



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: HU/01912/2020

**THE IMMIGRATION ACTS**

**Heard at: Manchester Civil Justice  
Centre  
On: 18<sup>th</sup> June 2021 (remote)  
and 10<sup>th</sup> November 2021**

**Decision & Reasons  
Promulgated  
On: 18<sup>th</sup> January 2022**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Ghulam Haider  
(no anonymity direction made)**

Appellant

**And**

**Entry Clearance Officer, Sheffield**

Respondent

**For the Appellant: Mr Greer, Counsel instructed by Parkview  
Solicitors**

**For the Respondent: Mr McVeety, Senior Home Office Presenting  
Officer**

**DECISION AND REASONS**

1. The Appellant is a national of Pakistan born on the 30<sup>th</sup> May 1972. He seeks clearance to enter to the UK in order to live here with his partner.
2. It is not in issue that the Appellant has a family life in the UK: his British partner lives here and he wishes to join her. Nor is it in issue

that the couple are able to meet all of the 'substantive' requirements of Appendix FM, such as the minimum income requirement. The matter in issue in this appeal is whether the Respondent had properly refused to grant the Appellant entry clearance under the 'general grounds for refusal'.

### **Background and Decision of the First-tier Tribunal**

3. On the 6<sup>th</sup> March 2006 the Appellant arrived in the UK on a visit visa. He did not leave the United Kingdom at the end of the period permitted to him. Instead he stayed, and on his own admission, entered into illegal employment. In July 2010 he attempted to regularise his position by making an application for leave on human rights grounds. This was refused and the Appellant was served with an IS151A. This is a notice informing him that he should make arrangements to depart, and that if he did not was liable to be removed from the country. The Appellant did not depart. Nor was he removed. He remained, and on the findings of the First-tier Tribunal, carried on working. He did not report as required. In 2012 he met and later married (under Islamic law) his partner. In 2015 he made a series of applications for leave to remain on human rights grounds none of which were successful. In April 2018 the Appellant returned to Pakistan at his own expense.
4. On the 16<sup>th</sup> May 2018 the Appellant applied for entry clearance to the UK in order to come back here to live with his partner. I have not been shown a copy of the refusal with which this application was met, but I take from the decision in the subsequent appeal, before Judge Alty on the 2<sup>nd</sup> May 2019, that the only matter in issue was the Appellant's previous immigration offending. That is to say that the Entry Clearance Officer acknowledged that the Appellant met the substantive requirements of Appendix FM, but found that his poor immigration history meant that the application fell to be dismissed under paragraph 320(11) of the Immigration Rules.
5. The appeal was dismissed by Judge Alty on the 10<sup>th</sup> May 2019. At his [§13] Judge Alty directed himself to the terms of paragraph 320(11) then in force:

Grounds on which entry clearance or leave to enter the United Kingdom should **normally** be refused

(11) Where the applicant has previously contrived in a significant way to frustrate the intentions of the Rules by:

- (i) Overstaying; or
- (ii) Breaching a condition attached to his leave; or

- (iii) Being an illegal entrant; or
- (iv) Using deception in an application for entry clearance, leave to enter or remain or in order to obtain documents from the Secretary of State or a third party required in support of an application (whether successful or not); **and**

There are other aggravating circumstances, such as absconding, not meeting temporary admission/reporting restrictions or bail conditions, using an assumed identity or multiple identities, switching nationality, making frivolous applications or not complying with the re-documentation process

(Emphasis added).

6. Judge Alty found, uncontroversially, that the Appellant had indeed overstayed. In respect of whether there were “other aggravating factors” Judge Alty accepted the concession of the Appellant’s then representative that his failure to report, as he had been required to go after being served with the IS151A in 2010, did amount to an aggravating factor. Having further taken into account that the Appellant had worked illegally, Judge Alty upheld the refusal under paragraph 320(11).
7. The Appellant made a second application for entry clearance on the 23<sup>rd</sup> October 2019. In his decision dated the 15<sup>th</sup> January 2020 the Respondent refers to paragraph 320(11) but does not set out its terms. The totality of the ECO’s reasoning is based on the decision of Judge Alty. Following a paragraph in which her findings are summarised<sup>1</sup> comes the conclusion: “in view of all of the above, I consider that there are sufficiently aggravating circumstances to fully justify the refusal”.
8. The chronology now brings us to the decision of Judge McAll, dated the 6<sup>th</sup> January 2021. At its §20 the Tribunal directs itself to the Respondent’s submission that Devaseelan v SSHD [2002] UKIAT 00702\* applies and that the decision of Judge Alty is the starting point. At §22 the decision sets out paragraph 320(11).
9. Here we come to the difficulty identified at the hearing. It does not feature in the grounds, but I am satisfied that it is an obvious legal error of the type identified in R (on application of Robinson) v SSHD [1997] 3 WLR 1162.

