Upper Tribunal
(Immigration and Asylum Chamber) **Appeal number: HU/08010/2020**

THE IMMIGRATION ACTS

Heard at:	**Field House**	**Decision & Reasons Promulgated**
On the	**29 March 2022**	**On the 31 March 2022**

Before

Upper Tribunal Judge Gill

Between

Miss Maseray Kamara **Appellant**
(ANONYMITY ORDER NOT MADE)

And

Entry Clearance Officer **Respondent**

Representation:
For the appellant: Mr A Chohan, of Counsel.
For the respondent: Ms J Isherwood, Senior Presenting Officer.

Decision

1. The appellant, a national of Sierra Leone, appeals against a decision of Judge of the First-tier Tribunal D Brannan (hereafter the "judge") who, in a decision promulgated on 8 June 2021 following a hearing on 21 May 2021, dismissed her appeal on human rights grounds against a decision of the respondent of 2 October 2020 to refuse her application of 10 January 2020 (made 1½ months before her eighteenth birthday) for entry clearance under para 297 of the Immigration Rules in order to join her uncle, Mr Hassan Kamara (hereafter referred to as the "sponsor"), in the United Kingdom.

2. As the appellant did not have a parent who was present and settled in the United Kingdom, she could not meet the requirements of para 297(i)(a)-(e) of the Immigration Rules. Accordingly, her application could only be considered under para 297(i)(f). The appellant therefore had to demonstrate that there were serious and compelling family or other considerations which made her exclusion from the United Kingdom undesirable.

3. The respondent was not satisfied of the following:

   (i) that the appellant's parent were dead;

   (ii) that the appellant had demonstrated that the sponsor had had any significant input into her upbringing; and

   (iii) that there were serious and compelling family or other considerations which made the appellant's exclusion from the United Kingdom undesirable. In this regard, the respondent considered that adequate care had been provided to the appellant in Sierra Leone and was not satisfied that such care could not continue to be provided in Sierra Leone until the appellant reached adulthood.

4. In 2013, the appellant had made an application under the EEA Regulations in order to join the sponsor as an extended family member. The application was refused. Her appeal against that decision was heard before Judge of the First-tier Tribunal Russell who, in a decision promulgated on 30 December 2014, dismissed the appeal. Judge Russell was not satisfied that the appellant was a relative of, dependent on, or a member of the household of, the sponsor.

5. In her application of 10 January 2020 for entry clearance under para 297, the appellant submitted a DNA report on the basis of which the respondent accepted that the sponsor was the appellant's uncle.

The judge's decision

6. The judge was not satisfied that the appellant satisfied the requirements of para 297(i)(f). He went on to consider proportionality using the "*balance sheet*" approach. He assigned points, in numerical terms, for and against the appellant. He concluded, at para 47, that "*the cons against the appellant … have 10 points while the pros in the appellant's favour have only two points*" and that the decision of the respondent was therefore proportionate.

7. The judge's reasons for finding that the appellant did not satisfy para 297(i)(f) are set out at paras 24-38. His assessment of the Article 8 balancing exercise in relation to proportionality is at paras 39-47.

8. In giving his reasons for finding that the appellant did not satisfy the requirements of para 297(i)(f), the judge considered, inter alia, the evidence concerning the alleged death of the appellant's parents at paras 24-27 which read:

> "24. In relation to the deaths of the parents, I note that before Judge Russell it was claimed that the Appellant's mother was dead and that contact had been lost with her father. The death of the Appellant's mother does not appear to have been challenged and Judge Russell certainly does not find it not to be the case. The Respondent now doubts whether the Appellant's mother is dead based on the Appellant having produced the death certificate from *[sic]* dated 21 October 2019 which is at page 38 of the Appellant's bundle. The document which [the Sponsor] says was before Judge Russell is at page 38 of the Appellant's bundle. He refers to this as a "cause of death certificate". I accept this explanation and see no reason to find that the Appellant's mother is not in fact dead and did not in fact die on 10 November 2008 as previously claimed.
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> 25. The situation of the Appellant's father is less clear. His death certificate is at page 40 of the Appellant's bundle. It is dated 26 September 2019. It states the date of death to have been 12 November 2012. Notably this is before the hearing before Judge Russell. [The Sponsor] attempts to explain this in his statement on page 2 of the Appellant's bundle. He says:
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> > I found out that her father was dead in Decernber 2018 when I visited Sierra Leone on holiday. I found out from Mr Abubakarr Saadry Kamara (father of my nieces *[sic]* deceased father) that his son had died. Prior to that the father of the

