



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05420/2018

THE IMMIGRATION ACTS

Heard at Field House
On 2 November 2018

Decision & Reasons Promulgated
On 16 November 2018

Before:

UPPER TRIBUNAL JUDGE GILL

Between

[G L]
(ANONYMITY ORDER NOT MADE)

Appellant

And

The Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr B Lams, of Counsel, instructed by Farani Taylor Solicitors.
For the Respondent: Ms Z Kiss, Senior Home Office Presenting Officer.

DECISION AND REASONS

1. By my decision promulgated on 30 August 2018 (hereafter the “*Error of law decision*”, attached to this decision as an Annex), I set aside the decision of Judge of the First-tier Tribunal Telford (hereafter the “*judge*”) by which he dismissed the appeal of the appellant, a national of Nepal born on 1 November 1988, on asylum, humanitarian protection and human rights grounds, against a decision of the respondent of 16 April 2018 refusing to grant him asylum and humanitarian protection and refusing his human rights claim.
2. Before the judge, the appellant's human rights claim was based on his relationship with his partner, Ms KP, and her daughter, Z (date of birth: April 2007), and also his

private life established since his arrival in the United Kingdom on 25 January 2011 as a student. He has not had leave in the United Kingdom since his leave was curtailed to expire on 9 March 2013. The evidence before the judge was that the appellant and Ms KP met in November 2013 and that he moved in to live with Ms KP in November 2014. Ms KP and Z are British citizens. The evidence before the judge and before me was that Z had not had contact with her biological father for some years.

3. At the Error of law hearing, the appellant was represented by Mr R K Rai, of Counsel, and the respondent by Ms K Pal, Senior Presenting Officer. At paras 17 and 18 of the Error of law decision, I explained the extent to which the decision of the judge was set aside and the issues to be decided at the resumed hearing as follows:

“17. For the above reasons, I set aside the decision of the judge to dismiss the appellant’s Article 8 family life claim. The following findings shall stand:

- (i) The judge’s decision to dismiss the appellant’s appeal on asylum grounds.
- (ii) The judge’s decision that the appellant’s removal will not be in breach of his rights under Articles 2 and 3 of the ECHR.
- (iii) Since the grounds did not challenge the judge’s assessment of the appellant’s private life claim under para 276ADE and Mr Rai did not mention para 276ADE at the hearing before me, the judge’s decision that the appellant does not meet the requirements of para 276ADE of the Rules stands. This includes the judge’s finding, at para 50, that the appellant had not established that he is not in contact with his family and that he has not shown that he cannot expect their support upon his return.
- (iv) The judge’s adverse credibility assessment and findings in relation to the appellant’s protection claim stand.

18. The issues at the next hearing will be limited to the following:

- (i) Whether Appendix FM and EX.1(a) and/or (b) are satisfied.
- (ii) Whether s.117B(6) is satisfied.
- (iii) The appellant’s Article 8 family life claim outside the Rules. If I find that the appellant’s relationship with Ms [P] and/or Z does not amount to family life within Article 8(1) but that it does form part of his private life, then his private life claim will be considered outside the Rules. If I find that the appellant’s relationship with Ms [P] and/or Z does not amount to family life within Article 8(1) and also that it does not form part of his private life (i.e. that there is no genuine relationship or connection), the parties will need to address me on whether the judge’s decision in relation to para 276ADE has addressed fully his private life claim so that it is unnecessary to consider his private life claim outside the Rules.”

4. At the resumed hearing, Mr Lams and Ms Kiss agreed that the factual issues for me to decide are as follows:

- i) whether there was a genuine and subsisting parental relationship between the appellant and Z; and
- ii) whether there was a genuine and subsisting relationship between the appellant and Ms KP.

5. Ms Kiss agreed that:
 - i) if I were to find that there was a genuine and subsisting parental relationship between the appellant and Z, the appellant's appeal on human rights grounds should be allowed with reference to s.117B(6) of the Nationality, Immigration and Asylum Act 2002 (the "2002 Act"). Ms Kiss accepted that, in the particular circumstances of this case, it would be unreasonable to expect Z to leave the United Kingdom.
 - ii) if I were to find that there was a genuine and subsisting relationship between the appellant and Ms KP but the relationship between the appellant and Z did not amount to a parental relationship, then notwithstanding s.117B(4) of the 2002 Act, the appellant's appeal on human rights grounds should be allowed with reference to EX.1(a) of Appendix FM, i.e. that there are insurmountable obstacles to family life between the appellant and Ms KP continuing outside the United Kingdom on the basis that there would be no one left in the United Kingdom to look after Z if Ms KP were to relocate outside the United Kingdom in order to enjoy family life.
6. Mr Lams informed me that, if I were to find that the appellant did not enjoy a genuine and subsisting parental relationship with Z and that he did not enjoy a genuine and subsisting relationship with Ms KP, then the appellant's private life claim could not succeed given the judge's dismissal of his private life claim under para 276ADE(vi) of the Immigration Rules.
7. In view of paras 5 and 6 above, I have only dealt with the evidence before me concerning the impact on Z and Ms KP of moving to Nepal and the evidence before me of the appellant's own circumstances if returned to Nepal to the extent that I considered necessary in order to decide the factual issues before me.

Adjournment request

8. At the commencement of the resumed hearing, Mr Lams informed me that Ms KP was unable to attend the hearing because the arrangements that she had made for Z's care whilst she attended the hearing had fallen through. Ms KP was informed at 18:00 hours on 1 November 2018 that her friend, who had agreed to look after Z, was taken to hospital. Mr Lams submitted a hand-written letter from Ms KP dated 1 November 2018 explaining her absence and requesting the Court not to "*use our absence in your decision and keep our family together*".
9. I refused to adjourn the hearing. I shall now give my reasons.
10. The judge had refused a request to adjourn the hearing before him. That request was made on the basis that the hearing date fell on the same date as Z's SATS examinations and therefore Ms KP could not attend the hearing.
11. At the Error of law hearing, I made it clear that, on an exceptional basis, I would hear oral evidence from Ms KP about the circumstances leading to the adjournment request made to the judge. On the basis of the evidence I heard, I decided that Ms KP had good reasons for not asking her mother to look after Z on the day in question, that her friends could not help her because they were working and that Ms KP only came to know about the hearing date late. It was clear from her evidence before me

that she had two friends who she could call upon to look after her daughter (para 5(ii) of the Error of law decision). I am satisfied she fully understood not only that I heard her oral evidence about the arrangements for Z's care on the day of the hearing before the judge on an exceptional basis but also that there would no adjournment of the resumed hearing if she was unable to attend the hearing.

12. In refusing Mr Lams' adjournment request, I took into account not only the above but the overriding interest. Ms KP's letter did not mention whether she had made any back-up arrangements in case the arrangements she had put in place fell through nor does she actually suggest that she would attend a future hearing if the hearing is adjourned: she only requests that the Court does not rely upon her absence in reaching its substantive decision. I acknowledge that Ms KP attended the Error of law hearing. Given Ms KP's failure to attend two substantive hearings because she was unable to arrange for Z's care, I can have no confidence that, if the hearing on 2 November 2018 was adjourned, she would attend the hearing on the next occasion.
13. In all of the circumstances and taking into account the overriding interest, I refused to adjourn the hearing.
14. The above were my reasons for my decision at the commencement of the hearing to refuse to adjourn the hearing. However, I kept the matter under review during the course of the hearing. As will be apparent from my summary of the oral evidence, the appellant was questioned in detail about the reasons for Ms KP's absence from the hearing. Mr [B] was also questioned. By the end of the hearing, I saw no reason to re-open my decision to refuse to adjourn the hearing. I found the appellant's evidence about the reasons for Ms KP's absence contradictory and incredible, for reasons which I give below (see paras 84 and 85 below). I found Mr [B]'s ignorance of the reason why Ms KP was unable to attend the hearing lacking in credibility (see para 101 below). On the whole of the evidence before me, taking it into account the contradictions in the appellant's evidence in this regard, the lack of credibility of Mr [B]'s evidence in this regard and having had the benefit of hearing the oral evidence they gave in this regard at the hearing, I find that the explanation I was given for Ms KP's absence from the hearing is not a genuine explanation.

