



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/13649/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre
On 16 March 2020

Decision & Reasons Promulgated
On 28 April 2020

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

K.H.D.
(ANONYMITY DIRECTION MADE)

Appellant

-and-

ENTRY CLEARANCE OFFICER - SHEFFIELD

Respondent

Representation:

For the appellant: Mr B Malik, Counsel, instructed by Direct Access

For the respondent: Mr C Bates, Senior Presenting Officer.

DECISION AND REASONS

Introduction

1. This is an appeal against a decision of Judge of the First-tier Tribunal Courtney ('the Judge') sent to the parties on 19 July 2019 by which the appellant's appeal against the decision of the respondent to refuse to grant her entry clearance as an adult dependent relative of a person present and settled in this country was dismissed, as was the appellant's article 8 appeal.

2. In granting permission to appeal Upper Tribunal Judge McWilliam observed that the grounds of appeal were wholly unparticularised and ran to over eight pages. The appellant's representatives were requested to re-draft the grounds of appeal to assist both the Tribunal and the respondent.
3. The appellant changed representatives prior to the error of law hearing and re-drafted grounds of appeal were received by the Tribunal from Demstone Chambers on 9 March 2020.
4. At the hearing Mr Malik represented the appellant by direct access.

Anonymity

5. The Judge issued an anonymity direction and provided her reasons for doing so at [52] of her decision. Neither representative requested that the Tribunal set aside the direction and so it is confirmed at the conclusion of this decision.

Background

6. The appellant is a citizen of the Philippines who is presently aged 25. Her mother, TK, is a British citizen of Filipino heritage.
7. It is stated that three days prior to the appellant's birth her twin sister died. This required the appellant to be delivered under emergency medical care. She suffered brain damage during birth consequent to her brain being starved of oxygen. Such brain damage has led to developmental problems. She did not commence walking or talking until the age of 4 and her progress has not been consistent with her peer group. She was diagnosed at the age of 6 as having learning disability accompanied by behavioural disorder. TK states that the appellant was enrolled at different schools over time because there were problems in securing adequate educational facilities. For a period of time she was enrolled at a school for children with Down's syndrome.
8. TK left the Philippines in September 2010 to join her husband in the United Kingdom. The appellant continued to reside with two older half-sisters and her younger brother, KK. The two sisters subsequently relocated, one to Manila and the other to Canada. KK was granted settlement in the United Kingdom though there is evidence before the Tribunal that he was residing with the appellant in 2019.
9. In 2012, when aged 17, the appellant applied for entry clearance as the dependent child of her mother. The application was refused by the Entry Clearance Officer on 26 June 2012 and her appeal against that decision was unsuccessful (OA/13991/2012).
10. The appellant subsequently applied for a visit visa, but this was refused by an Entry Clearance Officer on 20 April 2017.
11. On 21 February 2018 the appellant lodged her application for entry clearance as an adult dependent relative. An Entry Clearance Officer refused the application by a decision dated 25 May 2018. It was acknowledged that TK had provided evidence of

money remittances to the appellant, however it was decided that the appellant had failed to provide sufficient evidence to show that she met the requirements for adult dependents. The application was refused by reference to paragraphs EC-DR.1.1.(d) of Appendix FM and paragraphs E-EC-DR.2.1. to 2.5.

12. Upon review an Entry Clearance Manager decided by way of a decision dated 17 January 2019 that the appellant had not met the requirements set out in paragraphs EC-DR.2.4. and 2.5. It was further noted that the decision of the Entry Clearance Officer was consistent with the Court of Appeal decision in *Ribeli v Entry Clearance Officer* [2018] EWCA Civ 611. The Manager concluded:

‘I note that the appellant has not provided sufficient evidence to suggest that she suffers from any long-term illness. In my view it has not been shown that as a result of age, illness or disability, she requires long-term personal care to perform everyday tasks and she does not meet the requirement set out in paragraph E-EC-DR.2.4. Further, on the evidence before me, it has not been shown that the appellant is unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living, because: (a) it is not available and there is no person in that country who can reasonably provide it; or (b) it is not affordable. She does not meet the requirement of paragraph E-EC-DR.2.5. of Appendix FM.’

13. The appellant appealed against this decision, relying upon the Human Rights Act 1998. By way of the grounds of appeal the appellant asserted that the Entry Clearance Officer had wrongly determined her application on article 8 grounds because she is a vulnerable adult who has learning difficulties and has been diagnosed with behavioural and cognitive issues. The grounds state that the appellant is unable to take care of herself and had been cared for by her brother who has now secured settlement in the United Kingdom leaving her alone without provision for day-to-day care. Her precarious position was further adversely affected by her having been subjected to a sexual assault arising from her vulnerability.

