



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00436/2020

THE IMMIGRATION ACTS

Heard at Field House
On 01 November 2021

Decision & Reasons Promulgated
On 18 November 2021

Before

UPPER TRIBUNAL JUDGE CANAVAN
UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

D G
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity was granted at an earlier stage of the proceedings because the case involved protection issues. We find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent.

Representation:

For the appellant: Mr M. Fazli, instructed by Direct Access

For the respondent: Ms J. Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 03 January 2020 to refuse a protection and human rights claim. The First-tier Tribunal dismissed the appeal relating to the protection claim, but allowed the appeal on human rights grounds relating to the appellant's family life in the UK. The respondent was granted permission to appeal the human rights element of the decision to the Upper Tribunal. In a decision promulgated on 13 August 2021 the Upper Tribunal found that the First-tier Tribunal decision relating to the human rights claim involved the making of an error on a point of law (annexed). The appeal was listed for a resumed hearing in the Upper Tribunal to remake the decision in respect of the human rights claim.
2. The appellant, his father, stepmother, and younger brothers attended the hearing to give evidence. Where necessary, an interpreter was present to assist certain witnesses although all spoke good English. The oral evidence and submissions are a matter of record.

Decision and reasons

Article 8(1) – family life

3. The appellant has only lived in the UK since 2019. It is not argued that he has developed a private life that might engage the operation of Article 8 during this relatively short period of time. However, the First-tier Tribunal judge heard evidence from the appellant and his family members in the UK and concluded that their ties went beyond the normal emotional ties of an adult son with his parents and siblings. Although the judge did not outline the full extent of the evidence relating to the compassionate circumstances underpinning this finding, we set out that evidence at [5]-[6] of the error of law decision. The evidence given to us by the appellant, his father, and his stepmother was consistent with the history previously given about the abuse and neglect that the appellant suffered as a young child in the care of his mother.
4. Although the appellant has only lived in the UK since 2019, the evidence shows that his close and dependent relationship with his family in the UK is underpinned by a pre-existing relationship. The appellant's father kept in touch with him after he moved to the UK, family members have been to Georgia to visit the appellant, and from 2012 the appellant came on regular visits to the UK during the school holidays. Despite an immigration history of compliance with visit visas, it was only when he was refused entry clearance (on four occasions) that the appellant could not spend time with his family in the UK. Evidence from the family shows that the prolonged period of time that they have now spent living with the appellant has solidified and strengthened pre-existing family bonds.
5. In contrast, in Georgia the appellant has no contact with his mother. The only family members that he has had any meaningful relationship with are his paternal grandparents. We were told that they live in difficult circumstances in a small one bedroom apartment. The appellant's grandfather is suffering from cancer. The appellant's father sends money to help pay for medication. A paternal uncle was

mentioned, but it seems that the appellant has no contact with him, nor did his uncle assist him when he needed support.

6. Although the evidence indicated that the appellant's paternal grandparents may have had a hand in removing him from a situation of abuse and neglect when he was around 10-11 years old, it seems that there was a fracture in that relationship at some point during the appellant's mid-teens. The evidence from the appellant and his father was brief as to when and why the appellant began to spend less and less time with his grandparents. The appellant said that his grandparents were becoming more elderly. Because of his poor mental health he said that he could not cope living with them. The appellant said that he stayed with friends and went from place to place. Sometimes he would spend time with his grandparents, but sometimes he slept on the street. At times we noted a sense of reluctance on the part of the appellant and his father to discuss the full details of their family circumstances. In our assessment this did not affect the credibility of their evidence, but only the level of detail. Their reluctance seemed to be rooted in a sense of discomfort discussing their private affairs with strangers rather than a deliberate attempt to obscure a different picture.
7. The credibility of the appellant's account of childhood abuse was accepted by the First-tier Tribunal judge and was not challenged in the hearing before the Upper Tribunal. There is limited evidence in the form of the appellant's GP notes to show that the appellant suffers from mental health issues and has been prescribed anti-depressants. This is consistent with his previous history. Although the evidence does not indicate the full extent of his problems, because he has been equally reluctant to talk to strangers when offered talking therapy by his GP, it seems clear that the abuse he suffered as a child has had a significant impact on him. We accept that he may have been suffering from poor mental health while living with his grandparents. We find it reasonable to infer from the partial information that we have that the fracture in the living situation with his grandparents may well have resulted from a mixture of poor living conditions, mental health issues, and a reluctance to care for increasingly elderly grandparents in the context of the challenges many young people face during their teenage years.
8. What is apparent from the oral evidence and the limited history outlined in the GP notes is that the appellant's mental health has improved since he arrived in UK and has benefitted from the support of close family members. The appellant told us that he feels 'like a human being' here. His stepmother described the need to comfort him when he woke due to nightmares. The GP notes suggest that the appellant's condition has fluctuated at times, as one might expect, but in the last year the GP has reduced the dose of his medication and there have been discussions about weaning him off the medication. It was clear that the appellant's stepmother is supporting and advising the appellant in relation to his health and is generally concerned for his well-being. She considered him to be her son and did not want him to be taking medication on a long term basis.
9. Having spoken to the witnesses, it became clear that the family life that the appellant has with his father in the UK is the only loving and secure family environment that