Oral evidence

15. I heard oral evidence from the appellant and Mr [AB], his friend. Both gave evidence in the English language which they spoke fluently.

Oral evidence of the appellant

16. The appellant adopted his witness statement dated 14 May 2018 (pages 40-44 of the bundle).
17. In examination-in-chief, the appellant said, in relation to his relationship with Z, that he was not her biological father but he has been with her since she was 5 or 6 years old and that he has taken the role of the man, like a father. He has never seen or met Z's biological father. Sometimes he takes Z to school and sometimes Ms KP does. Sometimes he picks Z up from school and sometimes Ms KP does. He said that Z has settled down very well in her new school and is very happy. She is doing very well in school, in year 7.

18. Asked what activities he shares with Z, the appellant said that they play in the garden and they take their dog to the park. She goes with him when he goes shopping for food.
19. I asked the appellant to explain why the photographs he had submitted were, in the main, blur. He told me that the person in the middle in the photographs on pages 32 and 33 was Z and the person to the right was Ms KP. I told him that the photographs were so blur that I could not recognise the person on the right as the person I saw at the Error of law hearing. I declined Mr Lams' suggestion that I view the photographs on the appellant's mobile phone.
20. In relation to the photograph on page 27, the appellant said that he was the person on the right and Z was on the person on the left. He told me that Z was 11 years old in this photograph. She is currently 11 years old. I asked him whether this was a photograph of a girl who was 11 years old. He said: 'yes'. I observed that it was difficult to tell, when comparing the photographs of Z at pages 27 and at 32/33, that it was the same person in both photographs. The appellant explained that Z was a year younger in the photographs at pages 32 and 33.
21. If the appellant were to leave Ms KP and Z behind in the United Kingdom and return to Nepal, Z would be affected because it would be as if she has lost her parents again, as she lost her grandmother earlier this year. Ms KP is currently o.k., being not too good and not too bad.
22. At pages 29 and 30 are photographs of the appellant with the dog that had belonged to Ms KP's mother who has unfortunately passed away.
23. The appellant said that he has no one in Nepal that he could obtain assistance from. He said that he does talk to his parents but the earthquake has destroyed their business and they have nothing left. They therefore cannot support him. Before he met Ms KP, his family in Nepal supported him in the United Kingdom. After he met Ms KP, she and her mother have supported him in the United Kingdom.
24. Concerning the arrangements for Z's care on the day of the resumed hearing, the appellant said that he and Ms KP had arranged for Z to be looked after by a friend. The friend had agreed to keep Z overnight because the appellant and Ms KP would have had to leave for the hearing centre early in the morning. He said that the friend "*called*" to say that they had a "*family issue problem*" and could not keep Z overnight or even get her ready for school. He and Ms KP found out at about 18:30 hours on 1 November 2018. There was no one else that he and Ms KP could ask to look after Z.
25. I asked the appellant to explain what the "*family issue*" was. He said that the family had something happen to them. Ms KP's friend, Sarah, fell over at home and was taken to the hospital. This happened at 16:00 hours on 1 November 2018. Sarah's daughter sent a text to Z to inform her that her mother had fallen over and asked whether Z could come over and fetch her (Sarah's daughter). Ms KP and Z then went over to pick the friend's daughter up and took her back to their home. He said, initially, that "*we*" received the text from Sarah's daughter at 18:00 hours, then said that, when he had said "*we*", he had meant Ms KP had received the text from Sarah's daughter.

26. I referred the appellant to his earlier evidence, that Sarah's daughter had sent a text to Z and asked whether it was Z or Ms KP who had received the text. He said it was the same phone, because Z and Ms KP shared one phone, i.e. Z uses her mother's phone to text her friends. I referred him to his earlier evidence that the news was first received by a telephone call, whereas his later evidence was that it was received by text message and that he had said variously that it was received at 18:30 hours and at 18:00 hours. He acknowledged that he had said earlier that the news was received by a telephone call but said it was in fact received by text message and that it was received at 18:00 hours.
27. I asked the appellant what steps had been taken by Ms KP to make alternative child care arrangements. He said that she has two other friends but it was too late to ask their employers for the day off work. He said that Sarah does not work. She stays at home and looks after her children. The hospital did not discharge Sarah. Her children stayed with Ms KP that night.
28. In cross-examination, the appellant confirmed that he had never previously worked and that his parents had supported him. Asked how it came about that he was encountered working illegally in January 2018, he said that his family had stopped supporting him. He told the person who employed him during those two days that he would get his paperwork in two days' time and so he started work but he was arrested on the day that he started work. He had therefore only worked for one day. Asked why he gave a false name when arrested, he said that he had panicked.
29. Ms Kiss put to the appellant that he had failed to report on a number of occasions when he was given temporary admission in 2015. The appellant said that he left the place where he used to live at that time in order to go and live at Ms KP's home. He initially said that he did not inform the immigration authorities of his change of address and then said that he had emailed the change of address and that he did not receive any further letters from immigration.
30. The appellant said that he was detained in immigration detention for six months. During that time, Ms KP visited him "*a few times*". Asked why Ms KP only refers to one visit, in February 2018, in her recent witness statement (para 26, page 15), he said that it was because that was when Z was crying and wanted the appellant to return home.
31. The appellant said that he has lived with Ms KP since November 2014. Asked to explain why Ms KP is claiming single occupant's discount for her Council tax (page 111), he said that it was because he does not have a passport and therefore could not put his name for her Council tax.
32. Ms Kiss referred the appellant to the letter from Sheppey Dental Care in Sheerness (page 21). Asked why he had a letter from a dentist so far away from Canterbury where he said he lived with Ms KP, the appellant said that he knew the doctor at the dental surgery. He spoke to the doctor to floss his teeth because he had bleeding in his mouth. It was the doctor who booked the appointment for him. The surgery sent him the letter.

33. Asked how he helped Z when she was bullied, he said that he told her not to listen to people who are bullying her, not to be close to people who bully her and just to say 'hello' to them.
34. Asked why Z had not provided up-to-date evidence, he gave an answer which was simply intelligible. When the question was repeated, he said it was because they did not know that they had to make a witness statement again.
35. The appellant confirmed that he was named as a contact person at Z's school. She has been at her new school for 3 months. He said that he had not obtained evidence from her previous school but had done so from her current school.
36. At question 125 of his asylum interview, the appellant had said, when asked how it would affect Ms KP if he were to return to Nepal, that "*it would affect her. She would get depression if I go back they will kill themselves they are both telling me*". The appellant said that this is what he believes. Ms KP had not harmed herself before. Asked to explain why Ms KP had not said in her witness statement that she would kill herself if he were to leave the United Kingdom, he said that Ms KP had told him that there would be no point in her being alive if he were to return to Nepal.
37. Asked to explain why he had said at the hearing before the judge that he was in fear of his family whereas he had said at the resumed hearing that he is in contact with his parents, he said that he has contact with his mother. His problem is with his father and brother. The reason why he had said earlier that he had contact with his parents is because he does not want to tell people that he only speaks with this mother. He therefore says that he speaks to his parents when he means that he actually speaks only to his mother.