> deceased did not know where about *[sic]* of his son. My wife (who is now in the UK but was in Sierra Leone at the time) had to make some enquiries from the relevant government authority to find out the cause of death to register the death. As a result of the red tape in Sierra Leone government departments, it was not until 26/09/ 2019 that she was able to register the death.
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> 26. [The Sponsor] was cross examined on this and gave a broadly similar explanation.
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> 27. I note that [the Sponsor] says "prior to that the father of the deceased did not know where about of his son". The word “that” in this sentence could refer to the event of [the sponsor] finding out about the death or it could refer to the event of the death itself. If it refers to the event of [the Sponsor] finding out about the death it makes no sense because it would mean that Mr Abubakarr Kamara did not know the whereabouts of his son and somehow discovered the death at the same time that he passed this information on to [the Sponsor]. Therefore the likely interpretation is that Mr Abubakarr Kamara did not know the whereabouts of his son prior to the death in 2012, but knew about the death at that time. In that case, if the Appellant’s grandfather could be contacted and knew that his son had died in 2012, I cannot see why this information was not before Judge Russell. Furthermore, no explanation has been offered as to why the Appellant's father was missing in the first place or why [the Sponsor] contacted Mr Abubakarr Kamara in 2018. Overall I find this explanation very unsatisfactory, I therefore cannot be satisfied on the balance of probabilities that the Appellant's father has died.”

9. The judge considered the evidence concerning the appellant's medical condition at para 32 which reads:

> “32. On page 178 of the Appellant's bundle is a letter from Dr Ahmed Barrie dated 12 January 2021. It says that the Appellant had been the doctor’s patient for the past six years and had been treated for depression since 2014. It says she developed symptoms of insomnia, weight loss and anorexia as a result of a persistent feeling of sadness. It says that [the Sponsor] has been responsible for paying all medical bills throughout this period. I noticed this letter prior to the hearing and that there was no other reference in the evidence to the health of the Appellant. I therefore asked [the Sponsor] about the Appellant’s health. He told me she was depressed and cries on the phone and needs emotional support. He did not mention insomnia, weight loss or anorexia. The failure to mention these conditions, particularly one so serious as anorexia, leads me to question the accuracy of Dr Barrie's letter or [the Sponsor]'s actual involvement in the Appellant's health. For this reason I am not satisfied on the balance of probabilities that the Appellant does suffer from any condition other than depression.”

10. In evidence before the judge, the sponsor said that his mother, Lucy Kamara, looked after the appellant under his direction from 2008 until December 2017 when her health deteriorated and she became unable to do so. There was evidence that a Guardianship order was made by the High Court of Sierra Leone on 11 December 2019 which appointed the sponsor and his wife, Ms Conteh, as the appellant’s guardian. The sponsor and Ms Conteh were the applicants and Lucy Kamara the respondent. The judge considered this evidence at paras 29 and 36 which read:

> “29. [The sponsor] says that his mother (the Appellant’s grandmother), Lucy Kamara, looked after the Appellant under his direction from 2008 until December 2017 when her health deteriorated and she became unable to do so. There is a letter from Dr Alpha Conteh dated 23 January 2020 at page 223 of the Respondent's bundle which describes Mrs Kamara having a stroke at that time. On page 333 of the Respondents bundle is a handwritten prescription form saying that Mrs Kamara "should be on strict bed rest and should not take care of her grandchildren".
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> 36. The Appellant has also produced documents at page 118 to 123 of the Appellant's bundle which show that [the sponsor] and Ms Conteh were appointed as guardians of the Appellant on 11 December 2019 by the High Court of Sierra Leone. [The Sponsor] and Ms Conteh were the Applicants in this matter and Lucy Kamara was the Respondent. It was granted just over two months before the Appellant's 18th birthday. By way of explanation, [the sponsor] says "there was no need for a guardianship certificate until the application was made in 2020". This points towards Lucy Kamara having been responsible for the Appellant until the Court Order was made (which is nearly three years

after her health deteriorated). It says nothing about the day-to-day responsibility of [the sponsor] or Ms Conteh before or after the making of the Court Order."

