



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: HU/04081/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 1 February 2022**

**Decision & Reasons
Promulgated
On 2 March 2022**

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Appellant

and

KANCHANA KUMARI ARCHBOLD
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms. J Isherwood, Senior Presenting Officer

For the Respondent: Mr. A Slatter, Counsel, instructed by Paul John & Co

DECISION AND REASONS

Introduction

1. For the purpose of this decision the appellant is referred to as the 'Secretary of State' and the respondent as the 'claimant'.
2. The Secretary of State appeals against the decision of a Judge of the First-tier Tribunal ('the Judge') sent to the parties on 8 September 2021 allowing the claimant's appeal on human rights (article 8) grounds.

3. A Judge of the First-tier Tribunal granted the Secretary of State permission to appeal by a decision dated 27 October 2021.

Anonymity

4. No anonymity direction was issued by the Judge and no application for such direction was made before this Tribunal.

Background

5. The claimant is a national of Sri Lanka. She is presently aged 40.
6. The immigration history of the claimant and her husband is addressed in the briefest of terms by the Judge in his decision. With the very helpful support of Ms. Isherwood who undertook an examination of relevant files at the hearing, the following history is identifiable:
 - i) The claimant's husband entered the United Kingdom on 26 August 2005 with an ancestry visa, his grandfather having been born in Ireland in the 1800s and so before the relevant date of 1 January 1949. The husband enjoyed leave to enter this country until 17 August 2009.
 - ii) The situation between 17 August 2009 and 28 October 2013 is presently unclear, but on the latter date the husband applied for indefinite leave to remain on ancestry grounds. The application was refused by a decision dated 28 October 2013 as he was determined not to have met the relevant language and Life in the UK requirements.
 - iii) On 8 July 2014 he applied for leave to remain on ancestry grounds and was granted the requested leave from 8 August 2014 until 8 August 2019.
 - iv) The claimant secured leave to enter as the dependent of a spouse enjoying limited leave to remain on ancestry grounds, such leave being valid from 3 October 2014 to 8 August 2019. Her leave to enter expired in line with her husband's leave to remain.
 - v) Her husband made an in-time long residency application on 12 April 2019.
 - vi) The claimant sought leave to remain on human rights grounds by an application dated 28 June 2019. The covering letter clearly identified that the claimant applied for leave to remain as a 'spouse dependent'.
 - vii) From June 2019 to January 2020 the claimant and her husband had related, though separate, applications awaiting

consideration by the Secretary of State for the Home Department.

- viii) The Secretary of State granted the husband further leave to remain from 17 January 2020 to 17 January 2022 but refused to grant him settlement as he continued to be unable to satisfy the language requirement.
 - ix) One month after granting the husband leave to remain, the respondent refused the claimant's application by a decision dated 28 February 2020.
7. The claimant and her husband have two children who were born in this country and are presently aged 5 and 4. The children are not dependent upon their mother's appeal.
8. The husband underwent heart surgery (mitral valve replacement) in September 2020. Medical evidence filed with the First-tier Tribunal established that by June 2021, some 2 months before the First-tier Tribunal hearing, he was complaining of breathlessness and persistently swollen legs. There was medical concern as to whether the repair of the femoral vein was satisfactory, requiring further outpatient attendance.

Grounds of appeal

9. The grounds of appeal detail:
- i) The Judge erred in allowing the article 8 (family life) appeal under the Immigration Rules ('the Rules'), the claimant being unable to satisfy the relationship requirement of paragraph E-LTPR.1.2 of Appendix FM or paragraph EX.1 of Appendix FM.
 - ii) When considering article 8 (family life) outside of the Rules, the Judge erred by only considering matters favourable to the claimant.
 - iii) The conclusion as to article 8 (private life) under the Rules was devoid of adequate reasoning and failed to adequately apply the statutory regime established under section 117B of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act').
 - iv) The Judge failed to place the public interest into the proportionality assessment.

