IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001451, UI-2024-001452, UI-2024-002197, UI-2024-002198

First-tier Tribunal No's:
HU/53106/2023, LH/05666/2023
HU/53107/2023, LH/05667/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 24 June 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE HARIA

Between

GAGANDEEP SINGH CHAHAL (1st appellant)
RAHEELA HAYAT (2nd appellant)
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Heybroek of Counsel instructed by Kamran & Co Solicitors
For the Respondent: Ms Nwachuku Senior Home Office Presenting Officer

Heard at Field House on 6 June 2024

DECISION AND REASONS

Anonymity

1. No anonymity direction was made by the First-tier Tribunal. There was no application before me for such a direction. Having considered the facts of the appeals including the circumstances of the appellants, I see no reason for making a such direction.

Background

2. The first appellant is a citizen of India and the second is a citizen of Pakistan. The appellants appealed against the respondent's decisions to refuse their applications for leave to remain in the UK on the basis of their family life with

each other and their private life. First-tier Tribunal Judge Taylor ("the Judge") dismissed their linked appeals in a decision dated 2 February 2024.

3. The appellants claimed that they would be unable to return to their respective countries
because of the difficulties they would face as a mixed faith couple. The Judge found that they could not meet the immigration rules on the basis of family or private life and did not accept that their removal from the UK would be disproportionate.

The Judge's decision

4. I provide a brief summary here for the purpose of the Judge's decision. The parties are of course aware of the full decision.

5. The Judge finds that the appellants cannot meet the requirements of the Immigration Rules for a grant of leave either on the basis of their relationship or on the basis of their private life: [15]-[17]. There is no challenge to this aspect of the Judge's decision.

6. The Judge notes the appellants poor immigration history including the various unsuccessful applications for leave made by each appellant including claims for asylum: [18].

7. At: [19] the Judge proceeds to note the appellants claim to have entered into a relationship in 2018 in the full knowledge that neither of them had leave to remain in the UK and had no reasonable expectation of being granted leave. The Judge refers to the provisions of s.117B(4) and (5) of the Nationality Immigration and Asylum Act 2002 which respectively provide that little weight is to be given to a relationship established by a person with a qualifying partner at a time when the person is in the UK unlawfully and little weight should be given to a private life which is established while a person's immigration status is precarious. The Judge notes the appellants have had no immigration status in the UK for a number of years, neither appellant is a qualifying partner and they were both in the UK unlawfully when their relationship was formed. Accordingly, the Judge applying s.117B gives very little weight to their relationship. The Judge also proceeds to consider the other factors under s.117B such as the appellants ability to speak English (s.117B(2)) and their financial independence (s.117B(3)). The Judge finds the appellants were neither financially independent nor do they speak English. Put shortly the Judge finds the appellants presence in the UK was not in the public interest.

8. The second appellant had claimed a fear of persecution as a result of her mixed faith marriage and because she refused an arranged marriage. A previous Tribunal had found the second appellant lacked credibility and rejected her claim. The Judge at [20] applies the Devaseelan principles and finds no grounds to depart from the findings of the previous Tribunal.

9. At [21] the Judge considers the Country Expert Report which address the problems faced by women in Pakistan including those involved in mixed marriage and finds that the report provides a "general background". The Judge notes the appellants relationship has not been accepted and states that other than a Sikh marriage certificate they have provided little evidence of their relationship. The Judge has regard to the CPIN on religious minorities in India which he notes indicates some three percent of marriages in 2019 were mixed

Muslim and Hindu marriages. The Judge concludes that he is not satisfied that either appellant has demonstrated they meet the requirements of paragraph 276ADE(1)(vi) that they would face very significant obstacle on return.

10. In relation to the second appellant's medical conditions the Judge at [22] notes the test is a high one as set out in AM(Zimbabwe) [2020] UKSC 17. The Judge refers to Dr Galapatthie's report but notes that the report relies on a ninety minute video interview through an interpreter. The Judge notes the warning given by the Upper Tribunal in HA (Sri Lanka) [2022] UKUT 111 against reliance on a psychiatric report as opposed to the long term opinions of treating doctors. The Judge gives greater weight to the hospital letter of 15 August 2023 and the evidence from the GP. The Judge refers to Nv SSHD [2205] UKHL 31. The Judge finds the second appellant's case falls short of the test required to be granted leave on the basis of her mental health.