Hearing before the FtT

14. The appeal came before the Judge at Hatton Cross on 28 June 2019. The appellant’s mother and stepfather attended the hearing. The Judge noted relevant medical evidence relied upon by the appellant:

‘17. In a letter dated 23 October 2017 [AB page 40] Danilo V Valencia MD states (sic): ‘This is to certify that [the appellant], 23 years old, has an intellectual disabilities and emotional behavioural disorder which is moderate to severe that needs appropriate recognition and support. She also has difficulties in everyday activities like household tasks, socializing and managing money matters. The Philippines [has] got no adequate facilities to help her with these disabilities. As their family Physician, I am well aware of [the appellant’s] condition. Being away from her mother she felt more and more frustrated and depressed which aggravates her condition.’

18. In a letter dated 6 May 2019 [AB page 53] Dr Valencia says that he is [the appellant’s] family doctor; ‘she was my patient since she was small, and I am fully aware of her disabilities.’ He states that she has learning disabilities; ‘These conditions affect her overall functioning with everyday

tasks. They pose significant limitations in her daily life and in her intellectual functioning and adaptive behaviour thus she finds it difficult to learn many life skills'. Dr Valencia states that 'My observation and opinion are based on my personal assessment of [the appellant]'. Dr Valencia talks at length of the problems [the appellant] experiences, including difficulties with maths, poor time keeping, slow reading rate, poor comprehension, inability to cook, lacking any sense of danger and an inability to wash her own clothes. He states that [the appellant] 'needs 24-hour care'. In my judgment these manifestations of intellectual impairment have been reported to him rather than witnessed, since they are matters of schooling and domestic tasks.

19. I noted that Dr Valencia's letterhead states 'Internal Medicine – Gastroenterology'. Asked how he was able to say that [the appellant] has 'intellectual disabilities and emotional behavioural disorder' [TK] said that he [...] knew [the appellant] well. It was only when she was specifically asked whether he was the family doctor that she replied in the affirmative. There is nothing to suggest that Dr Valencia has any expertise in the field of emotional and behavioural disorder or learning disability.
20. Ms Dogra submitted that Dr Valencia's allusion in his first letter to 'difficulties in everyday activities' did not necessarily mean that [the appellant] required long-term personal care to perform those tasks. Similarly, in his second letter he wrote that her learning disabilities 'affect her overall functioning with everyday tasks' but he did not say that she could not perform the tasks without help. I find merit in these submissions.
21. In a Medical Certificate dated 12 October 2017 [AB page 41] the Psychiatrist Valerie Heena D Andora-Quilaton MD, DPBP, FPPA states that [the appellant] had been brought for assessment on 3 October 2017: 'Review of history revealed that [the appellant] has development delays since birth. She learned to walk at 4 years old. She talked when she was five. She also had academic difficulties. Her teachers at [her school] helped her pass. However, at grade 2, she was unable to meet even the basic requirements and hence was advised to seek special education. She was enrolled at Special Education class. She was unable to maintain her focus and concentration. She later refused to go to school. Since then, she had difficulty in interpersonal relationships. She trusted easily and was subjected to inappropriate sexual advances from neighbours. She had required 24-hour supervision since reaching adulthood. She was unable to work even at a minimal level'. In cross-examination the Sponsor said that [KK] had accompanied his sister to the consultation and acknowledged that he had told Dr Andora-Quilaton that [the appellant] needed 24-hour supervision. In my judgment all the information in the Medical Certificate quoted above can be sourced to [KK].
22. The Psychiatrist noted that [the appellant] presented with 'euthymic mood, appropriate affect' and was dressed appropriately for her age and social status. Her '[t]hought process is goal oriented' and '[i]mpulse control is good'. However, her '[c]ognitive status including attention and concentration are below that expected of her age. Insight to illness and judgment are poor'. It appears that this assessment is based on an IQ test administered by a colleague (namely Cora Berjes, Psychologist) which is

said to have shown 'Moderate intellectual deficits'. The methods and detailed results of the IQ test have not been provided. 'Maturation and Development' are stated to be 'Moderate' (which strikes me as an odd term to use), with reference being made to [the appellant's] school history which was clearly not within the personal knowledge of Ms Andora-Quilaton. 'Training and Education' is classified as 'Moderate - Severe', whatever that might mean in practice. The Appellant's 'Social and Vocational Adequacy' is stated to be 'Severe' (a classification which is equally inexplicable), with the Psychiatrist commenting that 'Client contributes partially to self-maintenance under complete 24-hour supervisions. Self-protection skills are minimal useful level'. All this seems to be based on what the Psychiatrist was told by [KK], not something that Ms Andora-Quilaton observed for herself.