he has ever had and that the close relationships that he has with all members of the family, but particularly his father, is a source of healing from a childhood characterised by abuse and neglect. Like the First-tier Tribunal, we find that the removal of the appellant in consequence of the decision would interfere with his family life in a sufficiently grave way to engage the operation of Article 8(1) of the European Convention on Human Rights.

Article 8(2) - proportionality

10. Article 8 of the European Convention protects the right to private and family life. However, it is not an absolute right and can be interfered with by the state in certain circumstances. It is trite law that the state has a right to control immigration and that rules governing the entry and residence of people into the country are “in accordance with the law” for the purpose of Article 8. Any interference with the right to private or family life must be for a legitimate reason and should be reasonable and proportionate.
11. Part 5A of the NIAA 2002 applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts breaches a person’s right to private or family life and as a result is unlawful under the Human Rights Act 1998. In considering the ‘public interest question’ a court or tribunal must have regard to the issues outlined in section 117B in non-deportation cases. The ‘public interest question’ means the question of whether interference with a person’s right to respect for their private or family life is justified under Article 8(2) of the European Convention.
12. It is in the public interest to maintain an effective system of immigration control. The requirements of the immigration rules and the statutory provisions are said to reflect the respondent’s position as to where a fair balance is struck for the purpose of Article 8 of the European Convention.
13. The appellant does not meet the requirements of the immigration rules. He falls far short of any of the private life requirements contained in paragraph 276ADE. None of the immigration rules relating to family life are engaged by the particular family relationships in this case. In circumstances where a person does not meet the requirements of the immigration rules only in compelling or exceptional circumstances would a person’s individual situation outweigh the public interest in maintaining an effective system of immigration control.
14. Ms Isherwood submitted that there were several public interest considerations that should be given weight. False representations were made on the visit visa applications, claiming that the appellant was visiting an uncle in the UK when he was really visiting his father. The appellant then entered the UK illegally and destroyed his passport to create a hurdle to his removal. The First-tier Tribunal rejected the credibility of the core aspects of his asylum claim. She also attempted to make points about the credibility of the father’s evidence, without particularising why he should not be found credible or in relation to what evidence given that much of the factual matrix was not disputed.

15. There is little evidence about the entry clearance applications, and no direct evidence. Although it did not appear to be disputed that the applications named an uncle as the UK sponsor, from what we can gather about his father's immigration history, his uncle was the only person with leave to remain who was in a position to formally sponsor such an application. We bear in mind that the appellant was not likely to be responsible for making the entry clearance applications because he was a child at the time. In any event, it is difficult to see how much weight could be placed on this issue in favour of the public interest if the appellant complied with all the conditions of the visa and returned to Georgia at the end of each visit.
16. The appellant's illegal entry and the destruction of his travel document is a more serious matter that would normally be given significant weight in the balancing exercise. However, illegal entry must be viewed slightly differently in the context of a person who makes an application for asylum: see *R (on the application of Adimi) v Uxbridge Magistrates Court* [2001] QB 667. We bear in mind that the First-tier Tribunal judge did not find the core account given by the appellant to be credible and concluded that the account was a 'narrative of convenience' [21]. She also noted that the appellant made clear in both asylum interviews that he had come to the UK to live with his family. These findings suggest that the appellant put forward an asylum claim in order to gain entry to the UK to be with his family having been refused entry clearance to visit them. These matters should be given weight as additional factors that go to the public interest in maintaining an effective system of immigration control.
17. We find that the public interest considerations outlined in section 117B bear little relevance to this case. The fact that the appellant speaks English and is capable of being financially independent without becoming a burden on the tax payer are neutral factors. The other issues highlighted in section 117B relate to what weight should be placed on a person's private life, which is not relied on in this case, or family life with a partner or child, which is not relevant on the facts of this case.
18. We conclude that there are public interest considerations relating to the appellant's immigration history that must be given weight in the balancing exercise. However, we note that there is no evidence of matters at the more serious end of the scale such as criminal convictions or evidence of fraud.
19. This is a finely balanced decision. Had there not been the compassionate circumstances surrounding the appellant's history of childhood abuse, and the appellant had a functioning relationship with relatives in Georgia, we would have no hesitation in finding that the balance tipped in favour of the respondent. However, the compassionate circumstances surrounding his childhood history are compelling and compassionate. They explain why the appellant felt so desperate to join his family in the UK after being repeatedly refused entry clearance to visit despite an apparent history of compliance. The evidence given by the family members suggests that it was a particularly difficult time for the appellant. His stepmother, who was a compelling witness, recognised that his illegal entry was wrong, but said that she would have supported him even if she had known what he was planning to