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<sup>1</sup> It should be said that the ECO for good measure attributed to Judge Alty, in quotation marks, a finding that Judge Alty did not in fact make. The refusal cites Judge Alty as having said: “the Appellant’s previous applications had been frivolous and in one instance he had been required to pay costs. He fell squarely into the circumstances paragraph 320(11) was intended to address”. The First-tier Tribunal decision in fact read: “I do not have sufficient evidence before me today to conclude that the previous applications for leave made by the Appellant were frivolous”.

10. When Judge Alty made his decision, there was in the rule an operative presumption against a grant of leave: leave “should normally be refused” and the Appellant had not managed to rebut that presumption. When Judge McAll came to take his decision a year later, the rule had in fact materially changed. The parties before me agreed that on the 10<sup>th</sup> December 2020 (HC 1779) part 9 of the Rules was amended so as to delete paragraph 320(11) and replace it as follows:

9.8.2. An application for entry clearance or permission to enter **may** be refused where:

(a) the applicant has previously breached immigration laws; and

(b) the application was made outside the relevant time period in paragraph 9.8.7; and

(c) the applicant has previously contrived in a significant way to frustrate the intention of the rules, or there are other aggravating circumstances (in addition to the immigration breach), such as a failure to cooperate with the redocumentation process, such as using a false identity, or a failure to comply with enforcement processes, such as failing to report, or absconding.

11. Judge McAll does not appear to have been aware that at the time that he took his decision, paragraph 320(11) was no longer in the rules. It, and its presumption against the applicant, had been replaced by paragraph 9.8.2 which is premised on the neutral “may be refused”. There was therefore a failure to apply the correct rule. Was that an error such that the decision of the First-tier Tribunal should be set aside: s12(2)(a) Tribunals Courts and Enforcement Act 2007.

12. Mr Greer unsurprisingly submitted that it was. This was a human rights appeal and so the Article 8 balancing exercise fell to be undertaken at the date of hearing. If on the date of hearing the rule contained no presumption, it must have been an error to apply the old rule, which did. Mr McVeety agreed with that general proposition, but relied on the fact that the First-tier may, ironically, have saved the decision by its own misdirection: in its summary of 320(11) at its §22 the Tribunal mis-transcribes the rule. Instead of reciting that this was a ground upon which leave should “normally” or “may” be refused the Tribunal wrote: “paragraph 320(11) provides that an application for entry clearance *can* be refused” (my emphasis). Mr MrVeety submits that although this was in itself an error, it is a misdirection which demonstrates that the Tribunal did *not* therefore start from the premise that there was a presumption in favour of refusal. Further, he submits, it is clear from the reasoning that the Tribunal would have reached the same decision whichever provision it was applying.

