IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No.: UI-2023-004161

First-tier Tribunal Nos:
HU/57730/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

15th March 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

AU (BANGLADESH)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Alexander Swain, Counsel instructed by Kalam Solicitors
For the Respondent: Ms Sandra McKenzie, Senior Home Office Presenting Officer
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Heard at Field House on 28 February 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to

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identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. This is my judgment on the question of how the decision on the human rights appeal of the appellant should be remade, the appellant having been partially successful in his error of law challenge to the adverse decision of the First-tier Tribunal Judge Simpson. The decision of Judge Simpson dismissing his appeal has been set aside as containing a material error of law, for the reasons given by me in my decision promulgated on 8 December 2023, following an error of law hearing in the Upper Tribunal on 25 October 2023. A copy of that decision is attached as Appendix A.

2. As set out in the error of law decision, Judge Simpson did not err in finding that the family life exception set out in section 117C (5) of the 2002 Act did not apply. However, he materially erred in law in failing to conduct a proper proportionality assessment in which he balanced the strength of the public interest against the strength of the claim under Article 8(1) ECHR.

3. Although not envisaged in my directions for the resumed hearing, the appellant's solicitors filed a supplementary bundle of evidence containing further witness statements from the appellant and the sponsor, and various documents.

4. In his supplementary skeleton argument dated 9 January 2024, Mr Karim submitted that, given the passage of time since the promulgation of Judge Simpson's decision in July 2023, there would be difficulties in conducting a real-world assessment as per *KO (Nigeria) & Others -v- SSHD [2018] UKSC 53* if the circumstances now were not taken into account. On that basis, he submitted that the supplementary bundle should be admitted under Rule 15(2A) as it was largely evidence that was not in existence at the FTT hearing, such as updated witness statements as to the current circumstances as well as up-to-date medical evidence.

The Resumed Hearing

5. At the outset of the resumed hearing, Ms McKenzie informed me that she had not received the supplementary skeleton argument or the supplementary bundle of documents.

6. As I had had the benefit of reviewing the supplementary bundle, I told the parties that I was minded to admit it in evidence, and to permit the appellant and the sponsor to be called as witnesses to be cross-examined on their supplementary witness statements, subject to two conditions. The first was that there should be no supplementary questions in chief, and the second was that the respondent was not required to cross-examine the

witnesses on matters which were settled by the preserved findings of fact made by the First-tier Tribunal.

7. Ms McKenzie replied that she had prepared some questions in cross-examination based upon the error of law bundle, and she asked for a short adjournment to consider the contents of the supplementary bundle and the supplementary skeleton argument.

8. After a short adjournment, the appellant gave his evidence through a Bengali Interpreter while his wife went outside. The Bengali Interpreter appeared remotely on screen, and so adjustments were made to enable the appellant to look at both the Interpreter and the Representatives while giving his evidence.

9. The appellant adopted as his evidence in chief his original witness statement that was placed before the First-tier Tribunal and his supplementary statement signed on 9 January 2024. In the supplementary statement, he apologised again for his past "*unintentional*" offence. His presence in the UK was of the utmost importance as, due to his wife's mental and physical health problems, she needed the continuous help which he could give.

10. In cross-examination, the appellant said that he supported his wife by taking the children to and from school, and by doing the household chores, such as cleaning and cooking.

11. In answer to questions for clarification purposes from me, the appellant said that he had informed his wife of his immigration status and false identity after they got married. They had not been together long before the marriage. When his wife went to Bangladesh with the children in the summer of 2022, she had gone to visit her family there. The man in the photographs of the visit was his wife's brother who lived in Bangladesh. She also had a younger brother who lived in the UK, outside London. He had a number of relatives in the UK, including his sister, his uncle and his auntie. He saw them from time to time.

12. In re-examination, he said that his relatives here could not help look after the children because they had their own children. His wife's brother could not help either, as he only visited them occasionally - every 5 or 6 months.

13. The sponsor was then called as a witness. Although she understood the Bengali Interpreter, she said that she would prefer to give her evidence in English. She adopted as her evidence in chief her original witness statement and her supplementary statement signed on 8 January 2024.

14. Due to a typing error, the word 'again' was missing from her original statement where she had said that they had lived together during the pandemic.

