



IAC-HW-AM-VI

**Upper Tribunal**

**(Immigration and Asylum Chamber)**

Appeal Numbers IA/06260/2013; IA/16951/2013  
IA/22380/2012; IA/22381/2012  
IA/22382/2012; IA/22829/2012  
IA/22832/2012; IA/22835/2012

**THE IMMIGRATION ACTS**

Heard at Field House  
On 17 June 2015 & 14 December 2015

Decision & Reasons Promulgated  
On 5 February 2016

Before

UPPER TRIBUNAL JUDGE RINTOUL  
UPPER TRIBUNAL JUDGE FRANCES

Between

MUHAMMAD RAMEEZ ALI  
VAMISHI ADIYALA  
SULTAN AHAMED KHAN  
MAHMUDA TAHER SUBORNA  
SA  
NAZIA AMJAD  
MUHAMMAD PARVEZ  
AP

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Mr Vaughan (17/06/15 only) and Ms Jones (14/12/15) only),  
instructed by Farid Javani Taylor, solicitors

For the Respondent: Mr S Walker, Presenting Officer (17/06/15 only)  
Ms E Savage, Presenting Officer (14/12/15 only)

**DECISION AND REASONS**

1. These appeals have been linked and heard together as they all arise from similar facts and were determined in the First-tier Tribunal by the same panel, Designated Judge Campbell and First-tier Tribunal Judge Bird. Four of the appellants (the "Principal Appellants") appeal against decisions of the First-tier Tribunal dismissing their appeals against the refusal of leave to remain as Tier 1 (Post-Study Work) Migrants under the points-based system and the decisions to remove them from the UK under Section 47 of the Immigration, Asylum and Nationality Act 2006. The remaining four Appellants are dependent relatives.

**Background to the appeals**

2. The Principal Appellants are just some of a cohort of individuals who applied to the respondent for a variation of leave to remain as Tier 1 (Post-Study Work) Migrants. The cohort has been identified by the respondent as comprising those who had submitted with their applications a letter from Kensington College of Business ("KCB") stating that they had been awarded a Master's degree in Business Administration by the University of Wales ("UOW"). After receipt of the applications the Respondent e-mailed KCB to verify the awards. KCB informed her that the letters notifying the applicants of their awards had not been issued by the college and there was no record of the applicants being students at that college. The applications were refused under paragraph 245FD of the Immigration Rules on the basis that no MBA had been awarded and under paragraph 322 (1A) on the basis that use of the award letters by the applicants constituted deception.
3. Not all of those in the cohort were entitled to a right of appeal or exercised that right. A decision was taken to list together the appeals of those who did appeal. Those appeals all came before the First-tier Tribunal, Designated Judge Campbell and First-tier Tribunal Judge Bird sitting as a panel.
4. The appellants appealed to the First-tier Tribunal on the grounds that the Respondent's decision was not in accordance with the Immigration Rules or the law and was in breach of their rights pursuant to article 8 of the Human Rights Convention.
5. It is the Appellants' case that they enrolled to study a top up MBA at London Graduate School ("LGS"). They paid their fees to LGS and the MBA was to be

awarded by the UOW. They would attend tutorials at LGS and lectures at KCB which was authorised by the UOW to teach its MBA course. The course would require the completion of three assignments and a dissertation and would be completed within three months.

6. The Appellants argued that it had not been established that the documents submitted were false and the Respondent had failed to make adequate enquiries before reaching a decision about the genuineness of the documents submitted. The Appellants had completed an MBA course and therefore met the requirements of the Immigration Rules and had a legitimate expectation of being able to acquire work experience. Further, the refusal to vary leave and the decisions to remove them would breach the Appellants' rights under Article 8 of the European Court of Human Rights.