Oral evidence of Mr [B]

38. In examination-in-chief, Mr [B] adopted his witness statement dated 17 September 2018 (pages 17-18 of the bundle).
39. Mr [B] said that he met the appellant in December 2014. Since then, he has been to the home of Ms KP and the appellant on one occasion. He has seen the appellant, Ms KP and Z in the public environment more than at their home. Asked how many times he has seen them, he said "*quite a handful of times over the years*", a "*good few times a month*". If he travelled ten times to Canterbury in a month, he would see the appellant six or seven times and the appellant, Ms KP and Z three or four times. If he sees them in the evening, this would normally be in the town where they would go for something to eat or they would have a coffee or go to the bar.
40. Asked why he goes to Canterbury so often (his witness statement gives his address as an address in Ilford in Essex), he said that he has quite a few friends and family in Canterbury.
41. Asked to describe the appellant's relationship with Z, Mr [B] said that the appellant cares for Z like a father should, even though he knows that he is not Z's biological father. Z's biological father has never been a topic of conversation at anytime, nor has Mr [B] ever met him or seen him.

42. Asked to give examples of how the appellant cares for Z like a father, Mr [B] said: *"In relation to mental support, when you start a new school, it is quite daunting for a child. Having the support of parents helps. [The appellant] plays his part, he is like a male role model. He builds a lot of confidence in her life as she is growing up"*. Asked how he knows this, he says he sees it and the appellant also talks to him about it. Asked to explain how he sees this, he said: *"It's the way she talks to him and how they are together"*. He said he knows this from his own physical observation of them together when he goes out with them.
43. Mr [B] said that he has also observed Ms KP's relationship with the appellant. The three of them have been out for drinks. He said that the appellant and Ms KP bond very well. He has never seen them argue.
44. Asked to explain in detail what he had meant at para 8 of his witness statement, where he said that *"the family are going through a difficult time"*, Mr [B] said that that statement says it all. The fact that Ms KP lost her mother recently has impacted upon Ms KP and Z.
45. Asked how it would impact upon Ms KP and Z if the appellant were to leave the United Kingdom, Mr [B] said that *"You have to take into consideration that [Z] has lost her grandmother and she's never had a father figure in her life. [GL] plays a huge part in her life. Taking that away disrupts the child going through a growth period"*.
46. In cross-examination, Mr [B] confirmed that he first met the appellant in December 2014. In his witness statement, he had said that he has similar interests and hobbies, such as eating out and going to bars and pubs. Asked who looks after Z if he goes out with Ms KP and the appellant, he said it would normally be a friend but he was not 100% sure. There was one occasion when she was looked after by her grandmother. The only friends of Ms KP that he has met are people who came over to say *"hello"* when they out having a drink.
47. Mr [B] said that he found out the day before the resumed hearing that Ms KP would be unable to attend the hearing. All he knows about this is that the arrangement that had been made for Z to be looked after fell through for some reason; he did not know why.
48. Mr [B] said he did not know which school Z attends. He last saw Z *"a few months or a few weeks"* ago; it has been a while. He saw her definitely once after her grandmother died in August 2018.
49. Asked whether he knows what Ms KP does for a living, he said that he did not think that Ms KP was working at present. He could not say when she stopped working. Asked to describe Ms KP's health, Mr [B] said that she is pretty much in good health; she does fall ill when she stresses but that happens to everybody. When she falls ill, she gets headaches and does not sleep properly. He was not aware whether she was on any medication.
50. Mr [B] confirmed that he was a surety for the appellant's bail. He does not know who the other surety was. He stood as surety in the sum of £1,500.

51. Mr [B] said that he does not know whether the appellant has had any contact with his father. Asked whether it was the case that the appellant does not talk about it, Mr [B] said that the situation with the appellant's father is quite sensitive.
52. Mr Lams informed me that he did not wish to recall the appellant to clarify any matters.

Submissions

53. Ms Kiss reminded me that the appellant came to the United Kingdom as a student. His leave was subsequently curtailed. He was given temporary admission and required to report but he failed to report and subsequently absconded. In evidence before me, he said that he had emailed his address to the Home Office but there was no evidence of this. He was encountered working illegally, he says for two days. The judge found his evidence of the basis of his asylum claim incredible.
54. Ms Kiss reminded me that Ms KP had been told in no uncertain terms that there would not be any adjournment if she did not attend. She had not attended. The account of the events that led to her not attending the hearing was not supported by any documentary evidence. There was only the appellant's word for it and a brief letter from Ms KP that does not go into any detail about the reasons why she could not attend. The appellant's evidence on the issue was itself contradictory, saying variously, that they had received a phone call and then that the friend's daughter had sent a text. In terms of timing, that they were informed at 18:00 and also at 18:30 hours and at 16:00 hours. A number of issues would have been put to Ms KP if she had attended in light of the fact that she asserts in her witness statement that the appellant has been living with her since November/December 2014 and yet she has been claiming the single occupier's discount in respect of her Council Tax liability. This does throw disrepute on her evidence. It was not clear why the fact that the appellant does not have his passport was a bar to the Council being informed of the true position. This issue impacts upon her integrity.
55. Ms Kiss informed me that, when the appellant was detained having been found working illegally, he gave the address at which Ms KP says she lives. He was also later bailed to that address. Ms Kiss initially said that she accepted that the appellant had lived at that address since January 2018 and then retracted this, saying that she was only prepared to say that he had been bailed to that address. Accordingly, it is clear that Ms Kiss did not concede or accept that the appellant lived at Ms KP's address. Ms Kiss submitted that, in any event, the evidence did not establish that the appellant has been living with Ms KP since November 2014.
56. Ms Kiss submitted that the appellant's explanation for the letter from the dentist in Sheerness was not credible. She questioned why someone would travel by public transport from Canterbury to Sheerness to have their teeth flossed.
57. Ms Kiss reminded me that the appellant only made his asylum claim when he was arrested. The appellant's chronology (page 10 of the bundle) refers to Ms KP and Z having made one visit to the appellant in detention, i.e. on 2 February 2018. Ms KP also refers to that one visit. However, in evidence, the appellant had said that they had visited him "*a few times*", and then "*a couple of times*". This does not indicate that they were as close to him and as reliant upon him as he asserts.

58. At the hearing before the judge, there was no evidence from Z's school. There is now some evidence which has been produced at the suggestion of the appellant's solicitors. As from September 2018, he is named in the school records as a contact for Z. This is recent evidence. There is no evidence from the school to say that he picks Z up from school or drops her off or that he has been involved in any meetings with the teachers.
59. Ms Kiss submitted that the evidence of the appellant's address comprised by the Tesco card and Nectar card is also recent. Whilst there is some evidence that he has been living at Ms KP's address this year, there is only his oral and written evidence that he has been living there since November 2014. Ms KP says the same thing in her witness statement but she has not attended the hearing to have her evidence tested. She has had two opportunities to attend a hearing and have her assertions examined. Ms Kiss reminded me that Ms KP had given evidence to me that she did not want her mother to look after Z so that she could attend the hearing before the judge whereas Mr [B] had said that Z was looked after by her grandmother on one occasion when he went out with Ms KP and the appellant.
60. Ms Kiss submitted that the evidence given by Mr [B] indicates that he has a strong relationship with the appellant. However, he did not seem to know very much about Ms KP and has only been to her home on one occasion in four years. He had not met any of her friends beyond saying "*hello*" when the friends came up to say "*hello*" when he was out with Ms KP and the appellant.
61. Ms Kiss submitted that Mr [B] did not seem to know very much about Z and had no clear idea why Ms KP could not attend the resumed hearing.
62. Ms Kiss accepted that Z does not see her biological father, given that the order dated 4 January 2012 of the Family Court at page F19 of the respondent's bundle shows that the Child Support Agency was unable to trace him. Nonetheless, the mere fact that the appellant has some involvement in Z's life does not mean that he is in a genuine and subsisting parental relationship with her.
63. Ms Kiss submitted that the appellant had produced insufficient evidence to establish that he was in a genuine and subsisting relationship with Ms KP. There were only recent documents to show that he lived at Ms KP's address. Ms KP has not attended court on two occasions so that her assertions could be tested. Ms Kiss relied upon her earlier submissions concerning the shortcomings in the evidence of the appellant, Ms KP and Mr [B].
64. Mr Lams submitted that Ms Kiss had made a number of concessions, i.e. that Z's biological father has not had contact with Z since 2009; that the appellant gave Ms KP's address when he was arrested in January 2018; that the appellant was bailed to Ms KP's address; and that he may have been living at Ms KP's address since January 2018 (however, this was clarified at the hearing, see para 55 above, and Ms Kiss confirmed that she would only accept that he was bailed to Ms KP's address). Nonetheless, Mr Lams submitted that he gave Ms KP's address when he was arrested. Ms KP was his surety when he was granted bail.
65. Mr Lams reminded me that I had had the benefit of hearing evidence from Ms KP at the Error of law hearing. In addition, she attended the bail hearing. She visited him in