11. At para 37, the judge said:

> "37. That brings me to the crux of the issue in this appeal. The Immigration Rules require serious and compelling family or other considerations making exclusion of the child undesirable. The burden of proof is on the Appellant to demonstrate the serious and compelling family or other considerations. Mr Muquit submitted that the analysis is simple. I paraphrase it as: if [the sponsor] and Ms Conteh were the actual parents of the Appellant her application would have been successful, she has no parents, therefore paragraph 297 (i) (f) ought to apply to save her from being parentless. The first difficulty with this is that I do not accept that the Appellant's father has died. Even if he is not involved in her life and has not been for a long time, the difficulty I have with this is that the Appellant has lived in Sierra Leone without parents for a very long time. If [the sponsor] has stepped into an overseas fatherly role, I only accept that this has only been since late 2017 when Ms Conteh became involved. Yet there is little evidence of Ms Conteh playing the role of a mother and I also find it implausible that she would be able to do so given the age difference. **All this points towards the Appellant, who is now 19 years old, having a high degree of independence or other family support. As the Respondent said in the refusal: why can this arrangement not continue? Despite all the evidence I still do not know the answer to that question. On the other hand, that is not the question in the Immigration Rules. In answer to the question in the Immigration Rules, I find that there are not *[sic]* serious and compelling family or other considerations in this case.**"
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> "My emphasis)

12. At para 46, in the course of his assessment of the Article 8 proportionality balancing exercise, the judge said, inter alia:

> "46. … while [the appellant] may be depressed, it is not clear that she will be better if in the UK. Given the contradiction between the oral evidence and medical documents I am not satisfied that she suffers from any other medical problems. **For these reasons I give this factor no weight."**
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> (My emphasis)

13. The "*contradiction*" referred to by the judge at para 46 concerned his earlier assessment at para 32 of his decision, that the sponsor in oral evidence did not mention insomnia, weight loss or anorexia in oral evidence whereas the letter from Dr Barrie stated that the appellant had developed symptoms of insomnia, weight loss and anorexia.

The grounds

14. There are nine grounds, which may be summarised as follows:

    (i) Ground 1: The judge failed to refer to the appellant's skeleton argument which was not considered and therefore the appellant has not had a fair hearing. That the judge did not consider the skeleton argument is further supported by the remaining grounds.

    (ii) Ground 2: At para 31, where the judge said that the receipts for school fees only referred to the appellant by name and not to the sponsor, the judge erred by failing to take into account material evidence, i.e. the letter dated 8 February 2021 at AB/117 from Zadet School which stated that the appellant had attended the school from September 2014 to July 2019 and that the sponsor "*had been solely responsible for all her school charges".* The letter at AB/117 was referred to at para 18 of the skeleton argument (not para 15, as stated at para 13 of the grounds).

(iii) Ground 3: The judge erred by failing to take into account the letter at AB/179 which was referred to at para 24 of the skeleton argument.

(iv) Ground 4: In stating at para 34 of his decision that there was *"scant evidence"* that the sponsor was responsible for the appellant whilst she was living with the sponsor's mother (Mrs. Kamara) and that if the sponsor truly had had such responsibility he would have expected to see evidence of it to a similar degree to that which had been shown for the period after the sponsor claimed that his mother could no longer look after the appellant, the judge had erred as follows:

(a) He took into account an immaterial consideration because there is always likely to be more evidence from the past few years.

(b) If the evidence for the past few years was comparatively less, then this should have been put to the sponsor.

(c) In any event, it was arguable that the letter at AB/117 ha not been considered in reaching the finding at para 34.

(v) Ground 5: The judge erred at para 32 because the sponsor in oral evidence was asked: "*How's Maseray's health?"* which was a question about the appellant's present health, whereas the letter from Dr Barrie was dated 12 January 2021, over 4 months before the hearing took place before the judge. Furthermore, having symptoms of insomnia, weight loss or anorexia is not the same as being diagnosed with insomnia, weight loss or anorexia.

(vi) Ground 6: The judge erred at para 36 by assuming, in the absence of evidence, that the fact that the Guardianship order was made on 11 December 2019 indicated that Lucy Kamara was responsible for the appellant up until 11 December 2019. The grounds contend that, whilst Lucy Kamara was legally responsible for the appellant until 11 December 2019, the sponsor and Ms Conteh were meeting her day-to-day needs in practical terms.

(vii) Ground 7: The judge erred at para 37 in his interpretation of the word *"that"* in the phrase "*prior to that*" at para 3 of the sponsor's witness statement, in that, he had misunderstood the sponsor's evidence by failing to take into account the first three sentences of para 3 of the sponsor's witness statement which provided the context. The grounds contend that it is clear that "*prior to that*" can only be construed to mean that Mr Abubakarr Kamara did not know the whereabouts of his son in 2013 and 2014 and therefore did not know that his son had died in November 2012.

