR and lastly, and most of all, I bear in mind your two young children. It is a fact that you are the sole carer. It is a fact that they will be hurt by your imprisonment, but, at the end of the day, children simply cannot be used as a bargaining chip.

> The least sentence that I can pass on you is one of fifteen months' imprisonment. If you behave yourself, you will be out in seven and a half months, less the credit that will be given to you for the tagged qualifying curfew…. "

The 15 months' sentence was concurrent on all charges.

Secretary of State's refusal letter

14. On 29 October 2013, the Secretary of State wrote to the claimant to say that pursuant to section 32(5) of the UK Borders Act 2007, she was required to make a deportation order against the claimant as a foreign criminal, subject to the claimant showing that she could bring herself within any of the Exceptions in that statute.

15. The claimant responded on 19 November 2013, claiming to fear return to Nigeria, based on an alleged death threat from immediate family members in Nigeria, because of her father's wealth. When the Secretary of State asked the claimant's representatives for more details, they clarified that she did not want to claim asylum but wished to remain in the United Kingdom as the parent of two British citizen children. In June 2014, the claimant made an application for leave to remain on that basis.

16. On 16 December 2014, the respondent made a deportation order.

17. On 18 August 2015, the claimant's representatives raised an asylum claim and she was interviewed. A statement of additional grounds was provided. On 29 July 2016, the international protection and human rights claim was rejected, and certified under sections 94 and 94B of the 2002 Act, with an out of country right of appeal. The claimant did not depart from the United Kingdom. She made further submissions, which were rejected under paragraph 353 of the Immigration Rules HC 395 (as amended) on 9 June 2017.

18. Following the decision of the Supreme Court in *Kiarie and Byndloss v Secretary of State for the Home Department* [2017] UKSC 42, the Secretary of State withdrew the 16 December 2014 refusal of the claimant's human rights claim and her decision of 29 July 2016 and 9 June 2017, but maintained the deportation order of 16 December 2014.

19. On 4 February 2019, the Secretary of State remade her decision on human rights, by reference to all of the previous submissions made by the claimant over the period from 2013 to 2017. She refused leave to remain on human rights grounds and also international protection.

20. The Secretary of State accepted that the claimant had a genuine and subsisting parental relationship with her two children, both still minors. She was estranged from her former partner, the children's father. The claimant was not currently in a relationship.

21. The Secretary of State did not consider that it would be unduly harsh for the children to remain in the United Kingdom without their mother, or to travel to Nigeria and

begin a new life there with her. There was no evidence as to why the children should not relocate to Nigeria and the claimant, who lived there until the age of 30, would be able to help them adjust and to integrate into life in Nigeria. There was no evidence that the claimant's children would not be entitled to Nigerian citizenship or be able to reside there on another basis with their mother, should they accompany her. Education and healthcare were available in Nigeria.

22. The Secretary of State did not accept the claimant's assertion that the children's father was unfit to care for them. There was no evidence of this, beyond her bare assertion. The children might have some difficulties initially if they were living with him, but would adjust. They could stay in touch with their mother by modern means of communication and visit her either in Nigeria or a third country, albeit infrequently because of the cost of flights. There were over 144 million mobile phone users in Nigeria.

23. The Secretary of State did not consider that there were very significant obstacles to the claimant herself reintegrating in Nigeria. She was not integrated in the United Kingdom; she had not worked here or made any positive contribution to society, but had depended on benefits to which she was not entitled. The claimant had lived in Nigeria until she was 30 years old; English was the language in Nigeria. The claimant was entitled to apply to the Facilitated Returns Scheme which would provide some funds to help alleviate any financial difficulties on return. Nor were there any compelling circumstances for which leave to remain should be granted outside the Rules.

24. The appellant appealed to the First-tier Tribunal.

First-tier Tribunal decision

25. First-tier Judge Davey found that it would be disproportionate to remove the claimant from the United Kingdom at present, given the circumstances with their father and step-mother. He recorded that there was no evidence that the father, or his wife, would be prepared to take the children in again if the claimant were deported. But there also was no evidence that breaking the tenuous bonds they had with their natural father would have any effect on the children, whose parental bond was with their mother.