13. I have considerable sympathy with Mr McVeety's submission. On the face of it the Tribunal (mis)directed itself that the relevant consideration was that an application "can" be refused in these circumstances, and I am not sure if there is any distinction in this context between the words "may" and "can". Although the drafting in the remaining part of 9.8.2 is admittedly opaque the parties before me were in agreement that there is little substantive difference between the new text and that set out in 320(11). This would tend to support Mr McVeety's submission that the Tribunal in effect carried out the exercise required of it by 9.8.2 of the Rules.
14. As attractive as that argument is, I am however satisfied that the error must be material. First, because as the grounds of appeal identify, the Tribunal expressly places the burden of proof on the Appellant rather than the Respondent. See for instance §26: "the burden rests on him". The grounds characterise this as an error for other reasons [see JC (Part 9 HC395 - burden of proof) China [2007] UKAIT 27] but in fact this is consistent with the application of the old rule - it was for the Appellant to rebut the presumption in 320(11). This would tend to indicate that the Tribunal apprehended that its task was the same as that carried out by Judge Alty. Which brings me to the second reason why I must find the error to be material. This decision, and very clearly the decision of the ECO, are based squarely on the reasoning in that earlier Tribunal decision. See for instance §27: "I find no reason to depart from IJ Alty's finding". Nowhere is it recognised that the rule had changed, and so the starting point had shifted.
15. That being the case I am satisfied that the error in applying the wrong rule was such that the decision of the First-tier Tribunal should be set aside. It follows that I need only address the written grounds briefly.
16. Ground (i) is that the Tribunal failed to address the argument advanced on behalf of the Appellant that the rule is, in effect, here operating as a lifetime ban, and that this is disproportionate when compared with, for instance, the rules relating to those with criminal convictions. The Upper Tribunal had in PS (paragraph 320(11) discretion: care needed) India [2010] UKUT 440 (IAC), cautioned against this very outcome, reasoning that there had to be some public policy benefit to permitting overstayers to regularise their positions without indefinite penalty. Before the *Robinson* obvious error above was identified there was some force in this argument as the ECO's decision to refuse is based squarely on the decision of Judge Alty: it is easy to see why the Appellant would begin to lose hope that he will ever be forgiven. However the changes to part 9 introduced by HC 1779 give that submission even greater force, since the 'general refusal' section of the rules now contains a formal table of the dates by which an operative mandatory ban will continue to operate against the erstwhile immigration offender. Mr McVeety is of course correct to

say that these tables do no more than identify the period in which an application will be *refused*. They do not suggest that applications will be *granted* after that cut off date. Whilst that is true, they remain helpful guides as to what the public interest requires.

17. Ground (ii) is concerned with what is characterised as the Tribunal's "double counting". Issue is taken with weight having been attached to the Appellant's "absconding *and* failing to meet reporting requirements". The grounds vigorously argue that the two are quite different and that the former is a "manifestly more serious allegation". I am not satisfied that it is, but even if it were, on the facts here it appears to be a finding open to the Tribunal. The Appellant did, by his own admission, decide not to report as he was required to do after he was served with an IS151A in 2010. There is no dispute that between his arrival as a visitor in 2006 and 2010 he was at large with the Home Office having no idea of his whereabouts. He was formally listed as an absconder on the Home Office website. The Appellant cannot now have any legitimate complaint about either, or both, of those matters being taken into account.
18. The second example of "double counting" given in Ground (ii) is that the Tribunal attaches weight to the fact that the Appellant worked illegally *and* in so doing deprived the Inland Revenue of taxes. I accept Mr Greer's point that this seems somewhat speculative since we have no means of knowing whether the casual low paid employment taken by the Appellant would have met the threshold at which tax becomes payable, nor indeed whether that threshold would have been reached by an alternative, lawful employee. It is also, I accept, arguably double counting since by its nature illegal employment is unlikely to be generating tax revenue.
19. A third issue raised under the head of ground (ii) is that the Tribunal erred in its findings on the mental health of the Sponsor at its §40. In fact that paragraph contains no findings on that matter: it is simply a summary of the evidence. I do not therefore propose to deal with the ground.
20. Ground (iii) is that the Tribunal applied the wrong burden of proof. I have already alluded to this above, but Mr McVeety accepts that in the context of a refusal on these grounds it was for the Respondent to show that leave should be refused: the Appellant had already shown that he qualified.
21. Ground (iv) submits that the Tribunal failed to make adequate findings on the positive credit that the Appellant should attract for those times in his immigration history when he has complied. This ground is rather subsumed by ground (i) in that the overall point is that an overstayer who starts to comply does not expect to be punished forever. I agree with the grounds that it is unclear what level of detail the Judge apparently required about what the Appellant was

doing between 2006 and 2015. He had already admitted to overstaying and working illegally in that time; he met and married his wife in 2012 and from then on lived with her. Whatever other details about his life might be relevant to this enquiry are not immediately obvious.

22. The final ground complains that the Judge should not have strayed into speculation about what advice the Appellant may or may not have received when he made a series of human rights applications in 2015. This is irrelevant given the Tribunal's acceptance that these applications have not been shown to be frivolous and are not therefore to be classed as "aggravating" factors.
23. For the reasons set out above, the decision of the Tribunal is set aside. The findings that are preserved are:
  - a) The Appellant was an overstayer
  - b) There are aggravating circumstances in his case because he failed to report/absconded
  - c) His attempts to regularise his position in this country cannot properly be classed, in the context of a genuine relationship, as 'frivolous' or 'vexatious'