The grounds contend that, even if the judge was right in his interpretation, the judge had erred by failing to put to the sponsor whether the appellant's grandfather was contactable before December 2018; why the appellant's father was missing in the first place or why and how the sponsor managed to contact the appellant's grandfather in December 2018.

(viii) Ground 8: The judge erred in giving under weight to the previous determination of Judge Russell, in that, he failed to take into account, as argued in the skeleton argument, that the focus of the enquiry in the previous appeal was different.

(ix) Ground 9: The judge erred in his assessment of proportionality for the reasons given in grounds 1 to 8.

15. Given the decision of the Upper Tribunal in Safi and others (permission to appeal decisions) [2018] UKUT 00388 (IAC), the parties agreed before me that all the

grounds could be argued notwithstanding that Judge of the First-tier Tribunal Ford had limited the grant of permission at para 3 of her decision.

Assessment

16. I am satisfied that grounds 5 and 7 are established and that, taken together, they are material to the outcome. My reasons are as follows:

17. In relation to ground 5, it is clear that the question put to the sponsor by the judge concerned the appellant's health as at the date of the hearing whereas Dr Barrie's letter was dated four months earlier. The judge was correct to say that anorexia is a serious condition. If the appellant had actually been diagnosed as suffering from anorexia as at the date of the Dr Barrie's letter, the judge would have been fully entitled to draw an adverse inference from the sponsor's failure to mention anorexia in his oral evidence, as it is most unlikely that a person could recover from being diagnosed as suffering from anorexia to full recovery in the period of four months between the date of Dr Barrie's letter and the date of the hearing. However, that reasoning may not hold given that Dr Barrie's letter did not state that the appellant had been diagnosed as suffering from anorexia. The fact that Dr Barrie stated that the appellant had *"developed symptoms of*" insomnia, weight loss and anorexia as opposed to the appellant having been actually diagnosed as suffering from these conditions leaves open the possibility, depending upon the severity of the symptoms, that her condition might have improved in the period between the date of Dr Barrie's letter and the date of the hearing so as to result in there being no inconsistency between the sponsor's oral and the contents of Dr Barrie's letter.

18. I am therefore satisfied that the judge erred in law by proceeding on the assumption that the letter from Dr Barrie stated that the appellant had been actually diagnosed as suffering from anorexia. He therefore erred in law in his assessment of the medical evidence and the sponsor's evidence at para 32 of his decision, as contended in ground 5.

19. At the hearing, Ms Isherwood accepted that the judge had erred in law as contended in ground 5. She submitted that the error was not material, a submission which I consider below.

20. In relation to ground 7, Ms Isherwood submitted that the judge was entitled to find that the word "*that*" in the phrase "*prior to that*" did not make sense and that, taking into account the fact that the judge had said that there was no explanation why the appellant's father was missing, he was entitled to conclude that he was not satisfied that the appellant's father was dead. In any event, Ms Isherwood submitted that any such error was not material given that the judge had considered the alternative at para 37, on the basis that her father had died.

21. I do not accept Ms Isherwood's submission that the judge did not err as contended in ground 7, for the following reasons:

22. Para 3 of the sponsor's witness statement reads:

> "3. In the refusal letter the ECO stated that appellant's father died in 2012 and the death was not registered until 26/09/2019. I confirm that at the lime I uncle *[sic]* made the previous application I stated that I did not know the where about *[sic]* of the appellant's father, which was the case. I made further enquiries from my mother's family who confirmed that they did not know her father's where about *[sic]*. I found out that her father was dead in December 2018 when I visited Sierra Leone on holiday. I found out from Mr Abubakarr Saadry Kamara (father of my niece's deceased father) that his son had died, Prior to that

> the father of the deceased did not know where about of his son. My wife (who is now in the UK but was in Sierra Leone at the time) had to make some enquiries from the relevant government authority to find out the cause of death to register the death. As a result of the red tape in Sierra Leone government departments, it was not until 26/09/2019 that she was able to register the death."

23. In my view, as ground 7 contends, there was a third possible interpretation of the word "*that*" in the phrase "*prior to that*" at para 3 of the sponsor's witness statement, when that phrase is read in the context of the preceding three sentences which the judge did not quote at para 25 of his decision. Read in that context, the third possible interpretation was that the sponsor meant prior to either the application for entry clearance or the previous appeal. This interpretation, if it correctly represented what the sponsor had meant, appears to be consistent with the sponsor's evidence. This third possible interpretation is alluded to at para 22 of the skeleton argument which the judge did not mention (see also para 34 below).