26. There was evidence also that the claimant had been undergoing training and achieved some qualifications, a few years back, on mental health and social care, health and safety in the workplace, and food safety in catering. Her evidence was that she aspired to taking a nursing degree at University. She was not pursuing any training at present, the latest being a childcare course in June 2018. In 2013, she had undertaken a course in nursing, midwifery and health studies.

27. Section 117D(1) of the Nationality, Immigration and Asylum Act 2002 (as amended) was applicable: the claimant's children, as British citizens, were qualifying children. the judge then found that it would be unduly harsh and unreasonable for the claimant to be removed to Nigeria and for her British citizen children to be expected

to accompany her there, with reference to section 117B(6) of the 2002 Act. The judge dismissed the international protection appeal but allowed the appeal on human rights grounds on that basis.

28. The Secretary of State appealed to the Upper Tribunal.

29. The claimant has not challenged the dismissal of her international protection claim.

Permission to appeal

30. There was a single ground of appeal, 'making a material misdirection of law'. The Secretary of State contended that undue weight had been given to the effect on the claimant's children; that there was no reasoned finding that they would face undue harshness if they remained in the United Kingdom living with their father; that there was no finding by the First-tier Judge that they were mistreated or inadequately cared at their father's home for during the 7 months their mother was in prison; and that the First-tier Judge's reasoning for finding that it would be unduly harsh for the children to live in Nigeria was also inadequately reasoned.

31. The First-tier Judge's findings did not go beyond the finding that it would not be in the children's best interests to live in Nigeria, which was not the relevant test. The First-tier Judge's decision did not explain why there was in this case a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent.

32. The error in the First-tier Judge's findings on these matters had infected his consideration of the high public interest in deportation: see *OH (Serbia) v Secretary of State for the Home Department* [2008] EWCA Civ 694.

33. Permission to appeal was granted by First-tier Judge Povey in the following terms:

> "3. The judge recorded the lack of evidence as to the ability or willingness of the children's father to look after the children in the United Kingdom, the impact upon the children of the [claimant's] removal, or them returning to Nigeria with her, and of the children's lives in the United Kingdom (at [10]-[12]). The judge went on to conclude that it would be unduly harsh for the children to relocate to Nigeria (at [25]-[26]) and appeared to also find that it would b unduly harsh for the children (as United Kingdom citizens) to remain in the United Kingdom without their mother (at [28]-[29]). However, there was merit in the [Secretary of State's] contention of an absence of adequate reasons for both conclusions, particularly given the paucity of evidence adduced by the [claimant] and the 'unduly harsh' thresholds contained within case law. As those findings were material to the outcome of the appeal, they constituted arguable errors of law."

Rule 24 Reply

34. On 9 March 2020, Upper Tribunal Judge O'Connor directed the parties to file skeleton arguments and trial bundles, a rule 15(2A) notice if required, and trial bundles, within 28 days.

35. The respondent filed a skeleton argument on 30 March 2020. She noted, which she had not in her grounds of appeal, that the First-tier Judge had directed himself that he was not dealing with a deportation appeal (see [16]). He had then applied the reasonableness standard rather than the higher test required in section 117C of the 2002 Act and in so doing, had fallen into plain error of law.

36. The First-tier Judge had been 'unimpressed by the [claimant's] evidence in regard to her circumstances and her clear lack of remorse in regard to her conduct' but had failed to give clear, cogent reasons showing why, despite the lack of evidence, and the poor credibility of the claimant's oral evidence, it would be unduly harsh for her children to remain in the United Kingdom with their father. The factors relied upon by the First-tier Judge were 'entirely ordinary factors that will apply to almost every case where a foreign national offender is part of a genuine and subsisting relationship and has British children'. There needed to be something more than the loss of a parent, especially when the other parent remains in the United Kingdom and has provided care in the past. The appeal should be allowed and the First-tier Judge's decision set aside.

