



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: HU/17184/2016  
HU/17188/2016  
HU/17191/2016

**THE IMMIGRATION ACTS**

Heard at Cardiff Civil Justice Centre  
On 21<sup>st</sup> February 2019

Decision & Reasons Promulgated  
On 15<sup>th</sup> March 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

(1) MR

(2) HA

(3) MR

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellants: Mr Taj Shah (Solicitor)

For the Respondent: Mr Chris Howells (Senior HOPO)

**DECISION AND REASONS**

1. This is a second stage continuation appeal hearing, after the first stage hearing by Upper Tribunal Judge Rintoul, which was promulgated on 19<sup>th</sup> September 2018, following a hearing on 22<sup>nd</sup> August 2018. The appeal arises in circumstances where there had been a challenge to the decision of the First-tier Tribunal Judge Suffield-

Thompson promulgated on 16<sup>th</sup> May 2017, in which she had allowed the appeal of the Appellants (these being the three members of the same family who appeared as Appellants in the Tribunal below). The decision that was being challenged at the time was made on 29<sup>th</sup> June 2016 refusing them all leave to remain in the United Kingdom. The basis of that decision was that these three Appellants did not meet the requirements of paragraph 276ADE of the Immigration Rules, and nor were there exceptional circumstances such that removing them from the UK was disproportionate.

### **Salient Facts**

2. The salient facts were set out in the Upper Tribunal decision of Judge Rintoul (who took care to set out the immigration history which had been described at paragraph 2 of the First-tier Tribunal Judge's decision). Basically, the first Appellant arrived in the UK illegally in 2003. An asylum claim by him which followed was then refused, but later having entered into a relationship with his wife (the second Appellant) he was granted discretionary leave to remain from 28<sup>th</sup> November 2011 to 21<sup>st</sup> October 2012. This was subsequently extended after an in-time application, and the principal Appellant was granted further discretionary leave from 26<sup>th</sup> November 2013 until 25<sup>th</sup> November 2016. That leave, however, was curtailed on 6<sup>th</sup> February 2016 on the basis that the first Appellant should not have been granted leave in the manner that he was, because such leave should only have been granted to him in line with that of his wife. In the meantime, the first Appellant built up a business of a restaurant known by the name of [~] in a small rural town by the name of [~] in [~], which is the only Indian restaurant in the entire town. The first Appellant did so because he had been granted discretionary leave to remain in the United Kingdom.
3. The second Appellant, his wife, had herself entered the UK in 2011. She had leave to remain as a student. This was later varied to leave to remain as a Tier 4 (Student) until 10<sup>th</sup> April 2015. An application was thereafter made in February 2014 for leave to remain on the basis of private and family life, which was refused, without a right of appeal. On 24<sup>th</sup> March 2014 an application for leave to remain outside the Rules was submitted but this was refused with no right of appeal.
4. The third Appellant was born in 2012 and like his parents, is a citizen of Bangladesh. The Appellants' case is that there would be very significant obstacles to their reintegration into life in Bangladesh as they have no home to go to, no means of making an income, no family in a financial position to help them, even for a short period of time. The land which they lived on had belonged to the first Appellant's sisters, and this had been destroyed in the floods, and they no longer had the means to support a family.
5. The Secretary of State did not accept that the Appellants met the requirements of paragraph 276ADE. The judge below who had heard the evidence from the first and second Appellants, found them to be honest, credible witnesses (see paragraph 35) and it was of great significance in this case that the first Appellant fell within the

“Legacy” provisions and had later been granted discretionary leave in line with his wife and he could therefore work. He had trained as a chef and set up a business. Thus, the curtailment of his leave came “out of the blue” (see paragraph 37).