Decision

10. I have considerable sympathy for judges sitting in the First-tier Tribunal who have sought, and continue to seek, to conscientiously and fairly hear appeals during the pandemic. I appreciate the many

attendant difficulties that arise in writing decisions. However, it is very unfortunate that the Judge adopted in this matter an unstructured approach as to his consideration which has led to a very confused decision riddled with errors of law. At a basic level the lack of a coherent structure resulted in the Judge's reasoning swerving from family life to private life and back, with consideration of article 8 outside the Rules intermingled with consideration of the Rules. This is the antithesis of the approach to the article 8 assessment explained by the Supreme Court in *Hesham Ali (Iraq) v. Secretary of State for the Home Department* [2016] UKSC 60; [2016] 1 W.L.R. 4799, at [83]-[84]. Though there is no obligation upon a judge to structure their decision-making in any particular way, the former Senior President of Tribunals confirmed that the use of a structure was to be endorsed: *TZ (Pakistan) v Secretary of State for the Home Department* [2018] EWCA Civ 1109; [2018] Imm. A.R. 130.

11. As is explained in this decision, the representatives and this Tribunal were required to grapple with a wholly unsatisfactory decision, both in terms of its jumbled, and at times incoherent, nature but also in terms of the absence of any, or any adequate, reasoning on core issues.
12. The grant of permission to appeal to the Upper Tribunal was entirely unsurprising upon even a cursory reading of the decision. Whilst care should be taken with all judicial decisions, it is particularly unfortunate that the claimant's husband, who is an ill man, has been subject to several months of additional stress awaiting determination of his wife's appeal in circumstances where, as discussed below, there exists for the claimant on the facts of this case a meritorious - and strong - appeal.

Article 8 (Family life) - Immigration Rules

13. An important section of any final decision of the First-tier Tribunal is the notice of decision (referred to by the Judge as the 'summary of decision') which is placed at the conclusion of the written decision and permits the parties to ultimately know the Tribunal's decision upon the ground(s) of appeal advanced. In successful appeals the notice may well be important in aiding the Secretary of State to identify the proper scope and nature of any subsequent grant of leave.
14. In this matter the Judge simply confirmed that he allowed the appeal 'on Human Rights grounds under the Immigration Rules'. No further information was provided. No reference was made by the Judge to his having allowed the claimant's article 8 appeal outside of the Rules. The casual approach adopted to this important section of the decision is unfortunate.

15. Looking at the body of the decision, the substance of the Judge's primary focus under the Rules is distilled at [27]: he considered the appeal under paragraph 276ADE(1)(vi) (private life) and paragraph EX.1 of Appendix FM to the Rules (family life). The latter establishes:

EX.1. This paragraph applies if

(a)

(i) the applicant has a genuine and subsisting parental relationship with a child who-

(aa) is under the age of 18 years, or was under the age of 18 years when the applicant was first granted leave on the basis that this paragraph applied;

(bb) is in the UK;

(cc) is a British Citizen or has lived in the UK continuously for at least the 7 years immediately preceding the date of application; and

(ii) taking into account their best interests as a primary consideration, it would not be reasonable to expect the child to leave the UK; or

(b) the applicant has a genuine and subsisting relationship with a partner who is in the UK and is a British Citizen, settled in the UK, or in the UK with refugee leave, or humanitarian protection, in the UK with limited leave under Appendix EU in accordance with paragraph GEN.1.3.(d), or in the UK with limited leave as a worker or business person under Appendix ECAA Extension of Stay in accordance with paragraph GEN.1.3.(e), and there are insurmountable obstacles to family life with that partner continuing outside the UK.

16. It is unfortunate that the Judge failed to identify under which limb of paragraph EX.1 the claimant was successful, but the following is clear:

(i) As the eldest child had not been in the United Kingdom for 7 years at the date of application and is not a British citizen the claimant cannot succeed under paragraph EX.1(a)

(ii) As the claimant's husband does not enjoy requisite leave the claimant cannot succeed under paragraph EX.1(b).