detention in February 2018. On 28 March 2018, Ms KP submitted her passport, original birth certificate, hand-written witness statement from herself, Z's original birth certificate, a hand-written letter from Z and her mother and a drawing by Z of the members of her family in which drawing she had included the appellant. He accepted that it may have been better if Ms KP had attended the resumed hearing and stood by her written evidence. He submitted that I could nevertheless place some weight on her evidence. Her recent witness statement was very detailed and she had also submitted a hand-written statement in the appeal before the judge. Ms KP had talked about suffering from depression, that the appellant has helped her through these low periods in her life and that, in time, she was able to come off medication. This evidence ties in with his answer to question 128 of his asylum interview where he mentioned that Ms KP was on "*happy tablets*". In his asylum claim, the appellant had said that he met Ms KP in 2013 and moved in with her in 2014, which was consistent with her evidence.

66. Mr Lams submitted that the picture thus created was consistent with the appellant being Ms KP's partner and that he lives with Ms KP and Z. Mr Lams questioned why Ms KP would go out of her way to such an extent if she is not in a relationship with the appellant. It has not been suggested that the handwritten letter from Z was not from her. He questioned why Z would draw a picture of her family which included the appellant. Z plainly sees her family as including the appellant. Mr Lams submitted that Z's hand-written statement was important.
67. I asked Mr Lams whether the photograph of Z at pages 27 and 28 are photographs of an 11-year old child. Mr Lams submitted that it was difficult to tell and that not a huge amount turned upon the photographs. Her date of birth was not disputed. All of the evidence points to a family group which comprised of the appellant, Ms KP and Z.
68. Mr Lams asked me to bear in mind that, as the appellant does not have his passport, his "*footprint*" would necessarily be light. He accepted that it may look as if Ms KP is claiming a single occupant's discount for her Council tax when she should not be. However, he submitted that the fact that she may not have declared another occupant does not detract so much from her character that the appellant's immigration case should fail.
69. Mr Lams reminded me that the appellant had explained that the reason why Ms KP's witness statement only mentioned one visit by her and Z to him in detention was that this was the occasion when Z was upset. He submitted that it could not be read into Ms KP's statement that that was the only occasion when she and Z had visited the appellant in detention.
70. Mr Lams reminded me that the issue is not the quality of the parental relationship between the appellant and Z but whether a parental relationship existed as a matter of fact between the two.
71. Mr Lams distinguished Ortega (remittal: bias: parental relationship) [2018] UKUT 00298 (IAC) on the basis that both of the biological parents were involved with the child, whereas Z has not had any contact with her biological father since 2009. Whilst actual declarations of parental responsibility may assist in reaching a finding that an individual has a parental relationship with a child, the absence of any such evidence is not determinative.

72. Mr Lams submitted that Mr [B]'s evidence supported the appellant's case. He said he knew Z and was aware of the relationship between the appellant and Z. He was able to say that it was daunting for a child to start a new school and that the appellant had helped Z. Mr Lams submitted that Mr [B]'s evidence was not significantly undermined, although he may only have been to Ms KP's house on one occasion.
73. Mr Lams submitted that, if the relationship between the appellant and Ms KP was genuine, this made it more likely that the appellant had a genuine and subsisting parental relationship with Z. Mr Lams relied upon his earlier submissions in relation to the issue whether the appellant had a genuine and subsisting relationship with Ms KP.
74. I reserved my decision.

Assessment

75. I have set out at para 4 above the two factual issues that I have to decide. In view of what I have said at para 5.i) above, it is unnecessary to refer to the recent judgment of the Supreme Court in KO (Nigeria) and others v SSHD [2018] UKSC 53 in any detail.
76. It is for the appellant to establish, on the balance of probabilities, that he has a genuine and subsisting parental relationship with Z and/or that he has a genuine and subsisting relationship with Ms KP, in order to succeed in his appeal. I agree with Mr Lams that, if the appellant enjoys a genuine and subsisting relationship with Ms KP, this may be relevant in deciding whether he has a genuine and subsisting parental relationship with Z. However, it is not determinative.
77. I stress that I have considered all of the evidence, whether or not mentioned in my decision, and that I have considered all of the evidence in the round and as a whole, giving each aspect of the evidence such weight as I consider appropriate.
78. In R (RK) v SSHD (s.117B(6); "parental relationship") IJR [2016] UKUT 00031 (IAC), the Upper Tribunal (Upper Tribunal Judge Grubb) said in the head-note that it is not necessary for an individual to have "*parental responsibility*" in law for there to exist a parental relationship and that the question whether a person who is not a biological parent is in a "*parental relationship*" with a child for the purposes of s.117B(6) of the 2002 Act depends on the individual circumstances and whether the role that the individual plays establishes that he or she has "*stepped into the shoes*" of a parent. At paras 42 and 43, the Upper Tribunal said:

"42. Whether a person is in a "parental relationship" with a child must, necessarily, depend on the individual circumstances. Those circumstances will include what role they actually play in caring for and making decisions in relation to the child. That is likely to be a most significant factor. However, it will also include whether that relationship arises because of their legal obligations as a parent or in lieu of a parent under a court order or other legal obligation. I accept that it is not necessary for an individual to have "parental responsibility" in law for there to exist a "parental relationship," although whether or not that is the case will be a relevant factor. What is important is that the individual can establish that they have taken on the role that a "parent" usually plays in the life of their child.