37. On 11 August 2020, the claimant filed an out of time Rule 24 reply, settled by Benjamin Hawkin of Counsel. He contended that the First-tier Judge's decision was thoughtful, careful and balanced, arriving at conclusions which were clearly open to him on the evidence. The grounds of appeal did not establish an arguable material error of law and were in reality simply a disagreement with the outcome of the appeal. The Upper Tribunal should be extremely slow to interfere with a decision of the First-tier Tribunal, merely because another judge might have reached a different decision.

38. The findings of fact in the First-tier Judge's decision (set out at [7] in the Rule 24 reply) were open to him on the evidence and the Upper Tribunal should uphold his decision: not only was the assessment made open to the judge on the facts of the case, but, submitted Mr Hawkin, it was the entirely proper outcome.

39. The Secretary of State did not exercise her right to respond to the Rule 24 reply promptly, nor did she respond to triage directions sent by the Upper Tribunal on 22 April and 14 July 2020. By a decision sent to the parties on 1 December 2020, Upper Tribunal Judge Mandalia decided that the appeal could be dealt with at a remote hearing.

40. That is the basis on which this appeal came before the Upper Tribunal.

Claimant's bundle

41. On 7 January 2021, the appellant filed a 252-page bundle of documents, both electronically (on 5 January) and physically. There was no rule 15(2A) application: this appears to have been the bundle which was before the First-tier Judge.

42. The only document in that bundle to which I was referred was the claimant's statement, the relevant portion of which is at [6] and [9]:

> "6. … If I was forced to relocate to Nigeria my children would have no-one. Their father would not be able to take them in as he has a family of their own. …
>
> 9. My children has grown up and developed here in the United Kingdom and they are very fond of British culture and British life style and this is the only culture and life style they have ever known. My children are not familiar with nigh culture and therefore they would find it very difficult to adjust, as this is the only home they have ever known. Furthermore, they have rights as British citizens, therefore it would be unfair for them to be forced to relocate to Nigeria."

At [13] the claimant asserted that 'it would cause extreme hardship for me and my children and me [sic] to relocate to Nigeria'.

43. There are also letters from friends: at page 181 in the bundle, a friend who has children at the same school as the claimant's son said that when the claimant was away for months, the child had lost concentration at school, been visibly unhappy, losing weight and not eating a regular meal, looking unkempt, always crying at school and not participating in any school activities. The writer described the claimant as dedicated to her children and always willing to help out.

44. Another letter says that in 2014, when the claimant was absent, both children were affected physically, emotionally and psychologically. They were not being looked after properly, as their mother did. 'It was a bad moment for the children, without their mother being around them for several months'. From page 184 to 252 are black and white photocopies of photographs of the children and their mother. There are no photographs of them with their father and no witness statement or other evidence from him.

45. At page 136 in the bundle is an attendance report from 2 September 2013 to 23 May 2014, which would cover the period when the children were living with their father. They achieved a 99.28% attendance, with one authorised absence, no unauthorised absences, one illness, and 6 occasions when they were late for school, but before registers closed. The remaining school materials postdate the imprisonment period; they show the children flourishing and progressing at their respective schools.

Upper Tribunal hearing

46. For the Secretary of State, Ms Cunha submitted that the evidence simply was not sufficient to support the First-tier Judge's findings of fact. He had drawn inferences, but without considering the acts of long-term deception which had led to the claimant's conviction. She should receive no credit for not having offended subsequently as she had been in prison until 2014, on licence till the end of that year, and thereafter subject to a deportation order. It would have been very unintelligent of her to offend again.

47. The First-tier Judge's decision did not consider undue harshness properly. Ms Cunha relied on *HA (Iraq) v Secretary of State for the Home Department* [2020] EWCA Civ 1176 at [52]-[52] in the judgment of Lord Justice Underhill (with whom Lord

Justice Peter Jackson and Lord Justice Popplewell agreed). The Secretary of State's appeal should be allowed.

48. For the claimant, Mr Youseffian accepted that the First-tier Judge had erred in directing himself that there was no deportation order and applying section 117B(6). However, if the decision were read fairly and as a whole, the unduly harsh finding was sustainable and sufficient reasons had been given. Mr Youseffian relied on *HA (Iraq)* at [50]-[56].