### **Procedural History**

7. Some of the appeals to the First-tier Tribunal were allowed on an article 8 basis; the majority were dismissed. Not all of those whose appeals were unsuccessful applied for permission to appeal and some of those who were successful have withdrawn their appeals at various stages of the proceedings.
8. The Upper Tribunal has, so far as is possible, attempted to identify all those who have been granted permission to appeal to it and to ensure that the appeals were heard together. We have been greatly assisted by Farid Javani Taylor as they have represented almost all of those who were granted permission.
9. After a number of procedural hearings and consequent directions, a decision was taken that determining whether the decisions of the First-tier Tribunal involved the making of an error of law would be considered at two hearings.
10. It was agreed that the hearing on 17<sup>th</sup> June 2015 should consider first:
  - 1) Whether the First-tier Tribunal erred in law by concluding that the refusal under paragraph 322 (1A) had been made out in the appeals of Wasif Amjad (IA/22620/2012) (whose appeal is no longer pursued) and Sultan Ahmad Khan (IA/22380/2012); and
  - 2) Whether in respect of all the appellants in respect of which permission to appeal had been granted, the First-tier Tribunal had erred in its assessment of proportionality in rejecting the proposition that the public interest in immigration control was lessened because the Secretary of State had, when exercising her regulatory function with respect to the colleges, a duty of care towards those in the appellants' situation and had failed in that duty, given that there were real concerns about how KCB was being administered.
11. It was also agreed that once we had come to a conclusion on these matters, we would issue a preliminary ruling, and invite submissions in respect of the individual

appeals. Our ruling was handed down on 7 August 2015 when we give the following directions:

- 1) The appellants must within 14 days serve on the Upper Tribunal and on the respondent detailed written submissions particular to their individual circumstances, identifying why, in the light of our preliminary conclusions, the First-tier Tribunal erred in dismissing their individual appeals on article 8 grounds.
  - 2) The appellants must also within 14 days inform the Upper Tribunal if they wish for a further oral hearing at which the matters raised in the submissions made at (1) above are to be further argued.
  - 3) In the absence of such submissions being made, or a request for a further hearing, it will be assumed that the Appellant in question wishes to withdraw his/her appeal before the Upper Tribunal and a decision to that effect will be made without any further hearing or notice to the Appellant.
12. Subsequent to these directions, a number of the appeals were withdrawn. The hearing on 14 December 2015 was to hear further oral submissions on the issues identified at paragraph 10 above.

**Did the First-tier Tribunal err in its approach to Paragraph 322(1A)?**

13. Mr Vaughan represented both the appellants to whom this issue is relevant, although one of them, Wasif Amjad, no longer pursues his appeal.
14. We are not persuaded by the submission that the First-tier Tribunal were not entitled to rely on the evidence of the Appellants themselves in order for the Respondent to show that paragraph 322(1A) applied.
15. Mr Vaughan submitted that that since the panel had found that they could not rely solely on the evidence of Mr Stagg then the evidential burden was not discharged by the Respondent. The Respondent could not rely on evidence from the Appellant.
16. We find that this submission is not supported by relevant case law and is contrary to NA (Cambridge College of Learning) Pakistan [2009] UKAIT 00031. The evidence before the panel was of sufficient strength and quality and was subjected to a critical and anxious scrutiny. At paragraph [102] of NA the Tribunal held that this requirement did not impose any rigid formal rule on the Tribunal circumscribing the range and scope of the evidence. The Tribunal is entitled to have regard not only to direct witness evidence but an array of other statements and documents and was not confined to evidence tested by cross-examination

*Sultan Ahmad Khan IA/22380/2012*

17. In the case of Mr Khan, there was an e-mail from Mr Stagg (Administrator at KCB) and a letter from Ian Pirie (the principal of a KCB) both stating that the document

being relied on was not a genuine document. The Appellant was not known to KCB and the registration number was for another individual. The visa letter contained notable differences in format and content from genuine documentation issued by the college. There was also a letter from the UOW stating that the Appellant was awarded his MBA in absentia.