43. I agree with Mr Mandalia's formulation that, in effect, an individual must "step into the shoes of a parent" in order to establish a "parental relationship". If the role they play, whether as a relative or friend of the family, is as a caring relative or friend but not so as to take on the role of a parent then it cannot be said that they have a "parental relationship" with the child. It is perhaps obvious to state that "carers" are not *per se* "parents." A child may have carers who do not step into the shoes of their parents but look after the child for specific periods of time (for example whilst the parents are at work) or even longer term (for example where the parents are travelling abroad for a holiday or family visit). Those carers may be professionally employed; they may be relatives; or they may be friends. In all those cases, it may properly be said that there is an element of dependency between the child and his or her carers. However, that alone would not, in my judgment, give rise to a "parental relationship."
79. As I said in the Error of law decision, the judge roundly rejected the appellant's credibility in assessing his evidence about the basis of his asylum claim. His adverse credibility assessment on the appellant's asylum claim is relevant in the re-making of the decision on the appellant's appeal. I have guarded myself against using it as a starting point. Plainly, it is not a starting point as the guidance in Devaseelan v SSHD [2002] UKIAT 702 does not apply. Devaseelan does not apply because the judge's assessment of credibility was not made in a previous appeal. It was made in the same appeal against the respondent's decision.
80. A striking feature of the appellant's evidence was the fact that he failed to descend into any specific details about his relationship with Z when questioned. He referred to the fact that he was not the biological parent of Z and that he was the male role model and played the role of father in Z's life but when questioned, singularly failed to give any specific details beyond some basic examples. He only mentioned picking Z up from school and dropping her off; that he and Z played in the garden, went to the park together with the dog and went shopping. He gave no explanation of anything that he may have done that a *parent*, as opposed to a friend or family acquaintance might do, save that it was mentioned that he had helped Z when she experienced bullying at school. However, even in that regard, there was no detail of the circumstances that gave rise to the bullying so that it was possible to appreciate why the very basic advice he allegedly gave Z (i.e. that he told her not to listen to people who are bullying her, not to be close to people who bully her and just to say 'hello' to them) was sufficient to deal with the situation. He gave no explanation of any *care* for Z that he has provided.
81. Indeed, such was the lack of detail in content in the appellant's evidence that, even if all of his evidence is accepted at face value (and I stress that I do not accept his evidence as I found him totally incredible), it simply cannot be said that he had "*stepped into the shoes of a parent*".
82. I have noted that no documentary evidence was provided from Z's school in the appeal before the judge. I do have a document from Z's current school. This is dated 13 September 2018 (pages 19 and 20 of the bundle). This refers to the appellant being a second contact. There is no evidence from the school to confirm that he does at times pick up Z from school and drops her off, nor is there any evidence from the school or any doctor to show that he has ever been present at any school meetings or any appointments with her doctor.

83. There were two or three occasions at the hearing when the appellant gave answers which at first did not make sense but on being asked again, he formulated an answer. For example, when asked why Z had not provided up-to-date evidence, he gave an answer which was simply unintelligible such that I was simply unable to record in my notes what his answer was notwithstanding the experience I have had in recording oral evidence. When the question was repeated, he said that it was because they did not know that they had to make a witness statement again. I formed the distinct impression that he was playing for time in order to formulate an answer to the question. I reject the explanation he gave as incredible, given that he is legally represented and it is inconsistent with the fact that Ms KP gave a second statement.
84. I found the appellant's evidence about the reasons for Ms KP's absence from the resumed hearing contradictory. It is very clear that he initially said that he and Ms KP received a call to say that the friend had a "*family issue problem*" and that he and Ms KP found this out at about 18:30 hours on 1 November 2018. On further questioning, this changed to "*we received the text from Sarah's daughter*" at 18:00 hours. He was given an opportunity to explain why he had said earlier that he and Ms KP received a phone call at 18:30 hours. He acknowledged that he had said that they received a call but then said that they had received a text at 18:00 hours. Accordingly, his evidence changed from saying there was a phone call at 18:00 hours to saying there was a text message at 18:30 hours to saying that there was a text message at 18:00 hours. These inconsistencies, for which no explanation was in fact given, go against his credibility.
85. The appellant was specifically given an opportunity to explain what alternative arrangements had been made by Ms KP for Z's care. He said that Ms KP had two other friends but that it was too late to ask their employers for the day off. This does not explain why Ms KP did not put in place any back-up arrangements in case Sarah was unexpectedly unable to look after Z which I would have expected given that she was fully aware that there would be no further adjournments.
86. In his evidence before the judge, the appellant's case was that he had no contact with his family and did not have their support. At the hearing before me, he initially said that he talked to his "*parents*". He is fluent in the English language and would have known that the Court would infer that he was referring to both parents when he used the term "*parents*". When it was put to him that he had said at the hearing before the judge that he was in fear of his family whereas he had said before me that he was in contact with his parents, he said that he does not want to tell people that he only speaks with his mother and he therefore says that he speaks to his parents when he means that he only speaks to his mother. I reject his explanation as wholly incredible. He is fully aware that he was not "*speaking to people*" but giving evidence in Court. He would have been fully aware that he had been found lacking in credibility by the judge and that I would need to consider his credibility further. He would have been fully aware of the importance of ensuring that his evidence was not only accurate but truthful.
87. I have to say that I found it very telling that the appellant has only produced a few photographs and that the photographs he has chosen to produce are, in the main, blur. This is someone who claims to have been in a relationship with Ms KP since November 2014. He claims to have been living with Ms KP and Z since November

2014. Yet, all he has managed to submit in this appeal are ten photographs as follows:

- i) Two photographs of the same occasion, at pages 27 and 28. He said that he was the person on the left and Z the person on the right. They were playing cards.
- ii) Two photographs of him in a park with a dog (pages 29 and 30).
- iii) One photograph of him with a female taken outdoors (page 31). This photograph is so blur I cannot tell who the female is. Indeed, I cannot even tell whether the man is the appellant.
- iv) Two photographs of the same occasion, at pages 32 and 33. He said that he is on the left, Z is in the middle and Ms KP is on the right. These photographs are (again) blur.
- v) A photograph on page 34. He was not questioned about this photograph but it appears to have been taken on the same occasion as the photographs on pages 32 and 33.
- vi) One photograph at page 35. This is very blur indeed. It appears to be a photograph of the appellant and a dog but I cannot be sure.
- vii) One photograph at page 36. This is so blur that I cannot even be sure how many people are in this photograph, who they are or where it was taken.

88. I declined Mr Lams' suggestion that I should look at the photographs on the appellant's mobile phone. The appellant has provided these photographs as evidence of his relationships with Z and Ms KP. He chose to produce blur photographs when he knows that he was submitting these photographs in order to establish his claimed relationship with Ms KP and Z. If he has been a relationship with Ms KP since November 2014 and lived with her and Z since then, he would have had many opportunities to take photographs. It is telling that he has produced so few photographs and that the quality of the photographs is so poor that I do not even recognise the lady on the right at pages 32 and 33 as the lady I saw at the Error of law hearing and from whom I heard oral evidence.

89. If there was any genuine relationship between the appellant and Z, any relationship at all even if not a parental relationship, he would not need to resort to producing for the Tribunal photographs that are so blur that I have difficulty being confident that I am looking at the photographs of an 11-year old at pages 27 and 28 and of the same person but a year younger at pages 32 and 33. Indeed, on the whole of the evidence and for all of the reasons given above and below, I do not accept that the person on the right at pages 27 and 28 is an 11-year old child. I find that this is a female who is in her late teens or older. I further find that the person in the middle in the photographs on pages 32 and 33 is not the same person as the female on the right at pages 28 and 29. I find that these are the reasons why the appellant has deliberately produced such poor quality photographs. On the whole of the evidence, I find that he is simply unable to produce more photographs and better quality ones because he is not in a genuine relationship with either of Z or Ms KP.

90. The appellant was questioned before me on his evidence that he was working illegally when he was arrested in January 2018. He said that he told the person who

employed him that he would be able to get his paperwork in two days' time and so he started work and that he was arrested on the day that he started work. In fact, it is clear from his immigration history that he could not have truthfully told any prospective employer that he would obtain his paperwork in two days' time. It is therefore clear that on his own evidence, he lied in order to obtain employment. This is evidence that he is someone who is prepared to lie and do whatever is necessary in order to live and work in this country. I pause here to observe that my experience of his credibility accords fully with the experience of the judge who, as I have said, roundly rejected his credibility.