15. Since she had met her husband and they slowly began their relationship, her life and that of her son had gradually improved and she had stopped

regularly seeking help from other sources. She said that she was previously supported by a social worker, support worker, Health Visitor and by family and friends. They regularly visited her house from time to time to support her son. There was also a lady from Church who always delivered food once a week.

16. She had not committed suicide because of her husband's care and love. She was still mentally and physically ill. If her husband was not with her, then these nightmares would come again in her life, which was not good for her and her children. Sometimes she thought of killing herself, if her husband was not with her.

17. In cross-examination, she was asked why her husband had not mentioned helping her with her personal hygiene and medication. She answered that maybe he was nervous.

18. Ms McKenzie asked the sponsor about a letter from Dr Ali dated 27 December 2023. In the letter, Dr Ali said that he was writing the letter with the consent of the sponsor who currently suffered from Type 2 diabetes and mixed anxiety and depression "*stemming from previous abusive partner*." Her husband was her main supporting carer. He helped her with all aspects of caring for the children, as well as looking after the home which she struggled to do due to her mental illness. She felt that without him, she would struggle to cope - not only with looking after herself, but also in looking after her children, as she had become dependent on him on a day-to-day basis.

19. The sponsor agreed that she was the source of the information that the appellant was her main supporting carer. She agreed that he had not been independently assessed for this purpose. Mr McKenzie asked her why she needed to have a carer. She answered that her psychiatrist had made this assessment some 3 to 4 years ago.

20. In Bangladesh, she had her parents and four brothers. She thought that the appellant knew about her four brothers, but there were no communications between them.

21. She had not found out her husband's true identity until around the time he was arrested in around 2020 or 2021. She called his family members and she obtained his passport from his uncle showing his true name. Earlier, she knew that something was wrong, and for that reason she had not put her husband's name on their child's birth certificate.

22. The sponsor initially said that they had begun living together during lockdown in 2019 (sic). When she was asked how she had managed with the children between 2016 and 2019, she said that the appellant had been living with her for the vast majority of the time, and it was only for a few days at a time that she sent him off to stay with his uncle or his sister.

23. In answer to questions for clarification purposes from me, the sponsor said that she used to work as a carer, but she was currently working as a

security guard through an agency. She worked when she felt up to it. She had completed her studies as a Health and Social Care Worker. She had obtained a Level 5 qualification. She had been granted indefinite leave to remain in 2016 or 2017, when she was living in a refuge.

24. In re-examination, she said that her brother could not help with the children, as he was living in Harlow, Essex, and he had a health condition for which he had a carer. Her husband's family in the UK also could not help, as they lived in South London and they had their own commitments.

25. Mr Swain asked the sponsor how she would feel if her husband had to go back to Bangladesh, given her mental health. She answered that she would feel suicidal.

26. In her closing submissions on behalf of the respondent, Ms McKenzie submitted that the appeal should be dismissed as there were not very compelling circumstances over and above those described in Exceptions 1 and 2 (and the corresponding paras 399 and 399A of the Immigration Rules). Ms McKenzie invited me to make an adverse credibility finding in respect of the claim that the appellant acted as a carer for his wife and the claim that the appellant had habitually resided with the sponsor and the children from 2016 onwards.

27. In reply, Mr Swain submitted that there was no basis for an adverse credibility finding on any issue, He submitted that the evidence in the supplementary bundle showed that the sponsor was still suffering the effects of the domestic violence referenced in the social worker's email of 3 February 2016, and it was credibly established that there was a high risk of the sponsor killing herself in the event of her husband's removal. He submitted that due weight should be given to the children's British nationality, following *UT (*Sri Lanka) [2019] EWCA Civ 1045*,* at para [7], and he referred me to para [55] of *Kiarie and Byndloss* [2017] UKSC 42, in which Lord Wilson said as follows:

> "…every foreign criminal who appeals against a deportation order by reference to his human rights must negotiate a formidable hurdle before his appeal will succeed: see para 33 above. He needs to be in a position to assemble and present powerful evidence. I must not be taken to be prescriptive in suggesting that there are very compelling reasons which the tribunal must find before it allows an appeal are likely to relate in particular to some or all of the following matters:
>
> (a) the depth of the appellant's integration into UK society in terms of family, employment and otherwise;
>
> (b) the quality of his relationship with any child, partner or other family member in the UK; (c) the extent to which any relationship with family members might reasonably be sustained even after deportation, whether by them joining him abroad or otherwise;
>
> (d) the impact of his deportation on the need to safeguard and promote the welfare of any child in the UK;

(e) the likely strength of the obstacles to his integration into the society of the country of his nationality; and, surely in every case,

(f) any significant risk of his re-offending in the UK, judged, no doubt with difficulty, in the light of his criminal record set against the credibility of his probable assertions of remorse and reform."