18. Mr Khan, on his own evidence, accepted that he had been to two or three tutorials in four months and none of the lectures. He failed to produce evidence that he had enrolled on the MBA top-up course at either LGS, KCB or UOW; evidence that he had paid £4,500 for his course of study; or any documentary evidence of his assignments or dissertation submitted.
19. At the hearing before the First-tier Tribunal, Mr Khan was unable to give adequate answers as to what research he undertook or to describe basic concepts. The panel found that despite the evidence of chaotic administration arrangements at LGS and KCB, it was likely that the Mr Khan did not attend any classes and did not produce work which was genuinely his own.
20. Accordingly, we find that there was no error of law in the panel's conclusion that Mr Khan was not a genuine student and he had not obtained an MBA. The panel's finding that a false document, namely a visa letter, was submitted by Mr Khan in the knowledge that it purported to record submission of genuine work when that was not the case, was open to them on the evidence. The ground of refusal under paragraph 322(1A) had been established by the Respondent.
21. In conclusion, we are not persuaded that the decision of First-tier Tribunal, that the respondent's assertion that paragraph 322 (1A) was made out in this appeal, involved the making of an error of law.

**Was the Respondent in breach of a duty of care to the Appellants?**

22. Mr Vaughan submitted that this was so. In Patel & Ors v SSHD [2013] UKSC 72 at [57] Lord Carnwath JSC held:

"It is important to remember that article 8 is not a general dispensing power. It is to be distinguished from the Secretary of State's discretion to allow leave to remain outside the rules, which may be unrelated to any protected human right. The merits of a decision not to depart from the rules are not reviewable on appeal: section 86(6). One may sympathise with Sedley LJ's call in *Pankina* for "common sense" in the application of the rules to graduates who have been studying in the UK for some years (see para 47 above). However, such considerations do not by themselves provide grounds of appeal under article 8, which is concerned with private or family life, not education as such. *The opportunity for a promising student to complete his course in this country, however desirable in general terms, is not in itself a right protected under article 8* [our emphasis]."

23. It cannot be forgotten that in all of these cases, the appellants were, in order to obtain further leave, required under the immigration Rules to have obtained a particular qualification. They had not.

24. Even assuming that in the circumstances of these cases, the First-tier Tribunal was correct to assume that article 8 was engaged, we do not accept that the public interest in maintaining immigration control was, on the facts of these cases, in any way to be treated as being of less weight.
25. Contrary to Mr Vaughan's submission and skeleton argument, the panel did make a finding as to the degree of responsibility of the Respondent and concluded that there was no failure on her part which had any bearing on proportionality.
26. Mr Vaughan's argument is predicated on the assumption that in its exercise of its regulatory function with respect to colleges, the respondent has a duty of care towards those in the appellants' situation. Absent such a duty (and we find no proper basis is put forward for such a duty to exist in the circumstances of this case), and absent a finding that the respondent was aware of their situation, it is difficult if not impossible to demonstrate that there is fault on the part of the respondent. The situation at KCB cannot be compared to the scenario where the respondent knows a college is to be closed and thus its students will be left without a sponsor. Here, while there may have been concerns, and there was an investigation, the college was not suspended nor was its licence revoked.
27. We are not persuaded that there was sufficient evidence before the First-tier Tribunal to enable them to conclude that the Respondent was at fault in failing to regulate KCB. It is clear from the agreed facts that all the Appellants registered with LGS and paid their fees to LGS. The evidence of Dr Bakht was that there was no official agreement between LGS and KCB. It was accepted that the Tribunal found that there was chaos at both of these colleges and administration was poor.
28. The Respondent in fact conducted an unannounced inspection at KCB and on 6 December 2012 had given a suspension recommendation. However, it would appear at this point that LGS ceased operating and further investigations at KCB showed that no further action was required. It is hard to see how the Respondent could be at fault for failing to suspend KCB's licence when in fact much of the administrative chaos arose at LGS. The fact that there were some problems with registration at KCB was not sufficient to show that the Respondent should bear any of the blame for the Appellants' failure to be able to obtain an MBA from the UOW. Therefore, the panel had not erred in law in failing to attribute some fault to the Respondent in their assessment of proportionality.
29. Further, we fail to see how the Respondent's failure to regulate KCB was relevant to the assessment of proportionality. If the college's licence had been suspended then the Appellants would not have been able to obtain an MBA and they would be in the same position as they are now. Action by the Respondent may have prevented the Appellants from paying fees to LGS, but it did not affect their right to private life. The Appellants were not in the same position as OA whose removal would have prevented her from completing her course, and each case must be decided on its facts in any event.