## **The Re-Made Decision**

### *The Facts*

24. At the resumed hearing in November Mr Greer and Mr McVeety very helpfully prepared a schedule of agreed facts. These are:
  - The Appellant was granted a Tier 4 (General) Student Migrant visa on the 14<sup>th</sup> March 2006 valid until the 6<sup>th</sup> September 2006
  - He did not leave the UK at the end of that period
  - On the 29<sup>th</sup> July 2010 the Appellant made an application for leave to remain on private life grounds
  - This was refused with no right of appeal
  - In 2012 the Appellant met his partner, and they were married in an Islamic ceremony on the 22<sup>nd</sup> September 2012
  - The Respondent accepts that this is a genuine and subsisting relationship
  - Between 2012 and 2018 the Appellant made four applications for leave to remain on family life grounds, all of which were refused with no right of appeal

- During the Respondent's consideration of the Appellant's first family life claim he was required to report to Dallas Court Immigration Enforcement Office on a fortnightly basis: he failed to do so
- The Appellant made a voluntary departure from the UK on the 20<sup>th</sup> April 2018
- He made an application for entry clearance on the 16<sup>th</sup> May 2018, which was refused
- The appeal against that decision was dismissed by Judge Alty on the 20<sup>th</sup> May 2019
- The application that lead to this appeal was made on the 23<sup>rd</sup> October 2019, and it was refused on the 16<sup>th</sup> January 2020
- It is accepted that all the substantive requirements of the rules are met for the Appellant to be given leave to enter as a partner
- The sole ground for refusal is under the 'general ground for refusal' at 9.8.2
- It is accepted that the Appellant was an overstayer between 2006 and 2010
- It is further accepted that he failed to report to Dallas Court when required to do so
- The Respondent no longer alleges that the Appellant made frivolous or vexatious applications
- Mr McVeety further accepts that in the context of overstaying, and on the facts of this case, it would be wrong to characterise the Appellant's illegal working as a further aggravating feature: ZH (Bangladesh) [2009] EWCA Civ 8

25. The Respondent further took no issue with anything said by the Appellant's partner in her witness statement. The Appellant's partner accepts that he was previously in breach of the immigration rules but states that he accepts responsibility for that and that he has been trying to make amends ever since. He regrets his behaviour.

26. The Appellant's partner explains that she herself came to the UK from Pakistan some years ago, as a spouse to a UK national. It was a forced marriage. She was physically, emotionally, sexually and financially abused. She was treated like a slave and raped; her husband would do demeaning things like require her to kiss his feet. She lived like this for 7 years before finally being placed in a safe house. She was eventually rehoused by the council. Today she

continues to suffer the psychological consequences of the abuse she suffered, in the form of ongoing anxiety and depression. She states that after meeting the Appellant, however, she felt “loved and secure and he became a source of peace and comfort”.

27. Following her separation from her first husband the Appellant’s partner managed to learn English, naturalise as a British citizen and get some training. She is now employed full time by the NHS. She works at Royal Oldham Hospital as a Healthcare Assistant, and did so all the way through the pandemic, including caring for Covid patients. She describes being alone through this very difficult time in her witness statement:

“I was dealing with seriously ill patients at work which added to my depression. At work I was so distracted with looking after patients but coming home to an empty house after seeing the things I saw during the day became unbearable”.

28. This loneliness was compounded, she states, by events that occurred during a trip she had made to Pakistan in 2020 to visit the Appellant. After many years of struggles with infertility she discovered that she was pregnant; by late September she had lost the baby. She says that she is finding it difficult to come to terms with that loss without her husband being with her. That distress was made all the more difficult, she says, by the fact that when he returned home to the UK she found that all the windows in her house had been smashed in. She has received ongoing support from the police and victim support but the culprit has not been found. The Appellant’s partner believes strongly that she would find it easier to deal with such situations if he were with her now.

29. As to the possibility that she could go to Pakistan to live with her partner, she is clear that she does not want to do this. She has built a life for herself here, and contributes positively to society in her work in the NHS, she is a British citizen and considers this her home. She receives a lot of support here, including counselling arranged through her GP, and does not believe that she could access the same in Pakistan.

### *Discussion and Findings*

30. This is an appeal against a refusal of entry clearance brought on human rights grounds.

31. It is accepted that there is a family life at play here: that was expressly accepted by Mr McVeety and implicitly accepted by the original decision maker who found the Appellant to comply with all the relevant parts of Appendix FM.