The Grounds of Appeal and Grant of Permission

11. The appellants applied for permission to appeal the Judge's decision and relied on two grounds: firstly, that the Judge had erred in his approach to the psychiatric report of Dr Galappathie in relation to the second appellant's mental health concerns; and secondly, that the Judge had failed to take into account the findings of the country expert in regard to the appellants' difficulties in living together in Pakistan. Permission was granted by First-tier Tribunal Judge Connal in a decision dated 9 April 2024, limited to the first ground only.

12. The appellants made a renewed application for permission to appeal to the Upper Tribunal, on the second ground and on a further four grounds. Upper Tribunal Judge Kebede granted permission on all grounds in particular on grounds 1 and 4. Upper Tribunal Judge Kebede stated as follows:

> "There is some arguable merit in the renewed grounds, in particular grounds 1 and 4. With regard to ground 1, it is arguable that the judge did not properly engage with the expert report in regard to the difficulties the appellants would face as a mixed faith couple in Pakistan; and as for ground 4, there is some arguable merit in the assertion that the judge raised for the first time the fact that the claimed relationship was not accepted. I find less arguable merit in the other grounds but do not exclude them.

13. The initial grounds were settled by the appellants solicitors and the renewed grounds were settled by Mr Youssefian. The grounds seeking permission are lengthy, but in summary they assert the Judge erred as follows:

> Ground 1**:** at [22] in the assessment of the expert psychiatric report produced by Dr Galapatthie a Consultant Forensic Psychiatrist;
>
> Ground 2: at [21] in failing to properly engage with the country expert report of Asad Ali Khan which addresses the appellants claim that they would not be able to live together in Pakistan and mischaracterising it as providing only "general background" [21];
>
> Ground 3: at [19] in the approach to the proportionality assessment under s.117B of the Nationality Immigration and Asylum Act 2002. Firstly, in finding the appellants were unable to speak English because they had chosen to use an interpreter at the hearing. Secondly, in concluding that

the appellants were not financially independent because they were dependent on friends and family contrary to the authority in Rhuppiah v Secretary of State for the Home Department [2018] UKSC 58.

Ground 4: at [21] by incorrectly noting that the "claimed relationship between the parties has not been accepted" when this was not a point which had been raised by the respondent in the refusal decisions or the respondent's review;

Ground 5**:** at [22] in relying on the case of N v SSHD [2005] UKHL 31 when assessing the second appellant's mental health issues;

Ground 6: in failing to consider the appellants case outside the Immigration Rules at all and not undertaking a proportionality assessment. Also in failing to consider the factors relied upon by the appellants in the round and cumulatively when considering whether the appellants removal was disproportionate.

Rule 24 Response

14. There was no Rule 24 response from the respondent.

Upper Tribunal hearing

15. The appeal came before me for an oral hearing on 6 June 2024. I had before me the composite electronic bundle.

16. The hearing was attended by both appellants and the representatives for each party as detailed above.

17. At the start of the hearing, Ms Heybroek who appeared for the appellants sought permission to submit the Appeal Skeleton Argument ("ASA") which was before the First-tier Tribunal but which had not been included in the composite electronic bundle. Ms Nwachuku raised no objection. Ms Nwachuku did not require more time to consider the ASA as it was a concise document. I did not consider the admission in evidence of the ASA at this late stage prejudiced the respondent in any way and so I consented to it being admitted.

18. Ms Heybroek stated that the appellants relied on all 6 grounds as pleaded in the initial grounds for permission to appeal and the renewed grounds for permission to appeal.

19. I sought clarification on the renewed grounds set out at paragraph "7" which Ms Heybroek said was a typographical error and should be paragraph "17". It is asserted that the Judge had failed to consider whether the appellants removal was disproportionate in the light of various accepted factors including the difficulties the appellants would face upon return due to their interfaith marriage. Ms Heybroek having checked the documents confirmed that this was an error as the difficulties the appellants would face upon return due to their interfaith marriage had not been accepted but the other factors relied upon such as the length of residence and the second appellant's mental health.

20. Ms Nwachuku confirmed that although there was no Rule 24 response the respondent opposed the appeal. Ms Nwachuku elaborated that the respondent accepts the Judge erred as pleaded in grounds 3, 4 and 5 but she submitted these were not material errors of law.