28. Mr Swain submitted that the application of these factors to the present case compelled the conclusion that there were very compelling reasons as to why the proposed deportation of the appellant was disproportionate, and that therefore his appeal should be allowed.

Discussion and Findings

29. Under s117C(6) of the 2002 Act, deportation may be avoided if it can be proved that there are very compelling circumstances, over and above those described in the Exceptions 1 and 2. The corresponding provision in the Rules at para 398 for medium offenders (those who have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months) is that. if the family and private life exceptions described in paras 399 and 399A do not apply, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paras 399 and 399A.

30. At para [47] of *HA (Iraq),* Lord Hamblen said that the difference in approach called for under s117C(6) as opposed to s117C(5) was conveniently summarised by Underhill LJ at para [29] of his judgment as follows:

"(A) In the cases covered by the two Exceptions in sub-sections (4)-(5), which apply only to medium offenders, the public interest question is answered in favour of the foreign criminal, without the need for a full proportionality assessment. Parliament has pre-determined that in the circumstances they are specified the public interest in the deportation of medium offenders does *not* outweigh the Article 8 interests of the foreign criminal or his family: they are given, so to speak, a shortcut. The consideration of whether those exceptions apply is a self-contained exercise governed by their particular terms.

(B) In cases where the two Exceptions do not apply - that is, in the case of a serious offender or in the case of a medium offender who cannot satisfy their requirements - a full proportionality assessment is required, weighing the interference of the Article 8 rights of the potential deportee and his family against the public interest in his deportation. In conducting that assessment the decision-maker is required by section 117C(6) (and paragraph 398 of the Rules) to proceed on the basis that the public interest requires deportation unless there are very compelling circumstances over and above those described in Exceptions 1 and 2."

31. At para [50], Lord Hamblen cited with approval the analysis of Jackson LJ in *NA (Pakistan)* as to how Exceptions 1 and 2 interrelate with the very compelling circumstances test when applied to medium offenders. At para [32] of *NA (Pakistan)* Jackson LJ said:

> "Similarly, in the case of a medium offender, if all he could advance in support of his Article 8 claim was a 'near miss' case in which he fell short of bringing himself within either Exception 1 or Exception 2, it would not be possible to say that he had shown that there were 'very compelling circumstances, over and above those described in Exceptions 1 and 2'. He would need to have a far stronger case than that by reference to the interests protected by Article 8 to bring himself within that fall-back protection. But again, in principle, there may be cases in which such an offender can say that features of his case of the kind described in Exceptions 1 and 2 have such great force for Article 8 purposes that they do constitute such very compelling circumstances, whether taken by themselves or in conjunction with other factors relevant to Article 8 but not falling within the factors described in Exceptions 1 and 2. The decision-maker, but it the Secretary of State or the Tribunal, must look at all the matters relied upon collectively, in order to determine whether they are sufficiently compelling to outweigh the high public interest in deportation."

32. At para [51], Lord Hamblen said that, when considering whether there are very compelling circumstances over and above Exceptions 1 and 2, all the relevant circumstances of the case will be considered and weighed against the very strong public interest in deportation. As explained by Lord Reid in *Hesham Ali,* at paras [24]-[35], the relevant factors would include those identified by the European Court of Human Rights as being relevant to the Article 8 proportionality assessment.

33. Although this was not a line that was pursued by Mr Swain in his closing submissions, in the supplementary skeleton argument Mr Karim mounts a full-frontal assault on the preserved finding that Exception 2 (the family life exception) does not apply.