23. In a report dated 20 January 2014 [see AB page 44] Celina P. Cordero-Gellada MD, a Fellow of the Philippine Society for Development and Behavioural Paediatrics, assessed 19 year-old [appellant] as having gross motor skills equivalent to age 10-12, fine motor skills equivalent to age 8, receptive and expressive language skills equivalent to age 6, social skills equivalent to age 10 and 'performance' (whatever that might encompass) equivalent to age 5½. Her conclusion was that the Appellant had 'Intellectual Disability, unclassified'".

15. As to the evidence of Dr Cordero-Gellada the Judge observed:

- '24. Despite what is said by Ms Cordero-Gellada it has not been suggested by the Sponsor that her daughter has any problems vis-a-vis movements of the large muscles of the arms, legs and torso (gross motor skills). Equally, there has been no indication that she has issues with manual dexterity (fine motor skills). In cross-examination the Sponsor said that her daughter was able to dress herself 'but sometimes she's not aware if her clothes are appropriate or not'. I note in passing that photographs of the Appellant included in the appeal bundle show a poised and stylish young woman. [TK] said that [the appellant] could wash herself and brush her teeth, but she needed prompting otherwise she would stay in the shower for hours. She had no problems with mobility but needed to be accompanied by her Yaya when she went out. She was able to take tablets, although she needed to be reminded to do so. The Sponsor asserted that the Appellant was unable to cook or wash her clothes.'

16. The Judge observes a lack of primary evidence as the appellant having suffered brain damage at birth:

- '26. The evidence as to the Appellant's schooling is internally inconsistent since Ms Cordero-Gellada records [the appellant's] 'Educational attainment' as Grade III whereas Ms Andora-Quilaton says that she was 'unable to progress beyond first grade level'.'

17. In her evidence before the Judge, TK detailed her belief that the appellant had no sense of personal danger:

- "27. The Sponsor said that [the appellant] had 'no sense of danger', which made her vulnerable. This had led to her being molested by a neighbour in 2016,

and on another occasion she had burnt her hand. A medical certificate from St Therese MTCC Hospital dated 2 December 2015 [see AB page 45] states that the Appellant suffered electrical burns to her fingers and was hospitalised between 22 and 25 November 2015. Various documents have been supplied relating to the prosecution of Winefredo Trasga for an 'Act of Lasciviousness' committed against the Appellant in June 2016 [see AB pages 47 *et seq*]. In an interview with the office of Women and Children Protection [see Judicial Affidavit exhibited at pages 50 - 51] [the appellant] gives a lucid and detailed account of the incident, including the precise time and date that it occurred. This is not suggestive of a person whose '*Cognitive status including attention and concentration are below that expected of her age*' (per Valerie Andora-Quilaton MD) or someone with receptive and expressive language skills equivalent to age 6 (per Celina Cordero-Gellada MD). It is claimed that [the appellant] '*has already been subject to sexual assault due to her vulnerability*'. Only two such incidents have been recorded, both with the same perpetrator. Those incidents of predatory behaviour - which both took place some three years ago - have been addressed by the authorities in the Philippines. They do not seem to have been facilitated by any gullibility or obliviousness to danger on the part of the Appellant. The Judicial Affidavit makes it clear that the accused neighbour entered the house uninvited. On the second occasion he asked [the appellant] to go to the comfort room [the bathroom] '*which I refused but he pulled me and dragged me to the CR*' [AB page 50].

18. The Judge was critical as to there being no medical evidence predating 2014 filed with the Tribunal:

'30. No medical evidence has been placed before me bearing a date any earlier than January 2014, when [the appellant] was 19 years old. It is frankly astonishing that this should be the case if the Appellant has genuinely been suffering from developmental problems since birth. In my judgment the claim that her daughter has learning difficulties was a 'final throw of the dice' on the part of the Sponsor, having been unsuccessful in bringing [the appellant] to this country on two previous occasions. I am not satisfied, on the balance of probabilities, that the applicant requires long-term personal care to perform everyday tasks as a result of disability.'