6. The judge had found there to be very significant obstacles to the family returning back to Bangladesh given that they had nowhere to live or no means to earn a living; she had found that the removal would be disproportionate; she had found that the family were well integrated into the local community as was shown by the evidence from the local people; and the first Appellant was self-supporting and provided employment for eleven British people at his business. Moreover, one of his children had died on the day of being born and was buried in the cemetery in the home town, and both the first and second Appellant regularly visited the cemetery, which they would not be able to do if they were to be forced to return back to Bangladesh. The judge also found that it was not reasonable to expect the Appellants to be removed, applying the test approved by Sedley LJ, and finding that there is more than mere hardship that they would suffer. The only issue that remained was under Section 117B and this was to do with the maintenance of immigration control (paragraph 52).
7. The Secretary of State had sought permission to appeal on the grounds that the judge had erred for two reasons. First, she had failed to address the weight to be attributed to all the issues and not just to the Appellants’ concern about relocating. The judge had failed to note that the private life of the Appellants had been built up during a period when their residence was precarious. Second, there was no evidence and no reason why, the Appellants could not work and set up a business in Bangladesh, and the judge had failed to consider that the Appellant could sell or wind up his business and use the profits to assist the family on return.
8. Judge Rintoul had found that the judge had failed properly to explain why she had concluded that there were insurmountable obstacles to the family relocating to Bangladesh. There was no reason why in principle the assets available in the United Kingdom could not be sold in order to overcome difficulties on return. Mr Shah, who had appeared as the Appellants’ representative on that occasion also, had submitted that he would accept that if an individual had a substantial sum of money in their bank account, then that could clearly be taken into account in assessing the overall availability of resources. Furthermore, the judge appears to have misunderstood the situation. Whilst the premises that the first Appellant had were on leasehold, this did not mean that the business cannot be sold as a going concern or that there was no value in the lease which was held for fifteen years.
9. Finally, the judge’s findings with respect to Article 8 were on the basis that the Appellants met the requirements of the Immigration Rules. However, the judge’s assessment of proportionality was flawed. There were a number of factors in this case which were unusual but the judge failed properly (at paragraph 53) to set out what weight she attached to the need to maintain immigration control, and what she said at paragraph 56 was clearly a misstatement of the law.

10. Judge Rintoul ended his determination on the basis that with the exception of whether or not the business could be sold, the other findings of fact were well reasoned and were to be maintained. The learned judge did end with the observation that,

“I do, however, have concerns about the nature and timing of the initial grant of discretionary leave to the first [Appellant] and for that reason, I direct that the Secretary of State provide all the contemporaneous notes with regard to that grant, the renewal of leave in that capacity and the decision to curtail that leave” (see paragraph 12).

### **The Hearing**

11. At the hearing before me on 21<sup>st</sup> February 2019, Mr Howells, the Senior Home Office Presenting Officer, handed up a bundle of documents, which had been emailed by him also on 18<sup>th</sup> February 2019 which set out the contemporaneous notes for the grant of various periods of leave to the Appellants. This was in accordance with the direction given by Judge Rintoul for this second stage appeal hearing.

### **The Hearing**

12. At the hearing before me on 21<sup>st</sup> February 2019, Mr Shah, called both the first and second Appellants, as husband and wife, to give evidence again. The first witness was the first Appellant. He confirmed his citizenship as being a national of Bangladesh, and that he was born on 20<sup>th</sup> January 1974. He had entered the UK illegally in 2003. He had applied for asylum. This was refused. Further submissions were made in 2011. This was because he was in a relationship with a Tier 4 Migrant. As a result, he was subsequently granted discretionary leave between 28<sup>th</sup> November 2011 and 31<sup>st</sup> October 2012. He went on to say that although he had a mother, two sisters and three brothers in Bangladesh he could not return back there because no-one would be able to look after him, as his family members were poor. He had two brothers living in Dubai and they sent monies from there. His own mother lived with his sister-in-law. He would contact his mother on the telephone and stayed in touch with them. He went on to confirm that he ran an Indian restaurant which employed eleven local staff and four other Bengali staff. This was in [~] in Somerset. It was the only Indian restaurant in the town. He had plans to expand the restaurant because it was so busy. However, he could not do so if his immigration status was on hold. He was asked why he could not go back. He said that one of his children was buried in the local cemetery. He could not leave him and go back. The other reason was that he had spent the best part of his life in the UK building up a business from scratch, had invested heavily, and could not give this up on the chance of being able to set up a business in Bangladesh.
13. In cross-examination he went on to confirm that he had some £25,000 to £30,000 in his business account. He took a salary per month from the turnover. The lease of the business is due to expire in 2024. His eldest son was well established in school. His primary language was English. He had local friends. He could not uproot himself and go to Bangladesh. He was asked about the letters (at pages 24 to 27) written by