17. Significant concerns arise from the fact that the claimant did not advance her case under paragraph EX.1, no doubt because her legal representatives were aware that she could not meet the requirements of either limb. Mr. Slatter confirmed the same at the hearing. Upon reading the record of proceedings with care, it is clearly established that Ms. Allen, Counsel, who represented the claimant before the

First-tier Tribunal, made no reference to paragraph EX.1 in her submissions. Indeed, Ms. Allen's submissions were almost entirely focused on article 8 family life outside of the Rules, with a brief concluding reference to the husband's private life rights.

18. I am very troubled as to how the Judge could consider, over one page of a ten-page decision, a submission not advanced upon by the claimant and then proceed to allow the appeal on such basis. I note that the decision was prepared four days after the hearing so Ms. Allen's submissions can properly be expected to have remained clearly in the Judge's mind.
19. Further, Mr. Slatter makes the fair point that the Judge should properly have been aware that paragraph EX.1 did not come into play because at [2] of his decision he clearly identified that the husband only enjoyed discretionary leave. It is very unfortunate that the Judge undertook his consideration of the appeal without taking care to identify and consider the relevant components of paragraph EX.1 before reaching his decision. A cursory consideration of the Rule would have identified why no reliance was placed upon it by the claimant.
20. The decision is materially erroneous in respect of its consideration of article 8 and family life under the Rules and this element of the Judge's decision is set aside. Mr. Slatter did not request that I remake the decision on this ground for the reasons detailed above.

Article 8 (Family life) - Outside of the Immigration Rules

21. The Judge addressed article 8 family life outside of the Rules in brief terms at [27] of his decision:

'27. ... However, even if I was not so satisfied, I am aware from the afore mentioned decision in *Agyarko* (2017) that in order for an appellant to succeed under Article 8 outside the Rules, that appellant would need to demonstrate that the consequences of the decision would cause very substantial difficulties or exceptional circumstances or unjustified harshness. I would be satisfied taking into account all the factors in the case that there would be exceptional circumstances which would warrant a grant of leave to remain outside the Rules, for the same reasons that I have given earlier in this determination.'
22. It is clear from [27] that a positive finding has been made, though it is not referenced in the notice (summary) of the decision at [28].
23. I confirmed at that hearing that I was satisfied that I could properly read into the summary at [28] that the Judge intended to also allow the appeal on article 8 (family life) grounds outside of the Rules, and Ms. Isherwood did not demur.

24. Again, consequent to the jumbled and unsatisfactory nature of the approach adopted, the task arises for this Tribunal to identify the reasoning underpinning the bald conclusion reached at [27]. This requires the traversing of various paragraphs situated earlier in this decision, often without the aid of expected signposts.
25. Turning to the Judge's reasoning, he addressed his 'findings of fact and conclusions' in twelve paragraphs that run over four pages of the decision. At [16] to [18] he made uncontroversial findings of fact. At [19] he observed that the claimant has no close family residing in Sri Lanka and her husband's family are present in the United Kingdom.
26. At [20] the Judge noted that the claimant's older child is in reception class and the younger child attends nursery. He concluded that if they were to relocate to Sri Lanka with their parents, they would need to recommence their respective education, leaving behind any friends made in the United Kingdom. There is no clear or cogent reasoning as to why positive weight could properly be placed in the proportionality assessment upon children aged five and four being required to start a new school or nursery and make new friends.
27. The Judge accepted at [22] that it would be in the best interests of the children to remain with their parents. No more is said on this issue, and the Judge does not engage with the Supreme Court's confirmation in *ZH (Tanzania) v. Secretary of State for the Home Department* [2011] UKSC 4, [2011] 2 A.C. 166 that whilst the best interests of a child are a primary consideration, they can be outweighed by the cumulative effect of other considerations including the countervailing consideration as to the need to maintain firm and fair immigration control.
28. At [23] the Judge turned to the existence, or otherwise, of 'insurmountable obstacles'. Unfortunately, consequent to the jumbled approach adopted, it is entirely unclear as to the context in which this assessment is undertaken, following on as it does from the paragraph concerned with the best interests of the children. It appears to me, and the representatives agreed, that the assessment was undertaken in respect of the materially erroneous consideration of paragraph EX.1(b) of Appendix FM.
29. As I have noted on several occasions, the decision woefully fails to establish a coherent structure, leaving those who read it required to grapple with its wholly inadequate presentation. However, I am satisfied that I can properly conclude that the reasoning at [23] and [24] flowed into the exceptional circumstances assessment undertaken in respect of article 8 outside of the Rules by reference, in general terms, to "taking into account all the factors in this case" at [27].