do because he was in such a desperate situation at the time and needed family support.

20. The evidence shows that all members of the family benefit from the appellant's presence in the UK. The appellant's mental health has improved with the emotional support given to him by his father and stepmother. The appellant's younger brother, 'L', suffers from alopecia. His mother's evidence suggested that the condition affects his self-confidence and he was sometimes bullied at school. L himself discussed how good it was to have developed a close bond with a sibling of a similar age who he could spend time with. The evidence we heard from several witnesses indicates that the appellant's presence in the UK helps to boost L's confidence in ways that his parents cannot. He speaks to the appellant about things that he would not discuss with his parents. L's mother said that the boys train in the gym together. On one occasion they came back and she was told that L felt confident enough to take his cap off during training. Given his self-consciousness about his condition, we consider this a strong indication of the confidence L gains from the appellant's support.
21. This is a sporty family. The appellant spends time training with both of his brothers. His younger brother, 'I', is highly accomplished at Judo. Although his father is also involved in his training, he said that the appellant helps him train, supports his Judo activities, and assists him with home schooling. All members of the family expressed their anxiety at the prospect of the appellant returning to Georgia because (i) of their fear that the appellant's mental health would deteriorate and he would return to an isolated and precarious existence with few opportunities; and (ii) the effect that it would have on them to be separated from him now that the familial bonds have been solidified.
22. We do not have a formal psychiatric assessment evaluating the extent of the appellant's mental health problems, nor an assessment of what might happen if he is returned to Georgia, the place of his childhood trauma. However, we found all of the witnesses to be credible in their evidence as to the strength of their family ties and their understanding of the appellant's problems. We are satisfied that the evidence shows that his mental health issues have improved with the day to day support of his family. It is reasonable to infer that there would be a deterioration in his mental health if he were to be separated from this essential source of support. We find that long distance communication and occasional visits could not replace the day to day support they currently all gain from the family life that they share. We find that the House of Lords decision in *Huang v SSHD* [2007] 2 WLR 581 identifies the key issue that, in our assessment, tips the balance in the appellant's favour:

'...the main importance of the case law is in illuminating the core value which article 8 exists to protect. This is not, perhaps, hard to recognise. Human beings are social animals. They depend on others. Their family, or extended family, is the group on which many people most heavily depend, socially, emotionally and often financially. There comes a point at which, for some, prolonged and unavoidable separation from this group seriously inhibits their ability to live full and fulfilling lives. Matters such as the age, health and vulnerability of the applicant, the closeness and previous history of the family, the applicant's dependence on the financial and emotional support of the family, the prevailing cultural tradition and conditions in the country of origin and many other factors may all be relevant.'

23. For these reasons we are satisfied that removal of the appellant from the support of the only caring family members that he has would have unjustifiably harsh consequences for him and his family such that it would amount to disproportionate interference with his family life for the purpose of Article 8(2).
24. We conclude that the decision is unlawful under section 6 of the Human Rights Act 1998.

DECISION

The appeal is ALLOWED on human rights grounds

Signed *M. Canavan*
Upper Tribunal Judge Canavan

Date 03 November 2021

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

ANNEX



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/00436/2020

THE IMMIGRATION ACTS

Heard at Field House
on 09 August 2021

Decision Promulgated

.....