21. Both representatives made submissions and my conclusions below reflect those arguments and submissions where necessary.

22. As to disposal of the appeal in the event that I find there to be an error of law, the representatives were invited to give their views and they were both in agreement that the appeal should be remitted to the First-tier Tribunal.

23. At the conclusion of the hearing I reserved my decision.

Decision on error of law

24. Before proceeding to consider the grounds of appeal in detail, I remind myself of the many authorities on the approach an appellate court or tribunal should take when considering findings of fact reached by a first instance judge.

25. I appreciate that judicial restraint should be exercised when examining the reasons given by the First-tier Tribunal Judge for his decision and that I should not assume too readily that the Judge misdirected himself just because not every step in his reasoning is fully set out. This is the guidance given by the Court of Appeal at paragraph [77] of KM v SSHD [2021] EWCA Civ 693.

26. A summary of the well settled principles can be found in Volpi & Anor v Volpi [2022] EWCA Civ 464 at [2] where Lewison LJ stated:

> “i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
>
> ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
>
> iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
>
> iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
>
> v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
>
> vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.”

27. What matters is whether the Judge has demonstrably applied the correct approach and it should be assumed that a Judge in a specialist jurisdiction such as this understands the law unless the contrary is shown.

28. It is appropriate for me to read the Judge's decision sensibly and holistically.

Ground 1:

29. Ms Heybroek submitted the Judge's finding that the Dr Galapatthie's report was based on the unchallenged acceptance of the second appellant's account is not factually correct as Dr Galapatthie reached his conclusions having taken into account the relevant caselaw including HA(Sri Lanka) 2022 UKUT 111 (paragraph 70) and all the medical evidence including the previous psychiatric evidence and CBT report.

30. Ms Heybroek pointed out that Dr Galapatthie refers at paragraph 86 to the report of Dr Kashmiri and Dr Galapatthie considers whether the appellant is feigning or exaggerating her symptoms (paragraphs 91 to 92), he refers to the Istanbul Protocol and considers her health records and the Cognitive Behavioural Psychotherapy report by Zabair Hussain.

31. Ms Heybroek submitted that the Judge failed to take into account the submission in the ASA (paragraph 16) that the ratio in Y(Sri Lanka) v SSHD [2009] EWCA Civ 362 at [61]-[63] applies in this case given the increase in the risk of suicidal ideation were the second appellant to be returned. Ms Heybroek submitted that the Judge had failed to properly assess and take into account Dr Galapatthie's report in concluding there would not be any very significant obstacles to integration on return for the second appellant and so the error is material to the outcome.

32. Ms Nwachuku in response suggested that the appellants challenge is in essence about the weight given by the Judge to Dr Galapatthie's report. She submitted that a tribunal is better placed to make an assessment of the weight to be given to particular evidence and to reach findings taking a holistic view of all the evidence including the appellants credibility. Ms Nwachuku referred to the findings at [22] where the Judge having assessed both Dr Galapatthie's report and the report of the CBT therapist attaches greater weight to the hospital letter dated 15 August 2023 which makes no mention of PTSD and the evidence from the GP who noted that the second appellant had improved since the last review to the extent that her medication was reduced.

33. Ms Nwachuku submitted that taking a holistic view of the evidence it was open to the Judge make the findings that he did on Dr Galapatthie's report and there is no error of law.

34. Ms Heybroek clarified that the issue was not whether the Judge was entitled to give more weight to the hospital letter and the GP evidence but that the Judge rejected Dr Galapatthie's report on the basis that Dr Galapatthie had relied on unchallenged evidence from the second appellant. . I am grateful to Ms Heybroek for the clarification of ground one.

35. I have looked with great care at the decision of the Judge. An error of law based on findings of fact is one which the Upper Tribunal should be slow to make. It is clear the Judge considered all the medical evidence including Dr Galapatthie's report. The thrust of the challenge is that the Judge erred in the assessment of

Dr Galapatthie's report. The grounds assert that the Judge erred in finding that Dr Galapatthie's findings were undermined as he had based his report on the unchallenged acceptance of the second appellants account. The grounds quote the following extract from the Judge's decision:

> "The unchallenged acceptance of the second appellant's account, undermines
> the findings of the psychiatric report, which finds that she has PTSD without seeing the patient. I attach greater weight to the hospital letter, dated 15th August 2023, which gives diagnoses of anxiety and depression with no mention of PTSD. The hospital had been reviewing the patient for some time, together with the GP, and found that the appellant had improved since the last review, to the extent that her medication was reduced from 100mg of sertraline to 50mg. Most of the indicators on review were normal, apart from low mood, poor memory and concentration."