30. The panel could do no more than they did in assessing the evidence before them and concluding that there was administrative chaos at LGS and KCB such that the Appellants through no fault of their own did not obtain an MBA. They took this into account in assessing proportionality.

### **Proportionality**

31. Mr Vaughan submitted that non-compliance with the Immigration Rules was not determinative because it was caused by the college and not the Appellants. He submitted that the panel erred in law in wrongly categorising the submission as a 'near miss' point and rejecting it having regard to Patel.
32. On the contrary, the panel specifically found that there was no 'near miss' in the Appellants' cases in the complete absence of an eligible qualification. The focus of the Article 8 assessment was on private and family life ties and not on opportunities for students to complete courses, or indeed obtain post-study work leave for a limited period of time.
33. The panel quite properly followed Patel in concluding that the Appellants had been denied an opportunity to obtain work experience. Although they had been denied this opportunity through no fault of their own, it nevertheless was insufficient to outweigh the public interest in the maintenance of immigration control given that the Appellants could not satisfy the Immigration Rules (paragraphs 245FD and 276ADE) and had only modest ties to the UK.
34. The Appellants came to the UK as students and completed their course of study. Their visas were of a temporary nature and they had no legitimate expectation they would be allowed to remain in the UK to work other than in accordance with the Immigration Rules. Even if they were misled by LGS and were unable to obtain an MBA and remain in the UK as post-study work migrants.
35. Having reached these conclusions, we issued a written decision to that effect. Consideration of the remaining appeals recommenced on 14 December 2015.

### **Submissions on 14 December 2015**

36. Ms Jones, relied on her skeleton argument and submitted that there was a failure to attach weight to the fact that, through no fault of their own, the Principal Appellants had been unable to obtain the work experience that they had expected; that there had been a failure properly to consider the issue of fairness in assessing proportionality; and there was a failure in assessing proportionality taking into account that, (with the exception of Sultan Khan)) they had a genuine expectation they would have got the qualification they had sought.

37. Ms Jones submitted that this was not inconsistent with Patel [2013] UKSC 72 as what is said there particularly at [54] is not inconsistent with fairness being taken into account.
38. Turning to Rameez Ali, who came to the UK in 2010, there had been no dishonesty and for the same reasons as Mr Adiyala, the consideration of Article 8 was incorrect. Further, it was submitted that there was a failure properly to engage with the rights of the child or to identify the child's best interests.
39. Ms Jones submitted that there were in addition to these points, a significant number of other points in respect of Nazia Amjad and dependants given that there had been no proper consideration as to the best interests of the child Appellant who had significant and continuing health problems. There had also been, contrary to EV (Philippines) a failure to identify what weight was to be attached to the best interests of the child, there being little evidence within the decision that this had been properly considered. In terms of Patel, what was in issue here was, rather than the loss of education and job opportunities, a substantial and serious impact on family life. She submitted that in this case the decision was clearly perverse.
40. Ms Savage submitted that there was no merit in the Appellants' cases. She submitted that in all cases there had been a proper consideration of all the relevant matters and that the decisions regarding proportionality were clearly open to the panel. She submitted that little or no evidence had been adduced in respect of the best interests of the children and, given their ages, it could not be said that the decisions were perverse or that any relevant information had not been taken into account. She submitted that proper account had been given of the evidence of the child's ill-health (S A Khan).
41. We asked Ms Jones to direct us towards any evidence which she said had not properly been taken into account. With the exception of the medical evidence relating to the child there was nothing over and above what was produced in the consolidated bundle which needed to be taken into account other than the statement of Mrs Amjad and Mr Khan.