Before

UPPER TRIBUNAL JUDGE CANAVAN
UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

D G

(ANONYMITY DIRECTION MADE)

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

Anonymity should have been granted at an earlier stage of the proceedings because the case involved protection issues. We find that it is appropriate to make an order. Unless and until a tribunal or court directs otherwise, the original appellant (DG) is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Representation:

For the appellant: Mr S. Whitwell, Senior Home Office Presenting Officer
For the respondent: Mr M. Fazli, instructed by Direct Access

DECISION AND REASONS

1. For the sake of continuity, we will refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant in the appeal before the Upper Tribunal.
2. The appellant (DG) appealed the respondent's (Secretary of State) decision dated 03 January 2020 to refuse a protection and human rights claim.
3. First-tier Tribunal Judge M. Dean ('the judge') dismissed the appeal against the decision to refuse a protection claim. She rejected the credibility of the appellant's account as a 'narrative of convenience' and concluded that he did not have a well-founded fear of persecution under the Refugee Convention if returned to Georgia. She went on to consider the appellant's family life with his father and half siblings in the UK. She acknowledged that he did not meet any of the requirements for leave to remain under the immigration rules and went on to conduct an overall assessment with reference to Article 8 of the European Convention. She began her consideration with a summary of the applicable legal principles:

'24. Therefore, the Appellant must first establish to the required standard that he has a family life which engages article 8. I also bear in mind that the interests of family members should be considered in an Article 8 appeal because the right to respect for the family life of one member necessarily encompasses the right to respect for the family life of others with whom that family life is enjoyed. I also bear in mind that relationships between adult children and their parents will not generally fall within the scope of article 8. However, each case is fact sensitive and requires an examination of the situation.'

4. The judge acknowledged that the appellant lived with his father, stepmother and two brothers in the UK. The appellant's father left Georgia when he was five years old but since he was about 11-12 years old he visited his family in the UK every year until he was 16 years old. She noted that the only reason why the appellant had been unable to visit since 2017 was because the respondent refused further entry clearance on four occasions.
5. The judge accepted the oral and written evidence of their family life given by the appellant, his father, and other members of the family, which she found to be consistent and credible. She did not set out the evidence in her decision, but concluded that it was sufficient to show that the appellant had a family life with his father and his family that engaged the operation of Article 8 [25]. The appellant's witness statement outlined a history of childhood ill-treatment by his mother and her partner. He said that he was physically and mentally abused by them. They would beat him, threaten him, and lock him in his room. He was not allowed out to play with other children. The appellant said that his mother had (unspecified) health issues. After a long time, he was allowed to live with his grandmother. The appellant said that he suffered from depression, anxiety, and panic attacks. He was examined by a psychiatrist in Georgia in 2017 who told him that his problems were likely to be linked to his childhood experiences. At the date he made the statement he was taking anti-depressant medication. The appellant said that his father's family were the only people who had given him happiness and stability. He was more dependent on his family in the UK because of the suffering he endured as a child. He is very close to

his family members in the UK. His brother suffers from alopecia and would not be able to cope without him. He believed that having to return to Georgia would exacerbate his depression.

6. The appellant's father gave a consistent account of his son's childhood. He knew this from the appellant and his mother. The appellant eventually went to live with his grandmother, but left her house, and ultimately became homeless. Because of these problems he developed anxiety, depression, and panic attacks. His father said that he could not imagine life without him. He had always looked after him and had been the only source of help in his life. He said that they had a wonderful family which would be broken if the appellant was removed from the UK. He said that the appellant did not have a good childhood and he wanted to make up for it now. The neglect and abuse he suffered in his childhood made him very dependent upon them. The appellant's father said that he talks to his son when he is sad and depressed. He believed that his other two sons would become depressed and stressed if the appellant was removed and that this would impact negatively on their education. The boys had grown up together and looked to their older brother for support. The witness statements of his wife and two sons gave a consistent picture of the family bonds.
7. Having concluded that removal would interfere with the appellant's family life in a sufficiently grave way to engage the operation of Article 8(1), the judge went on to consider whether his removal would be proportionate. She considered whether the appellant's circumstances were sufficiently strong to outweigh the public interest in maintaining an effective immigration control. The judge referred to the public interest considerations outlined in section 117B of the Nationality, Immigration and Asylum Act 2002. She made the following findings:
 - '29. I pay particular regard to the fact that section 117B(1) states that the maintenance of effective immigration controls is in the public interest. I also bear in mind that in the balancing act the public interest is to be given considerable weight.
 30. The Appellant has been visiting this country since 2011 and speaks English which I find will serve him well in finding employment. In his Asylum Interview (questions 20, 29, and 101-102) the Appellant states that he was a rugby player in Georgia and was scouted for the Georgian national team. In oral evidence the Appellant spoke of playing rugby while he has been in this country and submitted photographs of him with his team (Appellant's bundle, pages 26-27). I find that this demonstrates his ability to integrate into society which carries significant weight in the balancing exercise.
 31. Looking at this evidence in the round, I find that the Appellant has demonstrated that this country is one with which he is familiar through regular visits since 2011. He speaks the language and through his participation in sport is familiar with aspects of this society, all of which I find weighs in his favour.
 32. The Appellant's half-brothers gave oral and written evidence, which I accept, that they look up to him and he plays a significant part in their lives. He trains with his younger half-brother and supports him in competitive sport. He has also supported his elder half-brother through his treatment for Alopecia. When taken in the round I find that there is interdependence in the family unit which has been established