36. However, the extract from the decision quoted in the grounds and set out above should be read in the context of the preceding sentences in which the Judge states:

> "There is a supporting report from a CBT therapist, but both reports rely on the unchallenged evidence of the appellant concerning her past background and claimed trauma. The second appellant's claims of domestic trauma have been found not to be credible by the previous tribunal and this tribunal, and(sic) well as not been accepted by the respondent.

37. It is clear when read in context "…the unchallenged evidence…" referred to by the Judge relates to the second appellant's account of her past background including the trauma; an account which had been found to lack credibility by a previous tribunal. The second appellant recounted to Dr Galapatthie details about her past including the history of trauma. Dr Galapatthie records this information in his report (paragraphs 20-30). It would appear that Dr Galapatthie was unaware the second appellant's account had been found by a tribunal to lack credibility. The decision of the previous tribunal is not listed in the documents read by Dr Galapatthie (paragraph 10) and the decision of the previous tribunal is not mentioned in the report. It is therefore not surprising that Dr Galapatthie albeit a little sceptical about the account given by the second appellant of her past accepted it. The Judge finds it is this acceptance of the second appellant's account that finds undermines Dr Galapatthie's report.

38. The report makes clear that Dr Galapatthie did consider whether the second appellant was feigning or exaggerating her symptoms and the Judge makes no criticism of the report in this respect. Although Dr Galapatthie (at paragraph 16) does state he has approached the second appellant's case with an appropriate degree of scepticism as he is aware that she has an incentive to self-present in a way that portrays her to be unwell as she wishes to have reasons to remain in the UK and avoid being returned to Pakistan, Dr Galapatthie was unaware that a tribunal had found the second appellant's account lacked credibility.

39. I appreciate the previous tribunal reached its finding as to the credibility of the second appellant's account after a hearing in the absence of the second appellant. I also note the reasons given for her failure to attend that hearing,

however the findings made by that tribunal remain unchallenged. It is unfortunate that the decision of the previous tribunal was not disclosed to Dr Galapatthie.

40. I find the Judge undertook an adequate assessment of all the medical evidence including Dr Galapatthie's report and was entitled to reach the findings that he did on the evidence. This ground discloses no error of law.

Ground 2:

41. Ms Heybroek relied on the grounds as pleaded and stated that whilst it is acknowledged the Judge did consider the country expert report, it is asserted that the Judge failed to properly engage with the report in several respects. Firstly, by mischaracterising and dismissing the report as providing only "general background", when the report specifically considers the circumstances of the appellants as is readily apparent from the index and the contents of the report.

42. Secondly, contrary to the authority of Mibanga v SSHD [2005] EWCA Civ 367, the Judge rejected the expert report which specifically considered the appellants circumstances and concluded that they would face difficulties due to their inter faith marriage, because the Judge had found the second appellant would not face very significant obstacles to integration on return as a result of her relationship with a non- Muslim. Ms Heybroek elaborated on this point and submitted that the Judge took the wrong approach as he applied Devaseelan to the findings made in a previous decision and made adverse credibility findings against the second appellant and based on those findings the Judge rejected the country expert's report.

43. Thirdly, the Judge failed to properly consider the effect of the appellants interfaith marriage on their ability to return to either India or Pakistan and continue their family life there.

44. Ms Heybroek made a further point that as the second appellant's mental health issues had been accepted the Judge erred in failing to treat her as a vulnerable witness and by failing to apply the relevant guidance in the practice directions and caselaw to the determination of his appeal.

45. Ms Nwachuku submitted that the Judge's assessment of Dr Khan's report has to be seen in the context of the adverse credibility findings made at [20] and [21]. Ms Nwachuku stated the Judge at [20] finds no grounds to depart from the findings of the previous tribunal and is not satisfied that the second appellant suffered persecution before she came to the UK or as a result of a relationship with a Hindu while she was in the UK. Ms Nwachuku pointed out the Judge at [21] records that he has not accepted the second appellant's evidence that she would face very significant obstacles on return as a result of a relationship with a non- Muslim.