24. Although it is clear from para 26 of the judge's decision that the sponsor was questioned about para 3 of his witness statement in cross-examination, there is nothing to indicate that his [the judge's] concern, that the word "*that*" in the phrase "*prior to that*" did not make sense, was put to the sponsor. I am satisfied that this is not something that would have been obvious to any reasonably competent legal representative.

25. Accordingly, in my view, in the interests of fairness, the judge ought to have put to the sponsor his concern that the word "*that*" in the phrase "*prior to that*" at para 3 of his witness statement did not make sense.

26. Although it is clear from para 27 of his decision that the judge also took into account the fact that there was no explanation as to why the appellant's father was missing in the first place or why the sponsor contacted Mr Abubakarr Kamara in 2018, it is nevertheless clear that the judge's assessment of what the sponsor had meant by his use of the word "*that*" in the phrase "*prior to that*" went heavily against the sponsor in his assessment of the sponsor's credibility and his conclusion that he was not satisfied that the appellant's father had died.

27. For the reasons given above, I am satisfied that the judge erred in law in his assessment at paras 25-27 of the sponsor's explanation, at para 3 of his witness statement, why evidence that the appellant's father had died on 12 November 2012 was not given in the appeal in 2014 before Judge Russell, as contended in ground 7.

28. The errors advanced in grounds 5 and 7 are material to the outcome for the following reasons:

    (i) The two errors were plainly relevant to the judge's assessment of the sponsor's overall credibility. Whilst he gave other reasons for his adverse credibility assessment, it is impossible to say that the assessment of credibility would inevitably have been the same.

    (ii) It is clear from the last sentence of para 32 of the judge's decision that the contradiction that he had perceived to exist between the sponsor's oral evidence and the letter from Dr Barrie was pivotal in reaching his conclusion that he was not satisfied that the appellant suffered from any condition other than depression. As a consequence, he gave no weight to the appellant's medical condition as para 46 of his decision states, in terms.

    (iii) It is clear from para 25-27 that his assessment of what the sponsor had meant by the word "*that*" in the phrase *"prior to that"* at para 3 of his witness statement

was material to his conclusion that he was not satisfied that the appellant's father had died.

(iv) If the judge had not made the above errors, it would have been open to him to have accepted that the appellant did have symptoms of anorexia and insomnia and that her father had died and thus find that the appellant had established that there were serious and compelling family or other considerations which made her exclusion undesirable.

29. I therefore do not accept Ms Isherwood's submission that, taken the judge's assessment as a whole, these errors were not material. It is clear, for the reasons given above, that the judge gave considerable weight to his assessment of the medical evidence and the sponsor's evidence at para 32 and the sponsor's explanation at para 3 of the witness statement.

30. Ms Isherwood also drew my attention to the judge's concluding words at para 37, emboldened in the quote at my para 11 above, in particular, the fact that the judge had said that "*all of this*" pointed to the appellant having a "*high degree of independence or other family support*" and questioned why the existing arrangement could not continue. There is no substance in this submission for the reasons given at paras 28 and 29 above.

31. For all of the above reasons, I set aside the decision of Judge Brannan in its entirety.

32. Strictly speaking, it is not necessary for me to consider the remaining grounds. However, I will consider ground 1 because that will assist me in deciding whether para 7.2(a) of the 7.2 of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal (the "Practice Statements") applies and therefore whether this appeal should be remitted to the First-tier Tribunal or whether the Upper Tribunal should re-make the decision on the appeal.

33. At para 5 of his decision, the judge described the documents that were before him as follows:

> "5. Before me I have the following evidence:
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> (a) the appellant's bundle of 186 pages and paginated to page 180
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> (b) the respondent's bundle of 356 pages and paginated to page 356"

34. The judge did not mention the appellant's skeleton argument at para 5, nor is there any mention of the skeleton argument anywhere else in the decision. Para 22 of the skeleton argument states the whereabouts of the appellant's father was not known in 2014. This was relevant to the judge's consideration at paras 25-27 of what the sponsor had meant by the word "*that*" in the phrase "*prior to that*" at para 3 of the sponsor's witness statement. The judge did not mention para 22 of the skeleton argument in his assessment at paras 25-27 of his decision.