over many years and is something to which I attach significant weight when carrying out the balancing exercise.

33. Although the Appellant is a young adult, he has yet to establish himself and has not lived independently. Nevertheless, looking at the totality of the evidence before me, I find that it demonstrates that the family ties in this case go beyond normal emotional ties that would be found between adult children and their parents. Through annual visits I find that the Appellant has become an integral part of the family unit which I find weighs heavily in the balance.
34. The Appellant states that he did not have a job in Georgia, and that his father has supported him financially, in particular paying for the expenses associated with his annual visits to this country. The Appellant now lives with his 'new' family on whom he is dependent for emotional and financial support. Nevertheless, I find he has the skills and abilities to find employment and integrate fully into society and I therefore give this considerable weight.
35. Accordingly, looking at the totality of the evidence before me, together with my findings in paragraphs 25-34 above, I find that there are sufficiently strong factors in the Appellant's favour which outweigh the public interest in this case. I therefore find that the Appellant's removal from this country would be a disproportionate interference with his family life and that of this family members in this country. Accordingly, I find that the respondent's Decision is a breach of Article 8 outside the Immigration Rules and I therefore allow the appeal on that ground.'

8. The appellant did not seek to appeal the First-tier Tribunal's decision relating to the protection claim. The respondent applied for permission to appeal to the Upper Tribunal on the following grounds.

'It is respectfully submitted, that in allowing the appeal on the basis of article 8, FTTJ Dean errs in ignoring the appellants (sic) history of failed entry clearance applications and associated inability to satisfy the Immigration Rules as a family member. It is asserted that he is misdirected in utilising article 8 as a general dispensing power. It is respectfully submitted, that the FTTJ fails to give adequate reasons (sic) for why the appellant, as an adult who has lived apart from his father since the age of 5, is now said to have ties to his family in the UK which go beyond those normally expected to be seen. The appellant has lived his whole life in Georgia and has maintained a relationship with his family in the UK, through visits and modern means of communication, it is unclear therefore, on what basis a maintenance of the status quo (sic) in this regard would be considered to breach his article 8 rights, a hurdle which, it is asserted is heightened due to his becoming an adult. It is respectfully submitted (sic) that the FTTJ has failed to identify anything about the appellants (sic) relationship with his UK family, (Kugathas v SSHD (2003) INLR 170) which would be considered anything other than a normal loving relationship between family members, as such it is asserted that the FTTJ's conclusion is flawed to the extent that it is unreliable.'

9. First-tier Tribunal Judge Page granted permission to appeal to the Upper Tribunal in the following terms:

'This was a generous decision for the appellant. He appears to have succeeded outside the Rules when there were no exceptional circumstances. Permission is granted on all grounds argued.'