34. The evidence relied upon to sustain this assault is *prima facie* inadmissible for two reasons. The first is that to a significant extent the evidence in the supplementary bundle was available at the time of the hearing in the First-tier Tribunal, and no satisfactory reason has been given as to why it is only being deployed now. The second objection is that, insofar as the new evidence attempts to revise the evidence that was received by the First-tier Tribunal, it infringes the principle that the hearing in the First-tier Tribunal is not be treated as having been merely a dress rehearsal. The fact that the First-tier Tribunal erred in failing to carry out a proper proportionality assessment is not a legitimate springboard for an attempt to improve the case on the family life exception that was sustainably rejected by the First-tier Tribunal.

35. Nonetheless, out of caution and also in recognition of the fact that the Article 8 rights of the appellant and affected family members must be assessed at the date of the hearing, I have allowed the entirety of the evidence in the supplementary bundle to be introduced, and I approach it - and the oral evidence given before me - with an open mind.

36. For the reasons given below, I do not consider that the new evidence undermines the reliability of the findings of fact made by the First-tier

Tribunal on the appellant's private and family life claims that have not been successfully challenged as being vitiated by a material error of law.

37. One of the new items of evidence is an email sent on 23 February 2016 in which a social worker explained to a support worker why she did not feel it was safe for the sponsor and her son to return to Bristol. This was because this was a high-risk domestic violence situation and there was a direct risk of harm to the child, as the perpetrator had threatened to kill him. If she and the child returned to Bristol, it was likely that the perpetrator would be able to track her down. I infer from the surrounding evidence that was deployed in the First-tier Tribunal that the person making the threats was the sponsor's ex-partner KC.

38. Mr Swain relies on this email as being demonstrative of the cause of the appellant's ongoing mental health problems. In addition, the sponsor in her supplementary witness statement claims that the abuse which she suffered at the hands of her ex-partner is a continuing source of fear and suicidal ideation.

39. As I noted in my error of law decision, on 18 August 2016 the sponsor was diagnosed with PTSD. However, the subsequent medical evidence does not show that the sponsor continues to suffer from PTSD stemming from her previous abusive partner.

40. On 23 June 2021, Dr Oommen. a psychiatrist, wrote to the sponsor's GP following a referral for suspected bipolar disorder. Based on her telephone conversation with the sponsor, she diagnosed the sponsor as suffering from a borderline personality disorder and a moderate depressive disorder. The sponsor told Dr Oommen that at the age of 22 or 23 in Bangladesh she was taken to hospital after not eating, and after not talking for a few months. She was diagnosed with a bipolar disorder, and was treated with anti-depressants on and off. In the UK, she had been struggling with her low mood for a long time. She had received anti-depressant treatment on and off for a long time. In the UK, her first child was born from a relationship which lasted for one year. She lived in Bristol, and they separated. Now she had no contact with the guy, and her first child's father did not know her whereabouts. She was married to her daughter's father, Tajul (the appellant), who was supportive and helped her with cooking, cleaning and other chores at home. Tajul was unemployed and lived with her 'intermittently'. She was asked whether she had had harassment after breaking up with men after a short-term relationship, and she said 'no'.

41. The significance of the psychiatric report is that it shows that the appellant was not claiming in June 2021 that she continued to fear her ex-partner or that she was still traumatised by the abuse which she had experienced from him. It also constitutes a contemporaneous record of the fact that in June 2021 the appellant was not part of the family unit on a continuous basis.

42. It is apparent from the Mental Health Assessment dated 20 January 2022 that the sponsor told the psychologist that at times she ruminated on her past interpersonal trauma, but she did not claim to have an ongoing fear of her ex-partner and she denied having any suicidal ideation. She also said that her level of social engagement was limited as she was more occupied in being a stay-at-home mother and spending most of her time maintaining the household.

43. The medical evidence which has been generated since the hearing in the First-tier Tribunal in July 2023 does not reveal a material change of circumstances.

44. The sponsor was given a PHQ-9 assessment on 5 October 2023. According to the GP record, her scores in all categories were very low, and she scored '0' for thoughts of suicide or self-harm.

45. On 27 December 2023, the sponsor went to see her GP to request a supporting letter for her husband's immigration appeal. She told the doctor that she needed her husband for her mental health well-being. She told him that she was currently suffering from stress-related problems and low mood, but she had no active suicidal thoughts.