49. The First-tier Judge had been persuaded by the claimant's oral evidence. First-tier Judge Davey was an experienced judge and it was open to him to accept part of an otherwise incredible account: see *Chiver.* The Secretary of State's bundle contained many manuscript letters from the claimant on which the judge was entitled to rely.

50. If the claimant's children did not return to Nigeria with her when she was deported, they would at best spend the rest of their childhoods with their father and step-mother. Having their mother ripped away from them would cause serious emotional harm, given the closeness of the relationship between mother and children in this case. He referred to the support letters in the bundle, which said the claimant was a good mother.

51. The claimant had always been a single parent mother. In her letter of 2012, she said that she still shared a bed with her children (then aged 2 and 4 years old).

52. Mr Youseffian accepted that there was no professional evidence about the children or the harm which might occur if they were separated from their mother. They had lived with her for 7 years since she came out of prison, and what was involved here was more than undesirability or discomfort.

53. Mr Youseffian asked me to dismiss the Secretary of State's appeal.

54. Both representatives argued that if the appeal were allowed and the First-tier Judge's decision set aside, it would be preferable for the appeal to be reheard afresh in the First-tier Tribunal, to allow for better evidence, including a social worker's report.

55. I reserved my decision, which I now give.

***HA (Iraq) v Secretary of State for the Home Department* [2020] EWCA Civ 1176**

56. In *HA (Iraq),* on which both representatives relied, the guidance on the meaning of 'unduly harsh' begins at [50] in Underhill LJ's judgment:

> "50. The essential point is that the criterion of undue harshness sets a bar which is "elevated" and carries a "much stronger emphasis" than mere undesirability: see para. 27 of Lord Carnwath's judgment, approving the UT's self-direction in *MK (Sierra Leone),* and para. 35. … The reason why some degree of harshness is acceptable is that there is a strong public interest in the deportation of foreign criminals (including medium offenders): see para. 23. The underlying question for tribunals is whether the harshness which the deportation will cause for the

partner and/or child is of a sufficiently elevated degree to outweigh that public interest.

51. However, while recognising the "elevated" nature of the statutory test, it is important not to lose sight of the fact that the hurdle which it sets is not as high as that set by the test of "very compelling circumstances" in section 117C (6). …The statutory intention is evidently that the hurdle representing the unacceptable impact on a partner or child should be set somewhere between the (low) level applying in the case of persons who are liable to ordinary immigration removal (see Lord Carnwath's reference to section 117B (6) at the start of para. 23) and the (very high) level applying to serious offenders.

53. Observations of that kind are, I hope, helpful, but they cannot identify an objectively measurable standard. It is inherent in the nature of an exercise of the kind required by section 117C (5) that Parliament intended that tribunals should in each case make an informed evaluative assessment of whether the effect of the deportation of the parent or partner on their child or partner would be "unduly harsh" in the context of the strong public interest in the deportation of foreign criminals; and further exposition of that phrase will never be of more than limited value. …

55. … it is plainly not the case that Lord Carnwath was unaware of the relevance of section 55: see para. 15 of his judgment, quoted at para. 41 above. The reason why it was unnecessary for him to refer explicitly to section 55 specifically in the context of his discussion of Exception 2 is that the very purpose of the Exception, to the extent that it is concerned with the effect of deportation on a child, is to ensure that the best interests of that child are treated as a primary consideration. It does so by providing that those interests should, in the case of a medium offender, prevail over the public interest in deportation where the effect on the child would be unduly harsh. In other words, consideration of the best interests of the child is built into the statutory test. It was not necessary for Lord Carnwath to spell out that in the application of Exception 2 in any particular case there will need to be "a careful analysis of all relevant factors specific to the child"; but I am happy to confirm that that is so, as Lord Hodge makes clear in his sixth proposition in *Zoumbas*.