Preliminary issue

10. The respondent filed a skeleton argument on the Upper Tribunal by email at 16.32hrs on the last working day before the hearing. The skeleton argument included an application to amend the grounds to particularise, if it wasn't clear from the original grounds or the terms of the grant of permission, a challenge to the judge's findings relating to the proportionality of removal. The submissions, as reformulated in the arguments put forward at a late stage, were:
- (i) In relation to Article 8(1) of the European Convention it was difficult to see what elements on the facts of the case rendered the relationship over and above that of normal emotional dependency. The UT was invited to consider (a) that the family did not live together on a permanent basis until the appellant's last entry into the UK on 27 April 2019; (b) the appellant's choice of residence is 'not a consideration' for the purpose of Article 8; and (c) the GP records indicated that the appellant came to the UK to pursue a career in rugby rather than to pursue his family life.
 - (ii) In relation to Article 8(2):
 - (a) The judge failed to apply the correct test of whether there were 'exceptional circumstances' which would render refusal of entry clearance, or leave to enter or remain, a breach of Article 8 of the European Convention on Human Rights, because such refusal would result in unjustifiably harsh consequences for the applicant, their partner, a relevant child or another family member whose Article 8 rights. Nothing in the facts of this case disclosed any exceptional circumstances.
 - (b) The judge failed to give adequate reasons to explain her finding at [27] that continued separation of the Appellant from his family in this country interferes with his protect right to a family life.
 - (c) The judge erred in giving weight to the fact that the appellant spoke English when he gave evidence with the assistance of an interpreter and the GP notes indicated that his main spoken language was Georgian (this point was withdrawn at the hearing when it became clear it was based on a mistake of fact). English language ability should be treated as a neutral factor.
 - (d) The judge failed to give adequate reasons at [30] to explain why his ability to play sports demonstrates 'his ability to integrate into society' or why it should carry 'significant weight' in the balancing exercise.
11. The application to amend the grounds ended with the following statement:
- '9. It is submitted that the Appellant isn't prejudiced by this course of action given their lack of representation and in the absence of a response by way of Rule 24 of The Tribunal Procedure (Upper Tribunal) Rules 2008 and will no doubt deal with any issues(s) by way of oral reply.'

12. Contrary to the statement made at paragraph 9 of the skeleton argument, the fact that the appellant did not have a legal representative on record was a matter that required the highest standards of fairness on the part of the respondent. The risk of prejudice arising from no notice applications to amend grounds is much higher when a party is on record as acting in person. In such circumstances a litigant in person who has no specialist knowledge of immigration law may need time to take advice and/or to understand the implications of new arguments. Raising new arguments at a late stage risks an adjournment thereby wasting court time and public resources. Mr Whitwell acknowledged our concerns about the proposition made in paragraph 9 when it was highlighted to him at the hearing.
13. The appellant was not aware of the new arguments until shortly before the hearing when a copy of the respondent's skeleton argument was provided to Mr Fazli, who was instructed by Direct Access. Mr Fazli was given time to consider the application to amend the grounds and to take instructions from his client as to (i) whether more time was needed to consider the points, either that day, or by way of an adjournment; and/or (ii) whether the application was opposed, and if so, on what grounds.
14. Having taken instructions Mr Fazli said that he was instructed to oppose the application to amend the grounds because the arguments were not included in the original grounds and were not before the judge who granted permission. Although he also argued that he had only limited time to consider the new arguments, he confirmed that he was instructed to proceed with the hearing. He did not ask for any further time to consider the arguments and did not seek an adjournment.
15. The situation was highly unsatisfactory. The Secretary of State's original grounds were poorly pleaded, carelessly drafted, and unparticularised. They made general assertions without making clear what errors of law were said to have been made in the First-tier Tribunal decision with reference to potential errors identified by the Court of Appeal in *R (Iran) & Others v SSHD* [2005] EWCA Civ 982; [2005] INLR 633. The mere fact that the single paragraph was headed 'Making a material misdirection on law/Failing to give adequate reasons' did not obviate the need to make clear what the alleged errors were with proper reference to the decision in the body of the grounds.
16. Clear and particularised grounds are an essential part of the duty to help the Upper Tribunal to further the overriding objective in Rule 2 of The Tribunal Procedure (Upper Tribunal) Rules 2008. A judge considering a permission application must be able to identify the arguments relied upon to decide the application. If permission is granted, the opposing party must be able to understand what case they need to address in response. While not expressly conceding the issue at the hearing, the fact that Mr Whitwell considered it necessary to apply to amend the grounds at such a late stage implied that the original grounds were not thought to be adequately pleaded.