### The Law

42. It is accepted that the decision in Patel is relevant to all the appeals before us. We note what was said at [54] to [55] (**and at [57] (note - insert)**).NB
43. Mrs Amjad and Mr Khan have dependent children. To that end we have taken careful note of EV (Philippines) v SSHD [2014] EWCA Civ 874, in particular at [34] to [36].
44. We note that in this case neither of the children had entered education and there was no submission that any of the Appellants met the requirements of Appendix FM or paragraph 276ADE of the Immigration Rules. Indeed Mr Vaughan conceded at the



hearing on 17 June 2015 that none of the Appellants could meet the requirements of the Immigration Rules. To that end we note what was said in Singh & Khalid [2015] EWCA Civ 74 at [3].

**Mr Adiyala**

45. We accept in the case of Mr Adiyala that he genuinely believed that he would obtain leave to remain as a Post-Study Worker. As, however, he did not have the relevant qualification, he was not entitled to leave to remain. At [35] the First-tier Tribunal panel said this:-

“In relation to private life ties we find that he has provided very little evidence to show the strength and quality of private life he has acquired in the United Kingdom. His witness statement contains no details at all of any particular friendships, ties or associations here. Whilst we accept that he has been in the United Kingdom since 2007 and has acquired private life (the threshold of establishing this being a low one) there is nothing to show what the quality of his private life has been. He came to the United Kingdom as a student and can have had no reasonable expectation that he would be able to remain here without meeting the requirements of the Rules. He has failed to produce evidence to show what his private life ties here are and in the particular circumstances we conclude that it would not be difficult for him to return to his country and indeed it would not be unreasonable to expect him to do so and we find that he would be able to re-establish both private and family life in India.”

46. Further, at paragraph [36] the panel found that, taking this appellant’s case at its highest, he had lost an opportunity to gain work experience for a limited period of time. This was a factor of little substantial weight.
47. Again at [37], the Appellant has previously acquired a qualification from the United Kingdom which will be of benefit to him in acquiring suitable employment, following his return. There is little of real substance to set against the Respondent’s case. Weighing the competing interests, we conclude that the Appellant’s removal amounts to a proportionate response.
48. We consider that the First-tier Tribunal was entitled to attach little weight to the lost opportunity. Whilst the loss of the opportunity was not the Appellant’s fault, he simply did not meet the Rules. Further, in this case there was little evidence of private life.
49. In effect, what is being submitted is that somebody, who through no fault of their own, finds themselves unable to meet the requirements of the Immigration Rules should, notwithstanding that failure nonetheless be entitled to leave to remain on an article 8 basis because he is not responsible for the failure to comply with the rules. That is simply untenable. There are numerous reasons why people cannot meet the rules, even when they expected to be able to, some outwith an appellant’s control and there is no coherent basis for doing so. Attaching weight to lost opportunity is precisely the free-wheeling approach to Article 8 in which a Tribunal should not

indulge and the submission that blameless failure to meet the Immigration Rules is a factor of significant weight in an appellant's favour is, in effect, an attempt to induce a Tribunal to do so.

50. What the Appellant is in fact asking for is leave to remain despite the fact he does not meet the objective criteria of the Immigration Rules. It is simply hopeless to submit that in the circumstances the decision of the First-tier Tribunal was even arguably perverse.

**Mr Rameez Ali**

51. At [45], the panel observed that arguments based on fairness add nothing of any real substance to the assessment to be made in respect of Article 8. They observe also at [46] that the focus of the Article 8 assessment is on private and family life ties and not on opportunities for students to complete courses or indeed obtain Post-Study Work leave for a limited period of time. They noted at [47] that the Appellant had not established any family life in the United Kingdom and stated: "There is very little evidence that we have before us regarding private life ties. The Appellant speaks of loss of career opportunities. On the evidence we have come to the conclusion that the Appellant has only modest ties here which had been established in the relatively short time he has been present in this country. What he has lost, at the highest, is an opportunity to gain work experience for a limited period of time."