[MS], by [AL], and by [HS]. They had all referred to the business in a letter which was, however, written in identical terms. This stated that [~] was a small and rich English heritage village where it was extremely difficult to find local staff. The witnesses who wrote on behalf of the Appellant supporting him stated that they work at the restaurant, with a number of local staff, and that the first Appellant was the main chef in the kitchen and he was assisted by others. They explained that this was a very popular restaurant. Everyone living in and around [~] visited. Most customers are very happy and the restaurant needs to expand because it cannot accommodate all the customers. When the first Appellant was asked why these letters were all in identical terms, he explained that he had got his staff together, and explained to them the predicament he was in, and they had asked him how they could help him. Then one of the staff members, who was a student, volunteered to write a uniform letter, expressing the staff's support for the restaurant and for the first Appellant, and this was then signed off by everybody else. These were not, however, the words of the first Appellant himself.

14. There was no cross-examination.
15. The second witness was the first Appellant's wife. She also adopted her witness statement (pages 24 to 26) dated 21<sup>st</sup> February 2019. She confirmed she was born on 25<sup>th</sup> June 1992. She arrived in the UK on 10<sup>th</sup> January 2011 as a student. Her student visa was valid from 23<sup>rd</sup> January 2011 until 31<sup>st</sup> October 2012. In her evidence-in-chief she went on to say that she and her family are fully integrated into the local community. So much so, that the children of her staff invite her children to their homes. They meet with local residents at Christmas-time, when they are invited into their homes, and they are also invited for birthdays. She said that she had a business background and she had used that to support her husband to establish a business in this country. The two of them had worked very hard together.
16. She said everyone in [~] really loved them as a family and they in turn loved the people there. This town was now their home. They were settled here. They could not go back. When asked why they could not go back, she replied that,

“It would be a real shame. This is because my husband has built a business here. We have lots of friends. They're like close family members. I wanted to do an MBA and to become an accountant, and had the immigration situation been better I would have completed my studies. I feel ashamed when my friends ask me why I have not completed my studies as I have only four subjects to complete and I would then be a certified accountant”.

She drew attention to the letter of 27<sup>th</sup> May 2015 (at page 80) that confirms the four subjects she has yet to complete.

17. In cross-examination she confirmed that she had a father and stepmother in Bangladesh. She last visited in 2011. She believed that she would get another extension of stay and this is why both she and her husband had invested in the business. They had not acted illegally in this regard. When asked how she had spent

£20,000 on her education, she said that her husband had borrowed money. He had also worked in the restaurant. She herself had worked in a factory. Cumulatively the funds had been raised in order to enable her to study.

18. There was no re-examination.
19. In his closing speech, Mr Howells relied upon the refusal letter of 29<sup>th</sup> June 2018. He submitted that the crucial issue was the application of paragraph 276ADE, and whether the Appellants' private life was such as to make it disproportionate for them to return. There was no qualifying child and so the Appellants could not succeed under paragraph 276ADE(iv). There were also no insurmountable obstacles and so they could not succeed under paragraph 276ADE(vi) either. Importantly, my attention was drawn to the case of **Treebhawon [2017] UKUT 13** where Mr Justice McCloskey had summarised the two limbs of the test that had to be satisfied under paragraph 276ADE. The first was the issue of "integration". The second was the issue of whether there were "very significant obstacles". On the former question, the decision in **Kamara [2016] EWCA Civ 813** was decisive in holding that the idea of integration calls for a "broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that country is carried on and a capacity to participate in it". In relation to the latter question, namely whether there were "very significant obstacles" this was a "self-evidently elevated threshold" (see paragraph 37 of **Treebhawon**) so that "mere hardship, mere difficulty, mere hurdles and mere upheaval or inconvenience, even when multiplied, will generally be insufficient in this context". As Justice McCloskey explained, "the philosophy and reasoning, with appropriate adjustments, of this Tribunal in its exposition of the sister test of 'unduly harsh' in **MK (Sierra Leone) [2015] UKUT 223** applies"(at paragraph 46).
20. Finally, there was the question of Article 8. If the Appellants do not succeed under the Rules, then Section 117B applied and the public interest in immigration control would be a very important consideration. In this case, the first Appellant established his business even before he had been erroneously granted a further extension of stay (and it was erroneous because the further grant should only have been commensurate with the grant given to his wife, and not beyond that). The Appellant should not have taken the risk of starting a business. He should not be given the benefit of Article 8 rights created when his immigration status was precarious. The evidence showed that he had £25,000 to £30,000 available and he could relocate with that to Bangladesh. The Rules were clear that "little weight" should be granted to the creation of private life rights where one's immigration status is precarious. As for the position of the children, Section 55 of the BCIA 2009, would not assist the children, because they were young enough to go as a single family unit to Bangladesh with their parents, particularly as none of them had any health problems, and none of them were qualifying children.
21. In his closing submission, Mr Shah submitted that there were two important considerations in this case. First, there was the error made by the Secretary of State