46. The letter from Dr Ali dated 27 December 2023 is the product of that request. As was established in cross-examination, the sponsor was the source of the information for the assertion that the appellant was her main supporting carer. No report has been disclosed that shows that the sponsor's mental health disorder has been diagnosed as stemming from a previous abusive partner. This information appears to have been provided to Dr Ali by the sponsor. It is clearly not garnered from the psychiatric report to which the sponsor made reference in her oral evidence.

47. As to the subjective evidence, it is not the case that the First-tier Tribunal found the sponsor to be an entirely reliable witness of truth. Although he made no adverse credibility finding against the sponsor, the Judge rejected her claim that the appellant was her "main carer" and he rejected her portrayal of herself in her witness statement as a person who would be unable to cope in the appellant's absence due to her mental health issues and past traumatic history. Judge Simpson found that the sponsor was an impressive individual who was managing a family, part-time work, and full-time study. While he accepted that there were times when she struggled, he found that the objective evidence did not support the notion that she was unable to care for herself or her children without the appellant.

48. The sponsor has sought to undermine that finding by bringing forward evidence to the effect that since their marriage in October 2016 the appellant has always been around to provide her with the support she requires. To that end, she has (among other things) sought to correct the witness statement which she adopted before the First-tier Tribunal. However, her revised version of events is not credible. Not only is the sponsor's evidence on cohabitation contradicted by the information which

she gave to her psychiatrist in 2021, but it is also contradicted by the fact that the appellant did not even mention the existence of the marital relationship when making further representations in December 2016, and the fact that he represented through his former solicitors that he was not part of the sponsor’s functioning family unit when he applied for leave to remain to enjoy access rights to their daughter in February 2018.

49. In conclusion, I am not persuaded to depart from the finding of the First-tier Tribunal that the impact of the appellant’s removal on the sponsor and the children will not be unduly harsh.

50. Turning to the proportionality assessment, I begin with the factors on the Article 8(1) side of the equation that were identified by Lord Wilson in *Kiarie and Byndloss.*

51. I accept that the quality of the appellant’s relationship with his partner and children in the UK is a strong factor in the appellant’s favour. While the best interests of British national children are a primary consideration in the proportionality assessment, I do not find that the children’s welfare or well-being would be imperilled by the appellant’s removal.

52. As to factor (c), Mr Swain invited me to find that there was no realistic prospect of family life being enjoyed elsewhere. I do not consider this to be the case. Not only would it be a reasonable option for the sponsor to visit Bangladesh with the children during the school holidays, it would not be unduly harsh for the sponsor to live in Bangladesh because of compelling circumstances over and above those described in paragraph EX.2 of Appendix FM. The sponsor was born and brought up in Bangladesh, and she retains a strong connection to that country, where she has a supportive family. The sponsor’s relationship with the appellant was not formed at a time when the appellant was in the UK lawfully and his immigration status was not precarious. Moreover, although the sponsor was not aware of the appellant’s true identity when they entered into an Islamic marriage, it is not suggested that she obtained a false assurance from him prior to marriage that he had a secure immigration status. In addition, as is noted in my error of law decision at para [13], the sponsor said in her first witness statement that she had not named the appellant on their daughter’s birth certificate as she did not want to use his false name. It follows that, from the time of their daughter’s birth at the latest, the sponsor developed family life with the appellant in the full knowledge that he was operating under a false identity.

53. As for the children, while I accept that their best interests lie overall in their remaining in the UK where they can enjoy to the full the rights and privileges attaching to their British nationality, I do not consider it would be wholly inimical to the children’s best interests to live in Bangladesh with both their parents if their mother chose that option. There would be compensatory advantages for them, the principal of which would be living in the same household as both their parents. I recognise that the respondent accepted that the children should not be expected to go to

Bangladesh, and that such an outcome would be unduly harsh, but this was in the context of the respondent not accepting that the appellant had a genuine and subsisting relationship with them, or with their mother.

54. As to factor (a), the only positive integrative factor that Mr Swain was able to point to was the presence of the appellant's family members in the UK. But the fact that the appellant has associated with family members in the UK is not indicative of the appellant having become deeply integrated into UK society. I consider that the appellant has largely operated within a Bangladeshi diaspora, and that there is no reliable evidence of him making a positive contribution to UK society.