30. Turning to [24] the Judge provided reasons as to why he considered insurmountable obstacles to exist in this matter. He noted that the claimant joined her husband in this country some five years previously (as is clear from the Judge's own reference at [11] it was almost seven years by the time of the hearing). He placed weight upon the claimant not having any close family members residing in Sri Lanka, though no consideration is given as to her life in that country before she travelled to the United Kingdom aged 33. The Judge noted that the claimant's husband has resided in this country for approximately 16 years. He further observed that the husband's close family reside in this country. No reasoning is provided as to the relevance of this fact to the insurmountable obstacles test. I am satisfied that the reasoning at [24] is inadequate and erroneous in law.
31. As discussed with the representatives at the hearing, the true question for this Tribunal in respect of article 8 outside of the Rules is whether one or several of the identified errors of law were material.
32. It is unfortunate that the Judge did not engage with the submissions advanced by Ms. Allan. The core of her submission was directed to there being no public interest in the claimant's removal consequent to her personal circumstances, in particular (1) her husband's ill-health, and (2) the claimant having been granted entry clearance to join her husband who was lawfully present in this country through an ancestry visa. I am satisfied that a third important consideration arises, namely that for a time the Secretary of State had two related, but separate, applications before her in relation to the claimant and her husband: she granted leave to one, not to the other, within the space of one month.
33. In respect of the health of the claimant's husband, he has undergone heart surgery, and it is incontrovertible that he remains unwell and in need of continued medical attention which he is lawfully receiving in this country.
34. As to the claimant's lawful presence in this country, she was granted entry clearance to join her husband at a time when he enjoyed leave to remain on ancestry grounds. The personal circumstances between them have not changed. Indeed, their family unit has extended to include two children. However, there is no mechanism under Appendix FM for further leave to remain as the spouse of a person holding an ancestry visa. In respect of her protected family life rights, she did not have the benefit of applying for further leave to remain on human rights (family life) grounds under the Rules and this necessitated her having to progress directly to establishing exceptional circumstances.
35. Ms. Isherwood properly accepted before me that the claimant's application made it clear that she was applying for further leave to

remain as the dependent of her husband. The Secretary of State considered the husband's application first, as she was permitted to do with two separately made applications before her. The Secretary of State proceeded to grant the claimant's husband further leave to remain in this country. One month later, she refused the claimant's application observing, *inter alia*, that no exceptional circumstances arose as the claimant had not 'provided any evidence which indicates that you would be unable to maintain your children in Sri Lanka' and had not 'provided any evidence to suggest that both yourself and your partner would not be able to continue to care for them in Sri Lanka.' Such conclusions were reached in circumstances where only a matter of weeks beforehand the Secretary of State had accepted that the husband could remain in this country and in such circumstances no doubt accepted that he could properly expect his children to remain with him for the duration of his leave.