17. In *Awuah and Others (Wasted Costs Orders – HOPOs – Tribunal Powers)* [2017] UKFTT 555 (IAC) a panel of the First-tier Tribunal consisting of the President of the Upper Tribunal and the President of the First-tier Tribunal assessed the role of Home Office representatives in considering whether the Tribunal has power to make wasted costs orders. The Tribunal considered the statutory framework and the guidance of the House of Lords in *Medcalf v Mardell* [2003] 1 AC 120 in so far as it related to the conduct of ‘professional advocates’ who were regulated to appear in courts and tribunals. At [17] the First-tier Tribunal noted that the House of Lords found that, in principle, wasted costs orders ‘can be made in respect of the conduct of counsel not only when exercising rights of audience in court but also in relation to surrounding, or anterior, conduct such as settling pleadings, notices of appeal and skeleton arguments.’ The First-tier Tribunal concluded that the ‘professional advocates’ were ‘bound to honour the standards and obligations enshrined in the professional conduct code of his profession’. The Tribunal went on:
- ‘22. The framework which we have outlined and expounded above simply cannot be applied to HOPOs. They are not officers of the court. They belong to none of the regulated professional cohorts. They do not enjoy the privileges and immunities of the advocate. They are not subject to any of the detailed codes regulating the professional and ethical conduct of advocates and others and, in consequence, they lie outwith the jurisdiction of the various regulatory bodies. Stated succinctly, HOPOs are unregulated.
 - 23. That is not to say that HOPOs owe no duties to the tribunal. We consider that rule 2(4) of the 2014 Rules, a discrete element of the overriding objective and its UT analogue, framed in identical terms, clearly apply to HOPOs. Thus HOPOs are subject to the positive obligations of helping the Tribunal further the overriding objective and cooperating with the Tribunal generally. The generality of these duties encompasses a potentially broad series of specific requirements and obligations many of which will be recurrent in most cases. Others may be more case sensitive.
 - 24. The proposition that HOPOs are answerable to the judge or panel of judges before which they appear is in our view unassailable. It arises from the basic judicial functions and duties, in tandem with rule 2(4) of the 2014 Rules. The efficacy of this answerability is not, in our estimation, dependent upon prescribed regulatory, disciplinary or enforcement arrangements. In practice it is achieved, satisfactorily, by the mechanisms of judicial oversight, judicial disapproval, simple judicial warnings, the Tribunal’s insistence upon strict compliance with its orders, directions and rules and kindred measures. Answerability is further achieved by correspondence between the Tribunal and the appropriate agency when necessary and the contents of the Tribunal’s decisions. See in this context Wagner (advocates’ conduct – fair hearing) [2015] UKUT 655 (IAC).’
18. We note that the Home Office recently introduced a ‘Code of Conduct for Presenting staff’ dated 25 May 2021 in response to a report by the Independent Chief Inspector of Borders and Immigration published in January 2021¹. This is a positive move to provide a framework of conduct and professional standards for Home Office Presenting Officers albeit not as comprehensive as the codes of professional conduct applied to ‘professional advocates’ by their regulating bodies.

¹ An inspection of the Home Office Presenting Officer function (November 2019-October 2020)

19. However, we note that the code is focussed primarily towards Home Office staff who present cases in court. Mr Whitwell informed us that grounds of appeal have not been drafted by the Home Office Presenting Officers who present cases in court for some time. The Code of Conduct does not appear to place any obligations on non-advocate Home Office staff who are responsible for drafting grounds of appeal despite the crucial role that such pleadings play in proceedings before the Upper Tribunal. In light of our observations about the quality of the original grounds in this case we trust that this issue will be highlighted to those who train the relevant Home Office staff. Unfortunately, this is not an isolated case. This tribunal sees grounds of similar quality filed on behalf of the Home Office on a regular basis.
20. Despite these concerns we concluded that permission should be granted to amend the grounds of appeal. The original grounds, although poorly pleaded, made relatively clear that the respondent challenged the judge's findings relating to 'family life' for the purpose of Article 8(1), but less clearly touched on issues relating to public interest considerations for the purpose of the balancing exercise under Article 8(2). The First-tier Tribunal judge who granted permission, while not identifying what errors he considered arguable, made clear that he considered the issue of whether there were 'exceptional circumstances' to outweigh the public interest in maintaining an effective system justified granting permission.
21. If the appellant had not been represented at the hearing, we would have had no hesitation in offering an adjournment for him to consider the application to amend the grounds. In the end, he was represented by the same counsel who appeared before the First-tier Tribunal, who was familiar with the case. The case did not involve complex issues. Although the original grounds should have been clearly pleaded, the arguments made in the application to amend the grounds were not complex and amounted to slightly better particularisation of the vague arguments put forward in the original grounds.
22. We recognise that Mr Fazli was faced with more detailed arguments only a few minutes before the hearing began. We rose to give him time to consider the brief skeleton argument produced by Mr Whitwell and to take instructions. Whilst fully recognising that the original arguments put forward in the grounds were poorly pleaded, we did not find Mr Fazli's reasons for opposing the amendment persuasive. The grounds and the grant of permission touched on both elements of Article 8. The appellant was on notice that the judge's findings relating to both elements were challenged albeit in an unspecified way. Having granted permission to amend the grounds Mr Fazli was offered further time to prepare, which he declined. Having made this preliminary decision, we heard submissions from both parties regarding the substance of the appeal.