herself. At the hearing before Upper Tribunal Judge Rintoul, the Respondent had to make an apology for the fact that an erroneous grant of further extension of stay was made to the first Appellant, during which time he had built up private life rights, and without there being any explanation. Moreover, it had taken two years for the Secretary of State to correct any mistakes. Second, the plain fact was that there was in fact no error at all in the grant of further extension of stay. This was a complete misconception. This is because the Appellant himself had applied for asylum initially. His case had subsequently fallen into the Legacy Scheme. This was recognised both by the First-tier Tribunal Judge and by Mr Rintoul. As a consequence of that, when a decision was made to grant him discretionary leave, it was on the basis of his asylum claim. It came to be decided, for this reason, under the Legacy Scheme. There was no indication in the documentation that the grant of Leave to him was actually on the basis of his wife having been granted further leave to stay. Since that was in fact the case, the Secretary of State was wrong to have revoked that grant of stay on the basis that it was erroneous in the first place, because it was never linked to the grant of his wife's extension of stay. It was entirely to do with his asylum application and his case falling under the Legacy Scheme. This is why, submitted Mr Shah, it is that case that the Appellant himself states (at page 18 of the bundle) that he was "shocked" to learn that his grant of leave had been revoked. Nor was it the case that he had started his business at a time when he had no grant of leave so as to leave him in a precarious immigration position. On the contrary, this was a case where the Appellant had been granted an additional three years' leave to remain, and that leave expired in 2016, and the Appellant started his business only at the beginning of 2015. It cannot be said that he had actually jumped the gun and started his business before he had been granted an extension of stay. Finally, in terms of proportionality, the balance of considerations fell entirely in his favour and it would now be disproportionate to remove him and his family back to Bangladesh. He asked me to allow the appeal.

### **Reasons for Decision**

22. I have given careful consideration to all the evidence before me, the submissions that have been made, and the further documentation that has been produced. I find that the Appellants discharge the burden of proof that is upon them for the following reasons. I begin with the additional documentation that has been produced by Mr Howells, as a result of the directions given by Upper Tribunal Judge Rintoul on 18<sup>th</sup> September 2018.
23. First, there is an application made on 26<sup>th</sup> October 2012. It is an in-time application (see page 4 of the eight page bundle produced by Mr Howells). It confirms that there are no criminal convictions. There is no adverse information. It is in relation to that application that it was decided on 27<sup>th</sup> November 2013 that the Appellant is to be granted discretionary leave "in line with applicant's partner's T4 leave on code 1A until 10<sup>th</sup> April 2015" (see page 6). There is then an entry on 3<sup>rd</sup> December 2015 to the effect that "leave was granted on the basis of relationship with [the Appellant's wife],

and as her leave has expired and further application been refused, certified decision to curtail was correct”.

24. Second, however, be that as it may, I am satisfied that this is not the proper reading of what has actually transpired. What has happened is that the first Appellant was a failed asylum seeker. This is clear from Mr Howells’ email of 18<sup>th</sup> February 2019. This refers to the very first grant of discretionary leave to the first Appellant (see pages 1 to 3) which was dated 29<sup>th</sup> November 2011. It makes it clear that “[The Appellant] is a failed asylum seeker”. He has provided a copy of his wife’s student visa and the Home Office records confirm that “she has leave to remain in the UK until 21<sup>st</sup> October 2011. It is accepted that [the Appellant] has family in the UK” (see page 1).
25. Third, if one now looks at the decision letter of the Respondent, dated 28<sup>th</sup> November 2011, this is headed “Determination of Asylum Claim”. It clearly refers to the historic asylum Legacy cases. It makes it clear that,