55. As to factor (e), I consider that there is no reason to depart from the Judge's finding of fact that the appellant has family in Bangladesh to whom he can turn for support.

56. In the supplementary skeleton argument, Mr Karim raises an additional consideration which is that the appellant is suffering from depression. Mr Karim cites the CPIN on medical treatment and healthcare in Bangladesh, version 2.0, July 2022, for the proposition that government facilities for treating persons with mental disabilities are inadequate.

57. I accept that the new evidence shows that, following the hearing in the First-tier Tribunal, the appellant complained of depression to his GP, and that he was prescribed medication for his depression. But the disclosed medical records relating to the appellant do not show that he is suffering from severe depression, and there is no objective evidence to show that he cannot obtain adequate medical treatment for his depression in Bangladesh.

58. It is not established on the balance of probabilities that on return to Bangladesh the appellant will not be enough of an insider in terms of understanding how life in the society is carried on, and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society, and to build up within a reasonable time a variety of human relationships to give substance to his private or family life.

59. On the public interest side of the equation, Mr Swain relies on the fact that there is a zero risk of the appellant re-offending, and Mr Karim reiterates the submission that he made in his skeleton argument for the First-tier Tribunal, which is that the appellant is reformed and remorseful; his offence is not of the most serious category; he is unlikely to offend again; and his offences have not had a serious impact upon society.

60. I accept that the appellant has completed his probation period without committing any further offences, and that there is a zero risk of him re-offending again in the same manner as before. Having been caught and convicted for using someone else's identity for an immigration advantage, it is not a realistic possibility that the appellant could offend in the same way again, even if he was minded to do so. Similarly, as he was caught

red-handed, it was not a realistic option for the appellant to do anything else other than plead guilty to the charge. I attach little weight to the appellant's expression of remorse, as he does not take personal responsibility for his offending. He falsely characterises his offending as being unintentional, when clearly it was a calculated and deliberate act of deception.

61. While the level of the prison sentence that he received places the appellant at the bottom end of the category of medium offenders, it was nonetheless a crime which has a serious impact upon society. In her sentencing remarks, the Judge said that people in the appellant's position must understand that the immigration system is not to be interfered with by lies and deception.

62. Although the public interest in eliminating the risk of re-offending is not engaged, the other two facets of the public interest are strongly engaged, namely deterrence and the maintenance of public confidence.

63. A further relevant consideration is that the appellant was only convicted in respect of his use of the TB identity. Prior to his misuse of that identity, the appellant already had a bad immigration history of using other aliases. In *HA (Iraq)* at [33], Lord Reid said:

> "…. It is also relevant to consider, in the context of liability to deportation because of criminal behaviour, whether the offender has a bad immigration history, or whether there are major impediments to continuing family life in his country of origin, or whether family life is established in the knowledge that, because of the immigration status of one of the persons involved, its continuation in the UK was uncertain. If that were not so, the perverse consequence would follow that these matters would be liable to carry greater weight if a non-offender was sought to be removed on account of his irregular immigration status than if an offender with the same immigration status was sought to be removed on account of serious criminal conduct."

64. Not only did the appellant make applications under the false identities of HA and AH, but he also pursued an appeal in one of those false identities. The appellant embarked on a course of conduct between 12 September 2008 (the date of his first application in a false identity) and 23 February 2018 (the date of his last application in a false identity) whereby he made repeated attempts to deceive the Home Office and the Tribunal with his assertions of being someone he was not, which took up valuable time that could have been spent on genuine asylum seekers and other immigrants who come to the UK through legal channels, or who are in genuine need of assistance from the UK.

65. Having considered the evidence in the round, I find that the appellant does not have a sufficiently strong claim under Article 8(1) so as to outweigh the significant public interest in deporting him. The decision appealed against is proportionate to the permissible aim of the prevention of disorder and crime, and the maintenance of effective immigration controls.

Notice of Decision

The decision of the First-tier Tribunal contained a material error of law, and according the decision is set aside and the following decision is substituted:

The appellant's appeal is dismissed.

Anonymity

The First-tier Tribunal made an anonymity order in favour of the appellant, and I consider that it is appropriate that the appellant continues to be protected by anonymity for the purposes of these proceedings in the Upper Tribunal.

Andrew Monson
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
11 March 2024