Decision and reasons

23. In our assessment, even when the first ground relating to 'family life' was better particularised it failed to identify an error of law in the findings relating to Article 8(1) and amounts to no more than a disagreement with the judge's conclusion. It is

clear from the decision that the judge was aware of the appellant's immigration history and the fact that he had only come to live with his father on a full-time basis in 2019. It is difficult to see what relevance the fact that he also wanted to come to the UK to pursue a career in rugby might have to the judge's assessment when she had the benefit of hearing from each member of the family to assess the strength of their ties.

24. It is clear from the judge's summary of the law at [24] that she had in mind the applicable legal test when considering the relationship between an adult child and a parent: see *Kugathas v SSHD* [2003] INLR 170 and *Singh v SSHD* [2016] Imm AR 1. Although she did not outline the full family history in the same detail provided in the witness statements, it is clear from our summary of that evidence (above) that it contained compelling and compassionate elements that might explain the close relationship that the appellant has with his father and his family. Had the judge stopped with the relatively bare statement made at [25] we might have found that she had given inadequate reasons to explain her conclusion. However, at [32]-[33] she also considered the close relationship that the appellant had with his brothers, one of whom is still under 18 years old. Having heard evidence from the whole family, she was satisfied that there were strong elements of interdependence. She noted that the appellant had not yet established an independent life. The judge was satisfied that the relationship went beyond the normal emotional ties between a father and adult son. The judge made her findings with the relevant legal framework in mind. Her findings were within a range of reasonable responses to the evidence. We conclude that the First-tier Tribunal decision did not involve the making of an error of law in respect of the Article 8(1) assessment.
25. However, we conclude that the judge's findings relating to Article 8(2) contain obvious errors that cannot be ignored. In assessing what weight to place on public interest considerations contained in section 117B of the Nationality, Immigration and Asylum Act 2002 the judge's findings at [30] and [31] appear to relate to the considerations contained in section 117B(2)(English language) and 117B(3)(financial independence). The Court of Appeal in *Rhuppiah v SSHD* [2016] EWCA Civ 803 made clear that these were at best only neutral factors (the issue was not pursued to the Supreme Court). For this reason, the judge erred in placing weight in the appellant's favour on the fact that he speaks English. Although the strength of a person's ties to the UK might be relevant, the judge erred in placing 'significant weight' on the appellant's 'ability' to integrate in circumstances where he had only been living in the UK with his family on a full-time basis since 2019 and there was little evidence of significant ties other than with his family.
26. Although the judge stated that the public interest in maintaining an effective system of immigration control was a matter that should be given considerable weight in the balancing exercise [29], when her findings are analysed, there was no meaningful assessment of factors that were relevant to the weight to be placed on public interest considerations. The judge was aware that the appellant must have entered the UK illegally after having been refused further entry clearance on several occasions [7]. She also found that the fact that he destroyed his passport on arrival damaged his

credibility [20]. She made adverse findings about the credibility of his evidence relating to the protection claim, which she found to be a 'narrative of convenience designed to demonstrate that he is in need [of] international protection' [21]. When she turned to consider whether removal would be proportionate the starting point was that the appellant did not meet the requirements of the immigration rules, which reflect where the respondent considers a fair balance is struck for the purpose of Article 8. In such circumstances something compelling needs to be shown to outweigh the public interest in maintaining an effective system of immigration control. Factors weighing in favour of the appellant as well as in favour of the respondent needed to be identified, evaluated, and weighed to assess where a fair balance should be struck. The 'balance sheet' process is notably absent from the findings made by the First-tier Tribunal.

27. The decision relating to the protection claim has not been appealed and shall stand. However, for the reasons given above we conclude that the First-tier Tribunal decision relating to the human rights claim involved the making of errors of law. The finding relating to 'family life' is preserved. The Upper Tribunal will remake the decision at a resumed hearing at which it will weigh up all relevant factors relating to the balancing exercise under Article 8(2) of the European Convention.

DIRECTIONS

28. **The parties** shall file and serve any up-to-date evidence that they wish to rely on at least 14 days before the hearing.

DECISION

The First-tier Tribunal decision involved the making of an error of law

The decision will be remade at a resumed hearing in the Upper Tribunal

Signed *M. Canavan*
Upper Tribunal Judge Canavan

Date 11 August 2021