46. In response to the third limb of this ground, Ms Nwachuku pointed out that the Judge at [21] having considered the CPIN on religious minorities in India finds that he is not satisfied that there would be very significant obstacles to integration. Ms Nwachuku submitted that the issue of an increased risk of suicidal ideation in line with the ratio in Y v SSHD would not bite as the respondent's position has always been that the appellants could return to either India or Pakistan, the country that they returned to was entirely their choice.

Referring to the evidence Ms Nwachuku submitted there was no evidence to suggest that a Pakistani national married to an Indian national would not be able to get a visa to go to India. Ms Nwachuku referred to the second appellant's evidence as recorded by the Judge at [10] which notes that she stated in evidence that she had not thought of going to India. Ms Nwachuku pointed out that this was not true as in the second appellant in her application form give the following response to the question on the form:

> Question: If you were required to leave the UK, what country would you go to?
> Answer : India.

47. Ms Nwachuku also referred to the first appellant's oral evidence as recorded by the Judge at [12] which states that he had not applied for a visa for Pakistan and the second appellant had not applied for a visa to India, whereas in the first appellant his application form he gave the following response to the question on the form:

> Question: Please explain why you and your partner cannot live together outside the UK.
> Answer: I will not be able to live with my partner outside the UK. My partner will not be able to get a visa to live with me in the India it my application is refused.

48. The third ground raises a number of interrelated issues. I acknowledge that the Judge failed to apply the Joint Presidential Guidance Note in considering the second appellant's claim and did not state, at the outset, whether he was treating the appellant as a vulnerable witness. However, I also note that this is not specifically raised in the ASA.

49. I would also make clear that if a Judge decides to treat a person as vulnerable that does not mean that any adverse credibility finding in respect of the person is to be regarded as inherently problematic and open to challenge on appeal.

50. The third ground essentially raises an error in the manner identified by the Court of Appeal in Mibanga [2005] EWCA Civ 367, in particular at paragraph 24 of the judgment of Wilson J who said:

> "It seems to me to be axiomatic that a fact-finder must not reach his or her conclusion before surveying all the evidence relevant thereto. Just as, if I may take a banal if alliterative example, one cannot make a cake with only one ingredient, so also frequently one cannot make a case, in the sense of establishing its truth, otherwise than by combination of a number of pieces of evidence".

51. The country expert had been asked specific questions regarding the appellants circumstances which he addressed in his report. I find the Judge failed to properly assess the country expert report and as a consequence mischaracterised and dismissed the report as providing only "general background" without any scrutiny of certain aspects of the country expert report as he had already been rejected the second appellants account. I keep in mind the clarification given in HH (medical evidence; effect of Mibanga) Ethiopia [2005] UKAIT 00164, that the Court of Appeal in Mibanga did not lay down a rule as to the order in which the Judge should approach the evidence. I find that the

Judge erred not in the order in which he assessed the evidence but instead because he failed to treat the country expert report as part of the overall evidence to be considered "in the round" before coming to any conclusion as to the second appellant's credibility. The Judge appraised the country expert report separately and only after having rejected the second appellant's account having applied the Devaseelan principles and finding no basis on which to depart from the findings of the previous decision that the second appellant's account lacked credibility. The Judge does not give cogent reasons for rejecting the potential the country expert report. I find this to be a material error of law.

Ground 3

52. The respondent rightly conceded that the Judge erred at [19] in his considerations under s.117B, firstly, concluding the appellants are not able to speak English because they used an interpreter to assist them at the hearing and secondly, in concluding that the appellants are not financially independent as they are dependent on their friends and family contrary to the guidance in Rhuppiah v Secretary of State for the Home Department [2018] UKSC 58. Both appellants had entered the UK as students and there was no suggestion that they lacked the ability to speak English. It is perfectly understandable that an appellant or witness for whom English is a second language would use an interpreter at formal court proceedings. The guidance in Rhuppiah is financial independence in the context of s.117B means an absence of financial dependence on the state.

53. Although the respondent correctly conceded that the Judge erred in his findings, these are neutral factors in the balancing and proportionality exercise and as such these errors are not material to the outcome.