52. The panel concluded:-

"48. There is nothing in the evidence to show that the Appellant would have any difficulty in re-establishing himself on return to Pakistan. The Appellant has contacts and family there. Any friendships he made may be maintained from abroad. We do not doubt that he has been disappointed by his failure to obtain the MBA. The Secretary of State has the power to depart from the laws in order to give him a short period of leave in which he might apply for a further course. Whether she does so is not up to us it is up to her and the merits of such a decision are not reviewable...

49. Overall taking into account the private life ties that the Appellant has established here, we conclude that Article 8 is engaged (the threshold of engagement not being particularly high). The decision to refuse to vary leave is made in accordance with the law. There is a clear public interest in the maintenance of immigration control and the Appellant could have been in no doubt that he had no entitlement to remain here without meeting the requirements of the Rules. They have not been met in his case. In light of the evidence showing only modest private life ties here, we conclude that the adverse decision is a proportionate response, as would be the Appellant's removal to Pakistan."

53. We have not considered that this is in any way materially different from that of Mr Adiyala and we note that in this case the appellant arrived on 31 August 2010 as a student and had leave to remain thereafter until 30 September 2012. It was only on 1 February 2012 that he made an application for leave to remain as a Tier 1 (Post-Study

Work) Migrant. He at first, at the date of decision, (5 September 2014) had only four years residence in the United Kingdom. It is clear from the decision at [46] that the panel directed themselves properly in law. For the same reasons as given above, we find that the decision did not involve the making of an error of law.

### Nazia Amjad

54. On considering this appeal the panel noted at [21] that no detailed Article 8 case was argued before them. They also noted “We do not, in the circumstances, intend to consider any rights that the Appellant may have acquired under Article 8 apart from the questions raised in relation to fairness. At [29] the panel held:-

“Although the Appellant and her husband have family life together in the United Kingdom they will be removed as a family and will continue to enjoy family life upon their return to their country of nationality. Any private life ties that they have established again have been whilst they both have limited leave to be in the United Kingdom, and in any case we have very limited evidence of any such ties. What the Appellant has lost at the highest is an opportunity to gain work experience for a limited period of time ... There is nothing in the evidence to show that the Appellant would have any difficulty in re-establishing herself on return to Pakistan. The Appellant and her husband have contacts and family there. Any friendships and other associations that have been formed while they have been in the United Kingdom can be maintained from abroad.”

55. There is, however, we note no reference to the youngest Appellant, Mrs Amjad’s child. It is clear that there is no mention of the child in the decision despite her being an Appellant. While the grounds of appeal do raise Article 8 at paragraph [3] and challenge the finding that no detailed case on Article 8 was put, there is nothing in the grounds in relation to the child Appellant nor any submissions made in respect of Section 55 or the best interests of the child. Further this issue was not addressed in the written skeleton argument provided by Mr Vaughn dated 26 May 2015.
56. It is instructive that despite the directions given on 5 May 2015 for a skeleton argument identifying separate points arising in some of the appeals there appears to have been no attempt to raise the issue of the failure to deal with AP. The directions given in respect of some of these appeals on 18 December 2014 do not relate to the appeal of Nazia Amjad and her family, as they had not been joined at that point. Indeed those appeals have now fallen away. There has been no request to amend the grounds of appeal, indeed the point does not appear to have been raised until the submissions of Ms Jones in September 2015.
57. We do not consider that it is remotely arguable that the directions given in this case could rationally be construed as extending the grounds of appeal. It is abundantly clear from the context where it was agreed that the generic points would be dealt with first and the issues particular to individual Appellants, raised in their grounds of appeal, would be dealt with thereafter. It is sufficiently clear from the directions given in this case and in the decision we gave on the preliminary issue that this is

what was to happen. We do not consider that there has been any extension of the grounds of appeal in this case. Further, we find no merit in Ms Jones' submission that this is a "Robinson obvious point".