32. It is further accepted that the decision to refuse entry clearance to someone in a genuine and subsisting relationship with a British national resident here is an interference with that family life.
33. Mr Greer did not seek to persuade me that the decision is not one that was lawfully open to the ECO to make.
34. The only question, on appeal, is whether it was proportionate to refuse to grant entry clearance. Put another way, is that interference *necessary*: is it in the public interest? The parties before me agree on three important points arising at this stage:
- i) Proportionality is a matter to be decided at the date of the appeal before me;
  - ii) Here the 'general grounds for refusal' operate as an expression of the public interest and at the date of this decision the relevant paragraph of the rules is 9.8.2;
  - iii) Paragraph 9.8.2 requires the decision maker to exercise a discretion. It provides that entry clearance *may* be refused if certain prerequisites are met. In the context of Article 8 that is simply a proportionality balancing exercise, and on appeal it is one for me to undertake, taking all relevant matters into account.
35. In respect of (iii) above there was some discussion at hearing about why the rules have been changed in the way that they were, i.e. to remove a presumption that has long existed in the rules. Neither representative nor myself could find any policy statement to assist, and the government website contains no explanatory memorandum to accompany HC 1779. I would suggest, however, that the amendment does bring the rule in line with the existing scheme relating to Article 8 claims generally, where Part 5A of the Nationality, Immigration and Asylum Act 2002 creates a sliding scale of weight to be attached to the public interest: see for instance HA (Iraq) v Secretary of State for the Home Department [2020] EWCA Civ 1176. At the highest end of the scale are serious criminal offenders, who must show the most exceptional circumstances in order to defeat the assumption that they will be deported; next are medium offenders for whom 'short cuts' to demonstrating disproportionality is offered; then there are those with no extant leave; then those with no extant leave but with qualifying children; finally, at the lowest end of the spectrum are those like the Appellant, those who have *formerly* breached the immigration rules. In removing the presumption in paragraph 320(11) the Secretary of State has recognised the logic expressed in PS (India), namely that there is a public interest in encouraging those with no leave to depart from the UK and regularise their positions from abroad. It also serves to underline that here the task of the decision maker is simply a balancing exercise. Where the substantive

requirements of the rules are met, as they are here, that will be a matter of weighing the Appellant's historical immigration offending, with its aggravating features, against the family life that he is accepted to have with his partner in the UK.

36. There is no dispute that both of the preconditions at (a) and (c) of paragraph 9.8.2 are in this case met: the Appellant has previously breached immigration laws and there are other aggravating circumstances, namely his failure to report /absconding. The only question for me is whether, taking into account all of the relevant facts, entry should in fact be refused on these grounds.
37. My starting point is the decision of Judge Alty. That decision represents an authoritative assessment of the law and facts as they then stood. But as I note above, the wording of the rule expressing the public interest has, since that decision, changed in a significant way; furthermore two and half years have elapsed in the lives of the two people involved.
38. I find that the Appellant's partner has an established private life in this country. As a migrant herself she suffered extreme adversity after her arrival here, enduring a prolonged period of abuse. What she has achieved since then is very commendable. She has learned English and passed the 'life in the UK test'. She has secured a home for herself, and is totally unreliant on public funds, working as she does full time in the NHS. She manages to do this despite the fact that she has a number of health complaints, including anxiety and depression.
39. The Appellant's partner is, in short, everything that the UK would like a migrant here to be. Unlike the Appellant. The Appellant did not do what he was supposed to do. He overstayed, and avoided contact with the Home Office so that he could overstay longer. He did that over a prolonged period.
40. The question is whether he should for that be punished, as he sees it, on this occasion, or indeed forever.
41. I begin my consideration of proportionality by having regard to the public interest factors set out in s117B Nationality, Immigration and Asylum Act 2002.
42. The maintenance of effective immigration control is in the public interest. There can be no doubt that the Appellant flouted those immigration controls for an extended period and he admits that he knew full well that he was doing so. He deliberately decided not to report to Dallas Court and to evade immigration control. All of that weighs against him. I must however recognise that at least since 2015 the Appellant was living at an address known to the Home Office, and maintaining regular contact with them as he pursued his attempt to remain here with his partner; he returned back to Pakistan

at his own expense in 2018 and it has been recognised since then that but for his historical offences he qualifies for entry under the immigration rules.