Ground 4

54. The respondent appropriately conceded that the Judge at [21] raised an issue which had not bee raised by the respondent in either refusal decision or the respondent's review as to the genuineness of the relationship between the appellants.

55. I find this error was bound to affect and infect the other findings made by the Judge and is material to the outcome.

Ground 5

56. The respondent conceded that the Judge had erred at [22] because he relied on the case of N v SSHD [2005] UKHL 31 in assessing the second appellant's mental health but submitted that the error was not material.

57. It is as the grounds submit trite that the test has been modified by Paposhvili v Belgium [2017] Imm AR 867, as held in AM (Zimbabwe) v Secretary of State for the Home Department [2020] UKSC 17. The Judge was clearly aware of the correct test as at the beginning of the paragraph he states:

> "The test for such a claim is a high one, as set out in the case of AM Zimbabwe 2020 UKSC 17, which provides that it is for the appellant to show that she would face a real risk on return on account of the absence or lack of access to treatment, and there would be a rapid and irreversible decline in her health resulting in intense suffering."

58. A full reading of the decision shows and in particular the sentence at paragraph 22 of the decision in which reference is made to the case of N, that contrary to what is asserted, the reference to N was not in relation to the test to be applied in article 3 cases but instead in support of the proposition that:

> "…article 3 does not place an obligation on a contracting state to alleviate disparities of provision in different countries, through the provision of free and unlimited healthcare to all aliens without a right to stay."

59. Accordingly, I find the error asserted under ground 5 is not made out.

Ground 6

60. This ground asserts that the Judge failed to consider all factors cumulatively and conduct a global appraisal of the evidence and findings. The grounds argue that the Judge appears to have failed to consider the appellants case "…outside of the Rules at all and a proportionality assessment is wholly invisible.".

61. The criticism is not entirely accurate as the Judge does address the public interest considerations under s.117B at [19]. I have already considered and made findings above as to the Judge's consideration of some of these factors. The factors specified under s.117B do not provide an exhaustive list. It was incumbent on the Judge in undertaking an Article 8 proportionality and balancing exercise to draw together all the significant factors such as the appellants accepted length of residence in the UK and assess their cumulative impact. As stated in the grounds the Judge fell into the same error as the Upper Tribunal in Lal v SSHD [2019] EWCA Civ 1925 which held:

> "45. It seems to us that, at this stage of his analysis, Upper Tribunal judge went
> wrong in his approach by considering the matters relied on separately from each other without also assessing their cumulative impact. What the judge ought to have done was to identify all the significant difficulties which Mr Wilmshurst would face if required to move to India and to ask whether, taken together, they would entail very serious hardship for him."

62. I am satisfied this ground is made out. The Judge failed to draw together all the factors and consider the cumulative impact of the factors but dismissed the appeal considering each factor in isolation.

63. Overall I have found the Judge made material errors of law such that his decision cannot stand and must be set aside.

64. I have carefully considered whether this appeal should be retained in the Upper Tribunal or remitted to the First-tier Tribunal to be remade. The representatives were both of the opinion that this was an appeal which should be remitted to the First-tier Tribunal.

65. I have taken into account the case of AEB v Secretary of State for the Home Department [2022] EWCA Civ 1512, where the Court of Appeal emphasised the importance of remitting a case where a party had been deprived of a fair hearing, the logic being that even if little further fact-finding is required, a party is still entitled to have a fair hearing before the First-tier Tribunal and then enjoy

a right of appeal to the Upper Tribunal if need be, rather than being required to go straight to the Court of Appeal.

66. I have also taken into account the guidance in Begum [2023] UKUT 46 (IAC). At headnote (1) and (2) it states:

> "(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.
>
> (2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal."

67. The appropriate course, given the nature of the errors, is for the matter to be decided afresh and, as both parties agreed, for the case to be remitted to the First-tier Tribunal at Taylor House for a de novo hearing before another judge aside from Judge Taylor and with no preserved findings of fact.

Notice of Decision

68. The decision of the First-tier Tribunal involves the making of a material error of law and is set aside.

69. The appeal is remitted to the First-tier Tribunal at Taylor House to be dealt with afresh pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge other than Judge Taylor.

N Haria

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 June 2024