91. The appellant's evidence at the hearing was that the only occasion when he worked was when he was arrested, whereas Ms KP said in her first witness statement (page 92 of the bundle), describing how it came about that he stayed with her, that: *"Soon after he stayed and went to work from the house all the time"*.
92. I take into account that the appellant gave a false name when arrested. When it was put to him that he had failed to report on a number of occasions after he was given temporary admission, he initially said that he did not inform the immigration authorities that he had changed his address when he moved to Ms KP's address but then, almost immediately, said that he had emailed the change of address to the immigration authorities but did not receive any further letters from the immigration authorities. There is no documentary evidence to support his evidence that he had emailed the change of address to the immigration authorities. In any event, his explanation does not make sense because he was granted temporary admission in March 2015 but his evidence and that of Ms KP is that he was already living with her from November 2014 onwards.
93. Furthermore, his explanation (that he had emailed his change of address) simply does not explain why he just stopped reporting. He could reasonably be expected to have known that a formal change of his reporting condition was required and that it was not open to him to simply stop reporting.
94. I found it wholly incredible that the appellant had a genuine dental appointment at a dental surgery in Sheerness to have his teeth flossed. I found his evidence that he mentioned the problem that he had with his flossing to the doctor that he knew at the Sheppey Dental Care surgery and that it was then the doctor who made the appointment for him wholly incredible.
95. I acknowledge that Ms KP's second witness statement is very detailed. However, she did not attend the resumed hearing so that her evidence could be tested. I would have wanted to ask her why she was claiming single occupancy discount for her Council tax if the appellant was living with her. I would have wanted to ask her to confirm whether the person on the right in the photographs on pages 27 and 28 was Z, whether the person in the middle in the photographs on 32 and 33 was also Z and whether she (Ms KP) was the person on the right in the photographs at pages 32 and 33. I would have asked her why there were no photographs of the three of them at her home. As it is, I am left with these difficulties in the evidence. Since her evidence about her relationship and Z's relationship with the appellant has not been tested, the weight I can give her evidence is less than if she had withstood her evidence being tested orally at the hearing.

96. I have taken into account Z's hand-written letter and drawing. I have noted that she says, inter alia, in referring to the appellant: "*When he comes round we all laugh together*". This suggests that the appellant does not live in the same home. If Ms KP had attended the hearing, I would have wanted to put this to her.
97. I did not find Mr [B] credible. At para 4 of his witness statement, he said that he has been good friends with the appellant. At paras 8 and 9 of his witness statement he said:
 - "8. I know the family is going through a difficult time at the moment due to [Ms KP's] mother passing away recently.
 9. I have seen the couple's Ups and Downs throughout the time. I was also a financial surety in [GL]'s bail Application".
98. In keeping with his witness statement, Mr [B] sought to give the impression at the hearing that he knows the appellant, Ms KP and Z well. He said at the hearing that the appellant cares for Z like her father even though he is not Z's biological father. However, he was unable to provide any detail. For example, when asked to give examples of how the appellant cares for Z, he merely spoke in general terms, saying:

"In relation to mental support, when you start a new school, it is quite daunting for a child. Having the support of parents helps. [The appellant] plays his part, he is like a male role model. He builds a lot of confidence in her life as she is growing up".
99. He was given a further opportunity to provide detail when he was asked how he knows this. He said he sees it and the appellant also talks to him about it. When he was then asked to explain *how* he sees this, he said: "*It's the way she talks to him and how they are together*". Plainly, he was given more than one opportunity to 'add flesh to the bones' as it were, but failed to take the opportunity. I find that this is because he has not in fact observed anything. He has no actual examples to fall back on.
100. Another example is when Mr [B] was asked how it would impact upon Ms KP and Z if the appellant were to leave the United Kingdom. He said: "*You have to take into consideration that [Z] has lost her grandmother and she's never had a father figure in her life. [GL] plays a huge part in her life. Taking that away disrupts the child going through a growth period*". Again, he spoke in general terms and he failed to give any detail of *how* it would impact on Ms KP and Z.
101. Mr [B] said that he did not know why Ms KP did not attend the resumed hearing. I am asked to believe, on the one hand, that the appellant and Mr [B] are good friends and, on the other hand, that they did not discuss why Ms KP was unable to attend the hearing whilst waiting for this case to be called on. It would have been only natural for them to have discussed it. I do not believe that they did not do so. I find that Mr [B] gave the evidence he did in order to avoid any further questioning lest discrepancies emerge between his evidence and the appellant's.
102. Mr Lams provided me with a "*Notice of Bail hearing*" dated 21 May 2018 for a bail hearing on 24 May 2018 at the First-tier Tribunal (IAC) at Hatton Cross hearing centre and the completed bail application form. This has the details of Ms KP as the first surety and Mr [B] as the second surety. It is true that this shows an application

for Mr [B] to stand surety in the sum of £1,500. However, according to the Upper Tribunal's database, bail was refused by the First-tier Tribunal on 24 May 2018. The appellant was granted bail by the Secretary of State and, as such, neither the Upper Tribunal nor the First-tier Tribunal has any record of the conditions of bail or the details of the sureties.

103. Thus, there is no evidence, as such, that the other surety was Ms KP. This is likely to be an unfortunate oversight on the part of the appellant's representatives. If Mr Lams knew that bail was granted by the Secretary of State, I am sure he would not have provided me with a copy of the Notice dated 21 May 2018 of the bail hearing on 24 May 2018 or the application for bail. However, the narrow point I rely upon is that it is telling that Mr [B] professes, on the one hand, to be good friends with the appellant and Ms KP but does not know, on the other hand, who the other surety was.
104. I have taken into account the hand-written statement from Ms KP's mother. As she has unfortunately passed away, her evidence cannot be tested.
105. I have considered the contents of the Christmas and other cards at pages 99-106. In view of the fact that it is claimed that the appellant and Ms KP have been living together since November 2014 and been partners since then, it is striking to see how few cards have been submitted. There was only one from Ms KP to the appellant. There were a very small number from the appellant to Ms KP and one from him to Z. There were none from Z to the appellant. All the hand-written messages from the appellant to Ms KP and from Ms KP to the appellant were wholly platonic in nature.
106. I noted that there are no witness statement from Ms KP's friends to confirm that she has a genuine relationship with him and Z.
107. I take into account that the appellant said at his asylum interview on 22 March 2018 that he met Ms KP in 2013 and moved in with her in 2014, that his evidence in this regard has been consistent and that it is also consistent with Ms KP's evidence in her witness statements. I take into account that he gave Ms KP's address when arrested and that he was bailed to her address. I have noted that he said at question 128 of his asylum interview that she was on "*happy tablets*" which is consistent with her witness statement that she was on medication for depression. I take into account the letter and drawing said to be from Z and the letter said to be from Ms KP's mother. As I said earlier, I have taken into account all of the evidence whether or not I have specifically referred to it.
108. On the whole of the evidence and giving such weight as I consider appropriate to each aspect of the evidence before me, I found the appellant and Mr [B] wholly lacking in credibility. I reject the claim that the appellant has a genuine and subsisting parental relationship with Z. I reject the claim that the appellant has a genuine and subsisting relationship with Ms KP. I am not even prepared to accept that he lives with Ms KP or that he has lived with her since 2014, notwithstanding that he gave her address when arrested in January 2018 and that he was bailed to that address.
109. The evidence is, and I so find, that, notwithstanding that she is not in a genuine relationship with the appellant, Ms KP is willing to assist him in his immigration matter but only so far. She may have her own reasons for her willingness to help him; for example, she may be willing to help someone she knows who is in need. Whatever

her reasons, I find that it is clear that she is only willing to help him to a limited extent. That is why she is willing to provide him with some documents but unwilling to do more; for example, by having her evidence about her alleged relationship with him tested on oral evidence. She is willing for him to be recorded as a contact for Z but unwilling for him to take a greater part in Z's life at school which explains why there is no further evidence from the school. She is willing to allow him to use her address as a post-box which explains why he was able to give her address when he was arrested. However, he does not live with her, which explains why she is claiming a single occupier's discount for her Council tax, why there are no photographs of the three of them (the appellant, Z and herself) in her home, why so few greeting cards have been submitted, why the greeting cards submitted are of such a platonic nature, why Mr [B] has only been to her home once and why none of her friends have given supporting evidence. I do not accept that the letter and drawing said to be by Z were genuinely written or drawn by Z.