43. It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English are less of a burden on taxpayers, and are better able to integrate into society. It is accepted that the Appellant speaks English to the required standard so this provision does not weigh against him.
44. It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons are not a burden on taxpayers, and are better able to integrate into society. It is accepted that this is a family who can comfortably meet the 'minimum income requirement' in Appendix FM and this provision cannot therefore weigh against the Appellant.
45. Section 117B (4) requires that little weight is attached to a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully. That is plainly what happened here, and I am therefore bound by the terms of the statute to attach little weight to the relationship with the Appellant's partner. That said, there are two important caveats to that injunction in this case.
46. First it is important to note that the Appellant's relationship is recognised as 'qualifying' under the immigration rules. Appendix FM expressly stipulates that absent the countervailing factors, he should be granted entry clearance: to do otherwise would be a disproportionate interference with his family life. Given that provision in the rules, it is difficult to gauge the relevance of s117B(4) to an application for entry in these circumstances. As the reasoning in PS (India) explores, the nature of the public interest in these cases is complex. This is not, as perhaps Judge Alty saw it, the same as an in-country application from an overstayer who wishes to remain here with a partner. In such a case it is easy to understand why the statute is drafted in the way that it is: to prevent those not otherwise entitled to leave under the Rules from taking advantage of a relationship formed when leave was unlawful. That purpose was certainly fulfilled in this case, since the Appellant failed on no fewer than four occasions to regularise his position within the UK. Today, however, this is a case where the Appellant has expressly recognised, and acquiesced to, the Home Office's desire that undocumented migrants return home in order to regularise their positions. He has, as Mr Greer puts it, done what he is supposed to do.

47. Second, nothing in Part 5A prevents, or even discourages, decision makers from attaching whatever weight they regard as appropriate to the wider compassionate circumstances in any given case. The relationship *itself* may attract only a little weight but the weight that I am entitled to attach to the Article 8 rights of the Appellant's partner is a different matter: Beoku-Betts (FC) v Secretary of State for the Home Department [2008] UKHL 39 applied. I am satisfied, on the basis of her unchallenged evidence, that she has a substantial and established private life in this country which would be very difficult for her to give up. Hers is truly a story of triumph over adversity and she has created for herself a life in this country which includes making a valuable and vital contribution to our society in her work for the NHS. She does however remain vulnerable. She has suffered the loss of her unborn child, and the immense stress of working in a covid ward: it is not difficult to understand how those challenges are harder to bear when she is separated from her partner, whom she speaks of bringing her such comfort and reassurance in the aftermath of her escape from an abusive relationship. I accept that it means a very great deal to her to have her husband with her *here*, where she can continue with her job, and accessing the support of her GP with her various health issues including depression, anxiety and infertility. I certainly do not resile from Judge Alty's finding that it is *possible* for this lady to relocate to Pakistan, but I accept that she has no wish to do so. In the context of an application for entry clearance- as opposed to an application for leave to remain with reference to paragraph EX.1 of Appendix FM - the possibility of her departure from the UK is a matter that attracts only a little weight in my assessment.
48. I now turn to the primary submission made by Mr Greer. That is that the effect of the ECO's decision making, and the *Devaseelan* findings of Judge Alty, is to effectively deprive the Appellant of ever having the opportunity of living in the UK with his wife. As I note above, I can readily understand why he feels like that. The ECO's decision in the instant appeal was wholly based on the findings of Judge Alty, and hopefully bar the surprising inaccuracy that I identify above, I accept that this reasoning is likely to feature in any future application. Mr McVeety did not accept that this amounted to a lifetime ban. He pointed out that each application is assessed on its own merits, and that judges are not bound the *Devaseelan* findings of other Tribunals, they are simply required to treat them as a starting point, as I have done.
49. Unless they are actually together, it is unlikely that anything will materially change in respect of the family life shared by these two individuals. Separated by some thousands of miles it is, for instance, unlikely that they will be having a child in the foreseeable future.

## **Decisions and Directions**

50. The decision of the First-tier Tribunal is set aside.
51. The decision in the appeal is remade as follows: the appeal is allowed on human rights grounds.
52. There is no anonymity order, although given her personal circumstances I have not found it necessary or appropriate to identify the Appellant's partner by name.

A handwritten signature in black ink, consisting of the letters 'CBE' in a cursive, flowing style.

Upper Tribunal Judge Bruce  
29<sup>th</sup>

December 2021