“Your client’s further submissions have been carefully considered within the UK Border Agency of the Home Office, and a decision has been taken that it would be appropriate, because of the particular circumstances of your client’s case, to grant him leave to remain in the United Kingdom on a discretionary basis outside the Immigration Rules for a specified period”. (See page 34 of the Appellant’s bundle).
26. On this basis, the first Appellant was then actually given a residence permit (which appears at page 35 of the bundle) and this grants him “leave to remain” and is also certified as “work permitted”. Given the heading of this documentation, and its reference to the “asylum claim”, it is clear that this grant of discretionary leave had nothing whatsoever to do with the Appellant’s wife’s grant of discretionary leave.
27. Fourth, if one then turns to the Appellant’s witness statement (at pages 17 to 23), it is plain that he makes it clear that on 3<sup>rd</sup> May 2007, his representatives at the time “requested consideration under the Legacy Scheme as I was a failed asylum seeker” (paragraph 3). Although, the Appellant’s Legacy application was refused by the Home Office in a standard rejection letter of 11<sup>th</sup> February 2011, as he explains in his Witness Statement, he was on 26<sup>th</sup> November 2013, granted three years’ discretionary leave to remain until 25<sup>th</sup> November 2016.
28. Fifth, it was only subsequently thereafter, that the Appellant then, however, received a letter from the Respondent on 3<sup>rd</sup> December 2015, informing him that his leave was curtailed. But this was on the basis that his wife’s visa had expired and she was not granted any further leave. His leave was therefore also curtailed, and he was granted leave to remain until 6<sup>th</sup> February 2016. As he states in his Witness Statement, “I was shocked by the Respondent’s letter as I assumed that I was granted leave to remain on my own right as my leave was granted *for three years* and my wife who submitted a separate application *was granted two and a half years*” (emphases added).



29. Sixth, the result is, as the Appellant himself explains, that the grant of discretionary leave to him could not have been on the basis of the grant to his wife. This is because of the longer period being granted to him, as opposed to what was granted to his wife. The two grants of leave are not the same. His grant of leave could also not have been linked to his wife's case because he had been granted an extra six months compared to what his wife had been granted. He had always assumed that he had been granted leave on the basis of his length of residence in the UK since the year 2003. He appears to have been right in that assumption. As he explains in his Witness Statement, "I am the victim of the Respondent's decision and as a result of being granted three years' leave I purchased a leasehold Indian restaurant" (paragraph 5). He further adds that his legal representatives also explained that he had been granted leave to remain "on my own right and not on the basis of my wife" (paragraph 6).
30. On this basis, when the Respondent Secretary of State then wrote to the first Appellant on 26<sup>th</sup> November 2013 (see page 31 of the bundle), this was in relation to the Appellant's application for an extension of stay that had followed on from the grant of discretionary leave on 28<sup>th</sup> November 2011. In that regard, it was now being said to him that,
- "I am writing to inform you that, although you do not qualify for leave to remain in the United Kingdom under the Immigration Rules, it has nonetheless been decided that discretion should be exercised in your favour. You have therefore been granted limited leave to remain in the United Kingdom in accordance with the principles set out in the Home Office policy instruction on discretionary leave. You have been granted discretionary leave to remain until 25<sup>th</sup> November 2016".
31. The first Appellant gave evidence before me that he did not purchase the lease of his business until in early 2015. By that stage he had been granted a further discretionary leave to remain. That aside, what is interesting about the latest letter of 26<sup>th</sup> November 2013, however, is that it refers to the grant of discretionary leave "in accordance with the principles set out in the Home Office policy instruction on discretionary leave".
32. If one now has a look at that policy (see page 142 of the Appellant's bundle) it refers to "transitional arrangements", and makes the point that all decisions made on discretionary leave on or after 9<sup>th</sup> July 2012 will be subject to the criteria set out in this guidance. It then goes on to say that, with respect to applicants granted discretionary leave before 9<sup>th</sup> July 2012, which was the Appellant's position, "those who come up before 9<sup>th</sup> July 2012, have been granted leave under the DL policy in force at the time will normally continue to be dealt with under that policy through to settlement if they qualify for it (normally after accruing six years' continuous DL)".
33. Accordingly, under this previous policy in relation to discretionary leave to remain, the Appellant was well on his way to being granted permanent settlement after six years of discretionary leave to remain in this country. It was for this reason that in

the Appellants' written submissions (which appear at the start of their bundle) (at page 2), the point is made that "it was unreasonable for the Respondent to curtail the Appellant's three years' discretionary leave to remain".