110. Accordingly, s.117B(6) and EX.1(a), cannot assist the appellant.
111. For the same reasons, the appellant has not established that he enjoys family life with Ms KP and/or Z.
112. Mr Lams accepted that the appellant's private life claim cannot succeed given the judge's dismissal of his private life claim under para 276ADE(vi) outside the Immigration Rules.
113. I therefore re-make the decision on the appellant's appeal by dismissing his appeal on human rights grounds. The judge's decision to dismiss his appeal on asylum grounds and humanitarian protection grounds stands.

Decision

The decision of Judge of the First-tier Tribunal Telford involved the making of errors on points of law sufficient for it to be set aside. The decision was set aside. The Upper Tribunal re-made the decision on the appellant's appeal against the respondent's decision as follows:

The appellant's appeal is dismissed on asylum grounds, humanitarian protection grounds and human rights grounds.



Upper Tribunal Judge Gill

Date: 12 November 2018



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: PA/05420/2018

THE IMMIGRATION ACTS

Heard at: Field House
On 21 August 2018

Decision promulgated

Before

Upper Tribunal Judge Gill

Between

[G L]
(ANONYMITY ORDER NOT MADE)

Appellant

And

The Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr R K Rai, of Counsel, instructed by Farani Taylor Solicitors.
For the respondent: Ms K Pal, Senior Presenting Officer.

Decision and Directions

1. The appellant, a national of Nepal born on 1 November 1988, has been granted permission to appeal to the Upper Tribunal against a decision of Judge of the First-tier Tribunal Telford (hereafter the “judge”) who, in a determination promulgated 5 June 2018 following a hearing on 17 May 2018, dismissed his appeal on asylum, humanitarian protection and human rights grounds against a decision of the respondent of 16 April 2018 refusing to grant him asylum and humanitarian protection and refusing his human rights claim.
2. The appellant's asylum claim was based on his fear that he would be persecuted by his own family and also by his ex-wife's family. He said that his family would

persecute him because he had taken out a loan of £18,000 in 2013 secured against family property to fund his studies but did not repay his loan. His brother borrowed money from another bank to discharge the first loan. He has not repaid his brother. He has received death threats from his family. His ex-wife's family would harm him because the divorce from his wife led to an expectation that he would provide a house for her. As he had no money and was in debt to his brother, he could not provide the house. He has received death threats from his ex-wife's family. His ex-wife's father and brother were involved in politics.

3. The appellant's Article 8 claim was based on his relationship with Ms [KP] and her daughter. Both are British citizens. I shall refer to the daughter hereafter as "Z". It was said that the appellant and Ms [P] began their relationship in 2013 and began living together in 2014. It was said that the appellant was like a father to Z.
4. At the hearing before the judge, the appellant withdrew his asylum claim because it was accepted that there was no Geneva Convention reason. He relied upon his humanitarian protection claim and Articles 2 and 3 of the ECHR.
5. An application was made at the hearing before the judge to adjourn the hearing. The application was made for two separate reasons. Firstly, that Ms [P] was unable to attend the hearing because Z had to undergo SATS tests that day. Secondly, that the appellant needed more time to obtain further evidence to support his protection claim.
6. The judge refused to adjourn the hearing. In relation to Ms [P], he said that there was no evidence from Ms [P] that she could not attend the hearing, the evidence was simply on the instructions of the appellant. Furthermore, Ms [P] could have made arrangements as she had previously with her mother or anyone else responsible enough to look after the child.
7. It is only necessary to provide the following very brief summary of the judge's decision:
 - (i) The judge made a very strong adverse credibility assessment, rejecting roundly the entirety of the appellant's account of the basis of his protection claim.
 - (ii) In relation to the appellant's Article 8 private life claim, the judge found that the appellant had not established that there would be very significant obstacles in Nepal and therefore he did not meet the requirements of para 276ADE of the Immigration Rules (hereafter the "Rules"). At paras 50 and 81, the judge said as follows:

"50. He failed to establish insurmountable or very significant obstacles under paragraph 276ADE (1) (vi). As someone claiming as an unlawful overstayer, he cannot succeed here. He has not shown he has integrated into UK society in full and he can return to his home country safely and reintegrate there. He is on his stated d.o.b. 1 November 1988 and aged 29 years and has lived the vast majority of his life in his home country. He still retains the language of Nepal, has experienced work and has command of English. He has academic and professional qualifications. He can use his English language skills in Nepal. He has not shown he is not in contact with his family and I find has not shown he cannot expect their support upon his return.

81. There is no valid claim here. He has not shown he has altered his life to such an extent that he cannot return. He obviously does have links to his wider family in Nepal and they supported him previously and would be delighted I find to have him back. His claim was not shown to fall outside the Rules on article 8 in any way. EX.1 does not avail him.”

(iii) In relation to the appellant's family life claim under the Rules, the judge did not conduct an assessment under Appendix FM or EX.1(a) or (b), or s.117B(6) of the Nationality, Immigration and Asylum Act 2002 (hereafter the “2002 Act”). This may be explained by his findings in relation to the appellant's Article 8 claim outside the Rules, that family life with Ms [P] and Z had not been established.

(iv) In relation to the appellant's Article 8 family life claim outside the Rules and as stated above, the judge did not accept that the appellant enjoyed family life with Ms [P] and/or Z. The judge's reasons are set out at paras 51-58. It is only necessary to refer to para 56 where the judge, in referring to a letter he had before him from Z who was then 11 years old, said as follows:

“I deprecate the practice of letter writing by 11 year olds with pictures attached. Whilst it plays to the heart strings, it does nothing to indicate a mother with her child's best interest at heart....”

The judge made no further mention of Z's letter or its contents.

The grounds and the grant of permission:

8. There were three grounds which may be summarised as follows:

- (i) Ground 1 concerned the judge's assessment of the evidence concerning the appellant's relationship with Ms [P] and Z.
- (ii) Ground 2 concerned the judge's failure to consider Appendix FM and EX.1 (a) and (b).
- (iii) Ground 3 concerned various aspects of the judge's adverse credibility assessment in relation to the protection claim. It is unnecessary to provide greater detail, for the reason given at paras 10-12 below.

9. Judge of the First-tier Tribunal EM Simpson essentially granted permission to appeal on all the grounds. Although the grounds did not raise any issues as to a lack of fair process, Judge Simpson considered it arguable that there was a lack of fair process on account of the judge refusing to adjourn the hearing to enable Ms [P] to attend the hearing and also in excluding from his consideration the letter from Z.

10. At the hearing before me, Mr Rai initially said that he would not be withdrawing ground 3 but that he was also *not* asking me to decide it. When I asked him what he proposed I should do with ground 3 in that case, he asked for an opportunity to take instructions. Having done so, he informed me that ground 3 was withdrawn and that he would not be arguing ground 3 on that day. When I informed him that it was not certain that there would be another hearing and that the hearing then was when I would decide whether the judge had materially erred in law as contended in ground 3, he then said that he maintained ground 3 and that he would argue that the appellant contends that his return to Nepal would be in breach of Articles 2 and 3 of the ECHR. I then reminded Mr Rai that it was not for me to decide whether the

appellant's removal to Nepal would be in breach of his rights under Articles 2 and 3 but whether the judge had materially erred in law in reaching his finding that removal would not be in breach of his rights under Articles 2 and 3.