58. Further, even had it been a ground of appeal, Ms Jones was unable to take us to any material in the bundle provided to the First-tier Tribunal which relates to the child. It is remarkable that given what is now said to be a serious issue did not warrant a single mention in Mrs Amjad's witness statement. Whilst Ms Jones' skeleton argument at [32] and [33] relates to AP being at Hillbrook Primary School, and there is material of this before us, it is unclear whether this appeared before the First-tier Tribunal given that the documents at pages 185 to 194 are dated 2014 and none appear dated prior to the decision of the First-tier Tribunal. We are thus not satisfied that these documents were before the First-tier Tribunal. The supplementary witness statement is unsigned and undated, and thus, it cannot be said that weight should be attached to it, nor are we satisfied it was before the First-tier Tribunal.
59. In the circumstances, and given the absence of any apparent submissions made on this issue to the First-tier Tribunal let alone relevant material being provided, we do not consider that it could be said, even were this a grounds of appeal, that the First-tier Tribunal erred in its approach to the Appellant, AP. There is no material error of law in the decision of the First-tier Tribunal dismissing the appeals on Article 8 grounds.

### **Sultan Khan**

60. We consider that the case now put forward by Ms Jones is without foundation. First, as we observed during the hearing, it is clear from the grant of permission to the Upper Tribunal that Article 8 was not raised as a grant of permission. We do not consider that it could possibly be construed on the basis of directions given that the grounds of appeal had been varied or could be seen to have been varied given that there had been no application for such a variation, nor any proper indication that the Upper Tribunal had, of its own motion, decided so to do.
61. We do not consider that the skeleton argument put forward by Mr Vaughn, referred to above, could in any way be seen to be a request for Article 8 to be dealt with and indeed it is evident from what is said that this is not so. It is disingenuous to suggest to the contrary. Further, it cannot be argued that the point is "Robinson obvious" and it is instructive to note that at no stage is there any reference to the supposed variation of grounds in the submissions made. Further, in any event, we consider that even had this been raised as a ground of appeal, it is evident from the material provided that the child was at the date of decision just over two years old. It is accepted that she was premature and it is accepted that she had continuing health needs. The only evidence as to this was referred to us. We note that this is a short letter from the GP quoted in the decision supported by a letter from a consultant paediatrician. There is significant merit in the observation of the First-tier Tribunal that insufficient evidence had been put before the panel to show that she could not

receive adequate medical care in Bangladesh and indeed it is unclear what further treatment is required.

62. It is difficult to see how a child of two could be said to have any meaningful private life. While she undoubtedly has family life, that is entirely within the ambit of the nuclear family. This is not a situation where the child has started school nor indeed is she a British citizen. The decision in EV (Philippines) is clearly distinguished on its facts and it is notable that many of the factors there identified as relevant to assessing a child's private life would in this case not be relevant. The only issue is that of her health and there is simply no evidence before the First-tier Tribunal that she could not be cared for adequately or properly or that there would not be appropriate facilities available in Bangladesh. Accordingly, assuming for the sake of argument that Article 8 was engaged in this case, we consider that in respect of the child and her parents the decision was manifestly one open to the First-tier Tribunal. There is a proper and adequate consideration of all the relevant facts and while Section 55 is not addressed specifically it is clear from the decision that Section 55 and the relevant principles were taken into account insofar as they apply to a child of this age who would be returned to her parents' country of origin with them.
63. Accordingly, we are not satisfied that there is a material error of law in the decisions of the First-tier Tribunal dismissing the appeals on article 8 grounds.

### **SUMMARY OF CONCLUSIONS**

The decisions of the First-tier Tribunal did not involve the making of any error of law affecting the outcome of the appeals and we uphold them.

Signed

Date

Upper Tribunal Judge Rintoul