34. This was because if regard is had to "the chronology of events", the Appellant submitted a separate leave to remain application to the Respondent on 24<sup>th</sup> October 2012 and he was granted three years' leave to remain from 26<sup>th</sup> November 2013 until 25<sup>th</sup> November 2016. On that basis, I agree as the Appellant argues that, "it was unreasonable for the Respondent to send a letter to the principal Appellant on 3<sup>rd</sup> December 2015 informing him that his leave was curtailed on the basis that his wife's visa had expired and she was not granted any further leave".
35. The Appellant had assumed that he was granted three years' discretionary leave in his own right. The Respondent's decision letter of 26<sup>th</sup> November 2013 did not state that he was granted leave on the basis of his wife. The written submissions go on to say that,
- "As a result of the Respondent's error the Appellant purchased a leasehold Indian restaurant business. Clearly the Appellant was a victim in the hands of the Respondent. It is requested that the court exercises its discretion and grant the Appellant three years' discretionary leave under the old Immigration Rules" (page 2).
36. For all these reasons, this appeal is allowed on the basis that if the principles of "integration" and "very significant obstacles" are applied, then the Appellant succeeds, given what was decided in Treebhawon, and particularly as there is no Section 117B consideration that militates against the Appellants on account of any public interest in favour of immigration control requiring their removal. This is because as far as the latter is concerned, the appellants, I find, would face 'very significant obstacles' to their re-integration in Bangladesh such that they satisfy the requirements of para 276 ADE(1)(vi), given that the Court of Appeal has given guidance in Kamara [2016] EWCA Civ 813 (at para 14) that "the idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that country is carried on and a capacity to participate in it...". On the facts of this case, I am not satisfied that the Appellants will be enough of 'insiders' or able to 'participate' in the life society in Bangladesh given that they have lost their home there, and given all the other matters set out above. But more important than that, I find that there are 'exceptional circumstances' to the appellants' claim, if the claim is assessed outside the immigration rules.
37. This is because as the decision in Agyarko [2017] UKSC 1 explains, "the European Court's use of the phrase 'exceptional circumstances' in this context was considered by the Court of Appeal in MF (Nigeria) [2013] EWCA Civ 1192 (paragraph 56). The Supreme Court goes on to say that,
- "Ultimately, it has to decide whether the refusal is proportionate in the particular case before it, balancing the strength of the public interest in the removal of the

person in question against the impact on private and family life. In doing so, it should give appropriate weight to the Secretary of State's policy, expressed in the Rules and instructions, that the public interest in immigration control can be outweighed, when considering an application for leave to remain brought by a person in the UK in breach of the Immigration Rules, only where there are 'insurmountable obstacles' or 'exceptional circumstances' as defined." (Paragraph 57).

38. The Supreme Court provides helpful guidance when it goes on to say that,
- "The Secretary of State has not imposed a test of exceptionality in the sense that the case should exhibit some highly unusual feature, over and above the application of the test of proportionality. On the contrary, she had defined the word 'exceptional', as already explained, as meaning circumstances in which refusal would result in unjustifiably harsh consequences for the individual such that the refusal of the application would not be proportionate." (Paragraph 60).
39. I am satisfied that the Appellants can discharge the burden of proof that is upon them because it would be unjustifiably harsh to expect them to return back to Bangladesh given the facts that I have accepted above. The first Appellant did not remain here illegally. He did not start his business when his leave was precarious. And, the leave granted to him was under the Legacy Scheme such that it ought not to have been subsequently curtailed. The Article 8 rights in this case have been built up in that context. To suggest that they return back would suggest a disproportionality in such a course of action. Section 117B expresses the public interest in immigration control but for the reasons set out above it should not be given the controlling weight as a consideration that is normally given to it in this case. Accordingly, this appeal is allowed.
40. An anonymity direction is made.
41. This appeal is allowed.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 14<sup>th</sup> March 2019

Deputy Upper Tribunal Judge Juss

14<sup>th</sup> March 2019

**TO THE RESPONDENT**  
**FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have decided to make a fee award of any fee which has been paid or may be payable.

Signed

Date

Deputy Upper Tribunal Judge Juss

14<sup>th</sup> March 2019