35. In all of these circumstances, I am also satisfied that ground 1 is established, i.e. the judge had erred in failing to consider the appellant's skeleton argument. This means that the appellant's case as advanced in the skeleton argument was not considered. For the reasons given at paras 1-2 of my Directions signed and sent to the parties on 31 January 2022, the judge did have the appellant's skeleton argument at the hearing and it is clear that the skeleton argument was relied upon on the appellant's behalf.

36. It follows that, although the judge did consider the oral submissions (see, for example, para 37 of his decision where he mentioned the submission of the appellant's representative, Mr Maqsood (not Mr Muquit as para 37 states)), there was nevertheless an element of unfairness in the proceedings before the judge on account of the fact that the judge did not consider the appellant's skeleton argument. At least one aspect of that skeleton argument (that is, para 22) was relevant to his adverse assessment at paras 25-27 to which he accorded material weight.

37. In the majority of cases, the Upper Tribunal when setting aside the decision will re-make the relevant decision itself. However, para 7.2 of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal (the "Practice Statements") recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it is satisfied that:

> "(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
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> (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."

38. Given that the judge's decision has been set aside entirely and given my conclusion at para 36 above that there was an element of unfairness in the proceedings before the judge, I am satisfied that para 7.2(a) of the Practice Statements applies.

39. The appeal is therefore remitted to the First-tier Tribunal for a fresh hearing on all issues by a judge other than Judge of the First-tier Tribunal Brannan.

Costs:

40. At the hearing before me on 9 December 2021, the appellant was represented by Mr Maqsood. That hearing was adjourned. Mr Maqsood informed me that he wished to make an application against the respondent for the legal costs incurred by the appellant for his attendance at the hearing on 9 December 2021. The directions issued to the parties on 31 January 2022 included the following:

> "3. Not less than 28 days before the hearing date, the appellant to file and serve a skeleton argument in support of any application for costs that he wishes to make in respect of the legal costs she incurred for Mr Maqsood's attendance at the hearing on 9 December 2021, such costs **not to include** the cost of preparation for the hearing, together with a statement of such costs in order to aid in summary assessment by the Upper Tribunal, if necessary; such skeleton argument to include submissions on the Upper Tribunal's jurisdiction to award such costs in an appeal as opposed to judicial review with reference to relevant Tribunal's jurisprudence.
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> 4. Not less than 14 days before the hearing date, the respondent to file and serve a skeleton argument in response to the appellant's skeleton argument filed and served pursuant to Direction 3."

41. Approximately halfway through the hearing on 29 March 2022, the clerk handed to me an email dated 28 March 2022 timed at 15:59 from Four Square Solicitors which stated: "*Please find attached cost schedule as directed by Upper Tribunal Judge". Attached to the email was a cost schedule the opening paragraph of which states: "The claimant instructed Four Square Solicitor on 20/10/2020 in respect of filing an appeal against the decision of the ECO to refuse entry as a dependant, of which the following hourly rates are recoverable as based costs".*

42. I refuse to award any costs against the respondent for the following reasons:

(i) No application for costs has been made, within the time limit specified at para 3 of the Directions of 31 January 2022 or at all.

(ii) No skeleton argument has been filed within the time limit specified at para 3 of the Directions of 31 January 2022 or at all.

(iii) As a result, there is no written explanation of the facts relied upon in support of any such application for costs.

(iv) No application has been made for extension of the time limit for compliance with Directions 3 and 4 of the directions issued on 31 January 2022.

(v) Whilst Mr Maqsood stated at the hearing on 9 December 2021 that he wished to make an application for the cost of his attendance at that hearing, the cost schedule lists the appellant's entire costs for filing the appeal.

(v) The cost schedule includes the cost of preparation for the hearing on 9 December 2021, contrary to Direction 3.

43. For the reasons given at paras 41 and 42 above, the handling of the cost issue by Four Square Solicitors is wholly unacceptable and falls below the standard to be expected of a reasonably competent firm of solicitors. It is difficult to avoid the conclusion that the person who prepared the cost schedule simply failed to read the Directions of 31 January 2022.

Notice of Decision

The decision of the First-tier Tribunal involved the making of errors on points of law such that the decision is set aside in its entirety. The appeal is remitted to the First-tier Tribunal for a fresh hearing on the merits on all issues by a judge other than Judge of the First-tier Tribunal Brannan.

Signed: Upper Tribunal Judge Gill Date: 31 March 2022

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**
3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**
5. **A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**
6. **The date when the decision is "sent' is that appearing on the covering letter or covering email**