19. Having found that the appellant does not require long-term personal care to perform everyday tasks as a result of disability the Judge considered the appellant's appeal in the alternative. The Judge observed the evidence of TK that she has continued to hire a Yaya, or carer, to care for the appellant following the departure of KK. The Yaya had been employed to look after various children of TK since 2010. The Judge found at [38] of her decision that there was nothing to indicate that the appellant had been receiving any care in the Philippines over and above that supplied by her Yaya. Further, at [39] the Judge found that the appellant had not established that she was unable, even with the practical and financial help of her mother and stepfather in the United Kingdom, to obtain the required level of care from a hired carer in the Philippines.

20. The Judge proceeded to consider the appellant under article 8 and determined that the legitimate aim of proper immigration control is not outweighed by the family life rights of the appellant and her mother:

- ‘45. The Appellant and her mother have lived apart for nearly nine years, [TK] having come to the UK in September 2010. I do not accept that [the appellant] has mental and physical challenges such that the level of her dependency is necessarily greater than would ordinarily be the case for adult offspring. In my judgment there is no family life as between the Appellant and her mother for Article 8 purposes.
46. Even if I am wrong in this assessment, the decision is in accordance with the law and in pursuit of a legitimate aim, namely the need to maintain an effective system of immigration control. The issue is therefore one of proportionality. I remind myself that it is necessary to have regard to Part 5A of the Nationality, Immigration and Asylum Act 2002, and in particular to the factors at section 117B.
47. The separation between the Sponsor and the Appellant was occasioned by [TK] exercising the choice of living and working in England rather than in her own country of origin. She is entitled to exercise that choice. However, the Appellant’s mother could reasonably be expected to go back to the Philippines to provide the emotional and practical support her daughter is said to need. That would mean [TK’s husband] being faced with the choice of accompanying his wife or remaining in the UK. I recognise that he has employment and elderly parents in this country [WS §7]. However, he has not advanced any particular reason why he could not move to the Philippines, a country he has visited ‘*not less than 20 times*’, according to his wife [WS §12].
48. The Appellant continues to live in the home in which she has resided since birth [see application form Q24]. Family members from the United Kingdom are in a position to visit [the appellant] on a regular basis, albeit that they would not be residing with her permanently. They can keep in touch via modern methods of communication in the same way that they do now.’

Grounds of appeal

21. The original grounds of appeal run to 28 paragraphs over eight pages. There was no effort to particularise the grounds of challenge, rather the author of the grounds adopted the approach of working their way through the paragraphs of the decision and challenging issues as and when they arose. As observed by Upper Tribunal Judge McWilliam, this Tribunal expects grounds seeking permission to appeal to specify clearly and coherently, with appropriate particulars, the error(s) of law said to contaminate the decision under challenge. Unparticularised and unfocused grounds place unnecessary demands on the judiciary. As observed by the President in *Nixon (permission to appeal: grounds)* [2014] UKUT 00368 (IAC) poorly compiled applications risk undermining the important value of legal certainty and causing unfairness to the other party.

22. By means of his re-drafted grounds Mr Malik accepts that the Judge unimpeachably found that the appellant did not meet the requirements of the adult dependent relative provisions in Appendix FM, particularly as to the appellant not requiring long-term personal care and that such care was available or affordable in the Philippines. The crux of the appeal now advanced is that the findings of the Judge did not extend, as they ought to have done, to a full consideration of facts relevant to article 8. The re-drafted grounds detail, inter alia:

- ‘9. At [17]-[19] of the Determination, the judge appeared to be unimpressed by the two medical letters of Dr Danilo V Valencia, on the basis that the *‘manifestations of intellectual impairment [had] been reported to him rather than witnesses’* and that he did not have *‘expertise in the field of emotional and behavioural disorder or learning disability’*. Those findings are admittedly unimpeachable. There were however other aspects of the report that were not explored, for example, the fact that the Appellant tended to suffer from a number of medical ailments and required *‘hired help’* to manage her medications and that the diligence of the *‘helper’* appeared to be poor. This omission is underscored by the fact that at [20] the judge appeared to accept that the Appellant had *‘difficulty in everyday activities’* but concluded that such difficulty did not mean that she could not perform the tasks without help.
10. At [23] of the Determination, the judge considered documentary evidence from a paediatrician, namely Ms Celina Cordero-Gellada, which was to the effect that the Appellant had sub-normal gross and fine motor skills, and similarly sub-normal language and social skills. At [24] the judge appeared to reject Ms Celina Cordero-Gellada’s findings in relation to gross and fine motor skills because there was no mention of the Appellant having problems with gross and fine motor skills in the evidence of the Appellant’s mother. At [25] the judge furthermore appeared to reject Ms Cordero-Gellada’s evidence in relation to the Appellant’s language skills by reference to the Appellant’s text exchanges with her mother. Those findings are admittedly unimpeachable. However at [24] the judge considered but omitted to make findings on the Appellant’s mother’s evidence that the Appellant would not always dress appropriately; needed prompting to complete tasks such as washing herself, and taking medication, and could not cook or clean for herself.
11. At [27] the judge made a clear finding that the court documents in relation to an alleged sexual assault on the Appellant did not prove that she had *‘no sense of danger’*. That finding was admittedly unimpeachable *per se*, however, the judge omitted to make a finding on whether it was in fact true, wholly or to a degree, that the Appellant was indeed vulnerable because of a diminished *‘sense of danger’*.
12. Thus, although there were sufficient unimpeachable findings to sustain the judge’s conclusion that the appeal be dismissed in relation to the ADR provisions, the enquiry in relation to the engagement of and proportionality under Article 8 was incomplete, because important findings relevant to the degree of the Appellant’s dependency on her mother and sponsor, were omitted.

13. The judge's statement at [45] that 'I do not accept that [the appellant] has physical and mental challenges such that the level of her dependency is necessarily greater than would ordinarily be the case for adult offspring' was – respectfully – a rather 'hollow' statement because no clear findings were made on what exactly the Appellant's level of challenges were from an Article 8 perspective. In light of the judge's findings in relation to the ADR provisions, clear findings were needed on whether the Appellant's impediments and vulnerability were simply insufficiently evidenced from a medical perspective; exaggerated (and therefore to some degree true); or simply fabricates. UTJ McWilliams made the same point in granting permission.'

23. No Rule 24 response was filed by the respondent.

Decision

24. At the outset of the hearing I informed the representatives that I considered a further 'obvious' ground of appeal arose upon consideration of the Judge's decision. I observe that it is reasonable to expect professional representatives to set out appeal grounds with an appropriate degree of particularity and legibility and a Tribunal should be hesitant in forensically examining the decision to identify grounds beyond those advanced by a professional representative. However, there remains a duty upon the Tribunal to consider points that are obvious: *R v Secretary of State for the Home Department, ex parte Robinson* [1997] 3 WLR 1162. The Tribunal enjoys a power to consider any other point arising from a decision if the interests of justice so require.

25. In this matter, the Judge directed herself at [42] of her decision that she was only able to consider article 8 as it related to circumstances pertaining as at the date of the Entry Clearance Officer's decision of 25 May 2018. In making her self-direction the Judge expressly relied upon the Court of Appeal judgment in *Gurung v ECO, New Delhi* [2016] EWCA Civ 358 per Underhill LJ, at [17]

'... The decision under appeal was, as regards article 8 as much as the policy issue, the ECO's decision of 12 March 2012; and the relevant circumstances were thus, in accordance with Section 85A(2), those appertaining at the date of that decision.'

26. The Court of Appeal in *Gurung* was concerned with an earlier, and different, statutory regime concerning article 8 and entry clearance applications. By means of section 85(4) of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act') in an appeal under section 82(1) the Tribunal can consider evidence about any matter which it thinks is relevant to the substance of the decision including evidence which concerns a matter arising after the date of decision. From 23 May 2011 until 20 October 2014 section 85(4) of the 2002 Act was subject to the exceptions contained in section 85A which was brought into force by section 19 of the UK Borders Act 2009. The result of the statutory amendment was that in appeals against the refusal of entry clearance the Tribunal could only consider the circumstances appertaining at the time of the decision. I observe that section 85A of the 2002 Act was repealed by

Schedule 9 of the Immigration Act 2014 as from 20 October 2014 and the relevant saving provisions are not relevant to this appeal. Consequent to the amended statutory regime, as the appellant enjoys a right of appeal on human rights grounds against the respondent's decision she enjoys the benefits provided by section 85(4) of the 2002 Act, namely that the Tribunal may consider any matter it thinks relevant to the substance of the decision including a matter arising after the date of decision. The Judge therefore erred in law in restricting her consideration of article 8 at [42] of her decision. The question that arises is whether such error was material.