11. I then submissions on Article 8 first because Mr Rai preferred to address me on Article 8 first as he said this was the main focus of the appellant's appeal. When the time came for me to hear his submissions on ground 3, Mr Rai said that he was not relying on Article 2 and, in relation to Article 3, he said: "*I do not seek to persuade you that there is a material error of law as contended in ground 3*".
12. In other words, Mr Rai, in effect, withdrew reliance on ground 3.
13. Accordingly, the parties agreed that the issues before me are, and my approach to the issues should be, as follows:
 - (i) Whether the judge's refusal to adjourn the hearing in order to enable Ms [P] to attend the hearing and whether the fact that he had excluded from his consideration the contents of Z's letter mean that there has been a lack of due process in the proceedings before the judge in relation to the appellant's Article 8 family life claim;
 - (ii) If I decide the issue in (i) for the appellant, i.e. that there was such lack of due process, then it is unnecessary for me to decide the underlying merits of grounds 1 and 2. This is because the decision on the appellant's family life claim would have to be re-made.
 - (iii) If I decide the issue in (i) against the appellant, then it would be necessary for me to decide the underlying merits of grounds 1 and 2, i.e. whether the judge materially erred in law in his assessment of the appellant's family life claim.
14. I have decided that, *in relation to the appellant's Article 8 family life claim only*, there has been a lack of due process in the proceedings before the judge, for reasons given below. Accordingly, it is unnecessary for me to decide the underlying merits of grounds 1 and 2.
15. My reasons for concluding that, *in relation to the appellant's Article 8 family life claim only*, there has been a lack of due process in the proceedings before the judge, are as follows:
 - (i) In reaching my decision as to whether the judge's refusal to adjourn the hearing in order to allow Ms [P] to attend the hearing was unfair, I am not limited to the evidence that was before him. Issues as to whether there has been procedural unfairness do not necessarily come within the usual limitation on the admissibility of fresh evidence to establish that a judge has materially erred in law in the assessment of the substantive case.
 - (ii) I heard oral evidence from Ms [P]. Ms [P] said that she was only told about the hearing on about 10 May 2018. She explained that she did not ask her mother to look after her daughter because her mother, who has now passed away, was small in size, old and frail. She was 82 years old. She had had an accident previously and fractured both sides of her pelvis. Ms [P] did not wish to place the responsibility of looking after her daughter on her mother. Ms [P] had two friends she could call upon but they were both working. In addition, her daughter wanted her to be with her.

- (iii) I am satisfied, on the basis of the evidence I heard, that, at the relevant time, Ms [P] had a good reason for not requesting her mother to look after her daughter and that her friends were unable to do so because they were working. I am therefore satisfied that the judge's refusal to adjourn the hearing so that Ms [P] could attend the hearing and give evidence in relation to the appellant's family life claim has led to a lack of due process concerning that aspect of the appellant's case.
 - (iv) I am also satisfied that the judge did exclude from his consideration the evidence given by Z in her letter. This evident from the words in his para 56 quoted at my para 7(iv) above taken together with the fact that he did not otherwise mention or assess the contents of Z's letter. I am satisfied that Z's evidence was potentially relevant to the appellant's family life claim.
16. I am therefore satisfied that the judge did err in law in his assessment of the appellant's Article 8 claim. Ms [P]'s evidence (if she had been able to attend the hearing) and Z's letter were potentially capable of being material to an assessment as to the existence of family life and the assessment of the issues in EX.1 (a) and (b) and also the family life claim outside the Rules.
17. For the above reasons, I set aside the decision of the judge to dismiss the appellant's Article 8 family life claim. The following findings shall stand:
- (i) The judge's decision to dismiss the appellant's appeal on asylum grounds.
 - (ii) The judge's decision that the appellant's removal will not be in breach of his rights under Articles 2 and 3 of the ECHR.
 - (iii) Since the grounds did not challenge the judge's assessment of the appellant's private life claim under para 276ADE and Mr Rai did not mention para 276ADE at the hearing before me, the judge's decision that the appellant does not meet the requirements of para 276ADE of the Rules stands. This includes the judge's finding, at para 50, that the appellant had not established that he is not in contact with his family and that he has not shown that he cannot expect their support upon his return.
 - (iv) The judge's adverse credibility assessment and findings in relation to the appellant's protection claim stand.
18. The issues at the next hearing will be limited to the following:
- (i) Whether Appendix FM and EX.1(a) and/or (b) are satisfied.
 - (ii) Whether s.117B(6) is satisfied.
 - (iii) The appellant's Article 8 family life claim outside the Rules. If I find that the appellant's relationship with Ms [P] and/or Z does not amount to family life within Article 8(1) but that it does form part of his private life, then his private life claim will be considered outside the Rules. If I find that the appellant's relationship with Ms [P] and/or Z does not amount to family life within Article 8(1) and also that it does not form part of his private life (i.e. that there is no genuine relationship or connection), the parties will need to address me on whether the judge's decision in relation to para 276ADE has addressed fully his private life claim so that it is unnecessary to consider his private life claim outside the Rules.

19. It follows that:
 - (i) the judge's assessment and findings are set aside as follows:
 - a) paras 51-58;
 - b) the words *"there is no relationship here that would be breached by his removal"* in para 73;
 - c) The last two sentences of para 81, which read: *"His claim was not shown to fall outside the Rules on article 8 in any way. EX.1 does not avail him."*
 - d) paras 82-86. The Upper Tribunal will re-assess these issues in the light of its findings following the resumed hearing.
 - (ii) the remainder of the judge's assessment and findings shall stand.
20. In the majority of cases, the Upper Tribunal when setting aside the decision will re-make the relevant decision itself. However, para 7.2 of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal (the "Practice Statements") recognises that it may not be possible for the Upper Tribunal to proceed to re-make the decision when it is satisfied that:
 - "(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
 - (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal."
21. Mr Rai submitted that, if I decide that the appellant did not have a fair hearing before the judge, the Article 8 claim should be remitted to the First-tier Tribunal because this would require extensive findings of fact.
22. The fact that Ms [P] was unable to give evidence before the judge and the fact that the judge excluded from his consideration the letter from Z do, prima facie, come within para 7.2(a). However, para 7.2(a) is discretionary.
23. I have considered the exercise of my discretion. My decision, that there was a lack of due process in the proceedings before the judge, is limited to the Article 8 family life claim. The grounds did not challenge the refusal of the judge to adjourn the hearing in order to allow the appellant to have a further opportunity to produce evidence in support of his protection claim, nor was this raised at the hearing before me. Indeed, ground 3 was effectively withdrawn at the hearing before me. The issues to be decided at the next hearing are not a complicated. They are limited, as set out above.
24. I have therefore decided that the Upper Tribunal will re-make the decision on the appellant's appeal. The case is reserved to myself. The issues are limited as set out above.

Notice of Decision

The decision of Judge of the First-tier Tribunal Telford involved the making of errors on points of law such that the decision to dismiss the Article 8 family life claim is set aside.

The decision to dismiss the appeal on asylum grounds, humanitarian protection grounds, Articles 2 and 3 of the ECHR and in relation to para 276ADE of the Rules stand.

The Upper Tribunal will re-make the decision on the appeal. The case is reserved to myself.

Directions to the parties

- (1) The appellant shall notify the Upper Tribunal within five days of the date on which these Directions are despatched the following:
 - (a) if an interpreter is required at the hearing, the language in which an interpreter is required;
 - (b) the number of witnesses who will give evidence.
- (2) Any evidence the appellant seeks to rely on must be served within 14 days of the date on which this "Decision and Directions" is sent to the parties. The appellant's bundle must include:
 - a. Witness statements of the evidence to be called at the hearing.
 - b. A paginated and indexed bundle of all documents to be relied on at the hearing. Essential passages must be identified in a schedule, or highlighted.
 - c. A skeleton argument, identifying all relevant issues and citing relevant authorities.
 - d. A chronology of events



Signed
Upper Tribunal Judge Gill

Date: 23 August 2018