56. The second point focuses on what are said to be the risks of treating *KO* as establishing a touchstone of whether the degree of harshness goes beyond "that which is ordinarily expected by the deportation of a parent". Lord Carnwath does not in fact use that phrase, but a reference to "nothing out of the ordinary" appears in UTJ Southern's decision. I see rather more force in this submission. As explained above, the test under section 117C (5) does indeed require an appellant to establish a degree of harshness going beyond a threshold "acceptable" level. It is not necessarily wrong to describe that as an "ordinary" level of harshness, and I note that Lord Carnwath did not jib at UTJ Southern's use of that term. However, I think the Appellants are right to point out that it may be misleading if used incautiously. There seem to me to be two (related) risks. First, "ordinary" is capable of being understood as meaning anything which is not exceptional, or in any event rare. That is not the correct approach: see para. 52 above. There is no reason in principle why cases of "undue" harshness may not occur quite commonly. Secondly, if tribunals treat the essential question as being "is this level of harshness out of the ordinary?" they may be tempted to find that Exception 2 does not apply simply on the basis that the situation fits into some commonly-

> encountered pattern. That would be dangerous. How a child will be affected by a parent's deportation will depend on an almost infinitely variable range of circumstances and it is not possible to identify a baseline of "ordinariness". Simply by way of example, the degree of harshness of the impact may be affected by the child's age; by whether the parent lives with them (NB that a divorced or separated father may still have a genuine and subsisting relationship with a child who lives with the mother); by the degree of the child's emotional dependence on the parent; by the financial consequences of his deportation; by the availability of emotional and financial support from a remaining parent and other family members; by the practicability of maintaining a relationship with the deported parent; and of course by all the individual characteristics of the child."

Analysis

57. Although he did not say so, the First-tier Judge clearly took a dim view of the claimant's credibility as a witness, which makes it difficult to understand why he believed her about the lack of contact between her children and their father, and his unwillingness to take them in if she was deported. There was nothing from the father and it appeared that he had not been approached. There was no independent social worker's report.

58. The evidence which underpins the First-tier Judge's findings is slight, save for the claimant's own assertions. At [8] he found that there was 'no merit in any part of her claim to remain on the basis of a private life which the [claimant] has achieved in the United Kingdom by deception' and that the writers of the letters of support did not appear to know why she had been away from the children for several months, nor 'the extent of her criminality, the cost to the public, and her deliberate conduct to obtain the benefits of life in the United Kingdom.

59. At [3], the First-tier Judge dismissed the claimant's account that she was allowed to enter the United Kingdom without a passport for a six-month period, finding it more likely that she 'entered using false documentation and later sought to conceal it'. There was 'simply no evidence' on the very significant point of the father's contribution to her children's life, or his willingness to look after them if she had to leave the United Kingdom.

60. There is no question but that the First-tier Judge fell into error of law in directing himself that this was not a deportation case, when there was a deportation order, and in consequence, in applying section 117B(6) when the correct statutory provision to have applied would have been section 117C(2), and Exception 2, set out in section 117C(5):

> "**117C Article 8: Additional considerations in cases involving foreign criminals**
>
> (1) The deportation of foreign criminals is in the public interest.
>
> (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.

> (3) In the case of a foreign criminal (C) who has not been sentence to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies. …
>
> (5) Exception 2 applies where C has a genuine and subsisting relationship with a …qualifying child, and the effect of C's deportation on the …child would be unduly harsh.
>
> (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2"

61. The correct test to be applied here was whether the situation for these two children would be unduly harsh and/or whether very compelling circumstances outside the Exceptions could be shown. The confusion with the lower standard of reasonableness in section 117B(6) is plainly material and regrettably, I have come to the conclusion that it infects the entire decision. It follows that the decision of the First-tier Judge must be set aside.

62. It is not possible to remake this decision and to apply *HA (Iraq)* correctly on the basis of the very limited information about the children, and in particular, their relationship with their father. The decision of the First-tier Tribunal will be set aside for remaking afresh in the First-tier Tribunal.

DECISION

63. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. The decision on this appeal will be remade in the First-tier Tribunal on a date to be fixed.

Signed *Judith AJC Gleeson* Date: 15 January 2021
Upper Tribunal Judge Gleeson