27. By way of his grounds of appeal Mr Malik accepted that much of the Judge's decision is unimpeachable. It may be said that there appears to have been a lack of focus in the approach adopted by those who previously represented the appellant before the First-tier Tribunal. I clearly note at this point that Mr Malik was not the appellant's representative before that Tribunal. It is unclear as to whether any express reliance was placed upon the family life that the appellant enjoyed with her brother, KK, who had cared for her in the Philippines prior to his securing settlement in this country. However, her relationship with her brother was raised in the grounds of appeal and was also addressed in TK's evidence. I observe §27 of TK's witness statement dated 31 May 2019 which states:

'I have no peace of mind being here in the UK, leaving [the appellant] in the hands of another person. [KK] has been in the Philippines since March 2019 to be with [the appellant]. He is returning to the UK at the end of July 2019.'

28. The Judge may not have been aided by those representing the appellant but the family life between KK and the appellant, with the history of KK having cared for his sister, was an element to be considered within the proportionality assessment: *Beoku-Betts v Secretary of State for the Home Department* [2008] UKHL 39; [2009] 1 AC 115. It is unclear as to whether the Judge did not consider KK's article 8 rights because it was not expressly relied upon before her or because she had taken as her starting point that she could not consider factual issues arising after the date of the ECO's decision in May 2018 and KK was residing with the appellant in the Philippines after this point in time. However, I am satisfied that the error of law in the Judge relying upon a statutory provision that has been repealed is material in circumstances where relevant evidence postdating that decision was not expressly considered. I am satisfied that the Judge materially erred in law.

Remaking the Decision

29. The representatives addressed me as to whether I could re-make this decision. I conclude that in circumstances where the Judge had given no consideration to the article 8 rights of KK it would be appropriate for this matter to be reconsidered by the First-tier Tribunal so that KK's rights can be considered as well as those of the appellant and her mother.
30. Mr Malik was content that there be preserved findings of fact, observing that he was content that everything from [15] to [41] of the Judge's decision should stand.

31. Upon careful consideration of the Judge's decision, I am not in agreement with Mr. Malik. Whilst the approach to the expertise of Dr Valencia is lawful, the Judge failed to expressly consider the weight that should be given to the expert evidence of the psychiatrist, Ms. Andora-Quilaton. Rather, she adversely observes that Ms. Andora-Quilaton's understanding of the appellant's situation was reliant upon information given by KK. There appears to be no justifiable concern as to KK providing such information if he is credible, and I note that the Judge makes no assessment as to his credibility. Observations are also made as to the clinical terminology used by Ms. Andora-Quilaton, though the Judge is not an expert in psychiatry and provides no explanation as to why the terms utilised are 'odd'. Importantly, no clear finding of fact is made as to Ms. Andora-Quilaton's evidence, and so contrary to Mr. Malik's suggestion there are no findings of fact that can be preserved at [21]-[22] of the decision.
32. Further, I am not in agreement with Mr. Malik's observation at §10 of his grounds of appeal that the Judge's assessment of the evidence of a paediatrician, Ms. Cordero-Gellada, is 'unimpeachable'. The Judge has decided at [24] to accept the evidence of the appellant's mother over that of an expert paediatrician without engaging with the specific diagnosis of Ms. Cordero-Gelladam at [23], which is not inconsistent with a child (as the appellant was in 2014) being able to dress herself or brush her teeth. There is no explanation at all as to why a child dressed stylishly in a photograph cannot have the motor skill deficiency identified by an expert paediatrician. I am satisfied that the Judge's conclusion at [24] is materially erroneous in law by a failure to reasonably assess the expert evidence and to provide adequate reasons for rejecting it.
33. Though I undertake no detailed assessment of [27] of the decision, as I intend to set aside all of the Judge's findings of fact, I observe that the failure to adequately consider the expert evidence of Ms. Cordero-Gelladam as to the appellant's expressive language skills adversely impacts upon the Judge's reasoning as to why the appellant has no sense of danger.

Notice of Decision

34. The decision of the First-tier Tribunal involved the making of an error on a point of law and I set aside the Judge's decision promulgated on 19 July 2019 pursuant to Section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.
35. This matter is remitted to the First-tier Tribunal for a fresh hearing before any Judge sitting at the FtT Hatton Cross other than Judge of the First-tier Tribunal Courtney.
36. No findings of fact are preserved.

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

37. Unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the

appellant or her family members. This direction applies to amongst others the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed: *D O'Callaghan*

Upper Tribunal Judge O'Callaghan

Date: 3 April 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days, if the notice of decision is sent electronically).
3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically).
4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days, if the notice of decision is sent electronically).
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email