36. Section 117A(2) of the 2002 Act confirms that in considering the public interest question, the Tribunal must have regard to section 117B. A judge is required to consider the five questions set out by the House of Lords in *R (Razgar) v. Secretary of State for the Home Department* [2004] UKHL 27, [2004] 2 A.C. 368, with section 117B being a further elaboration of question 5 concerned with proportionality and justifiability.
37. Section 117B(1) states that the maintenance of effective immigration control is in the public interest.
38. I observe the Master of the Rolls judgment in the deportation appeal of *MF (Nigeria) v Secretary of State for the Home Department* [2013] EWCA Civ 1192; [2014] 1 WLR 544, at [42], in respect of exceptionality

'42. ... In our view, that is not to say that a test of exceptionality is being applied. Rather it is that, in approaching the question of whether removal is a proportionate interference with an individual's article 8 rights, the scales are heavily weighted in favour of deportation and something very compelling (which will be 'exceptional') is required to outweigh the public interest in removal.'

39. In considering this passage, Lord Reed confirmed in *Agyarko*, at [56]-[57]:

'56. ... Cases are not, therefore, to be approached by searching for a unique or unusual feature, and in its absence rejecting the application without further examination. Rather, as the Master of the Rolls made clear, the test is one of proportionality. The reference to exceptional circumstances in the European case law means that, in cases involving precarious family life, "something very compelling ... is required to outweigh the public interest", applying a proportionality test. The Court of Appeal went on to apply

that approach to the interpretation of the Rules concerning the deportation of foreign criminals, where the same phrase appears; and their approach was approved by this court, in that context, in *Hesham Ali*.

57. That approach is also appropriate when a court or tribunal is considering whether a refusal of leave to remain is compatible with article 8 in the context of precarious family life. Ultimately, it has to decide whether the refusal is proportionate in the particular case before it, balancing the strength of the public interest in the removal of the person in question against the impact on private and family life. In doing so, it should give appropriate weight to the Secretary of State's policy, expressed in the Rules and the Instructions, that the public interest in immigration control can be outweighed, when considering an application for leave to remain brought by a person in the UK in breach of immigration laws, only where there are "insurmountable obstacles" or "exceptional circumstances" as defined. It must also consider all factors relevant to the specific case in question, including, where relevant, the matters discussed in paras 51-52 above. The critical issue will generally be whether, giving due weight to the strength of the public interest in the removal of the person in the case before it, the article 8 claim is sufficiently strong to outweigh it. In general, in cases concerned with precarious family life, a very strong or compelling claim is required to outweigh the public interest in immigration control.'
40. It remains the position that the ultimate question is how a fair balance should be struck between the competing public and individual interests involved, applying a proportionality test. I am satisfied that a reasonable judge, properly directing themselves to relevant law and when undertaking the proportionality assessment, could come to no other decision than finding exceptional circumstances exist in this matter. The claimant secured leave to enter the United Kingdom to join her husband. They remain together, and now have two children. The nature of the claimant's grant of entry clearance, as the dependent of the holder of an ancestry visa, required her to seek further leave to remain with her husband outside of the Rules. This is the intention of Parliament through application of the Rules in respect of dependents of persons enjoying leave on ancestry grounds. However, the question of whether public interest requires separation of a couple, with attendant impact upon family life rights, in such circumstances remains to be considered. The claimant's husband successfully secured further leave to remain the month before her own decision. This decision was made with the knowledge that the claimant had an outstanding application. It was not contended by Ms. Isherwood that having secured further leave the husband should expect his children to leave this country with their mother. She was correct not to. Indeed, the husband could properly expect to be allowed to enjoy his recently granted leave to

remain. The decision-maker in this matter should properly have been aware of such fact, undermining as it does the notion that the husband should properly be expected to return to Sri Lanka with his wife and children. In addition, the husband has succumbed to serious health concerns and has greater dependence upon his wife. I am satisfied that on the facts arising in this matter, the strength of family life outweighs the public interest in the claimant's removal from this country.

41. In the circumstances, the identified errors in respect of the family life decision are not material. The Secretary of State's appeal against the decision to allow the claimant's appeal on article 8 (family life) grounds outside of the Immigration Rules is dismissed.

Article 8 (Private life) - Immigration Rules

42. I observe that Ms. Allen did not expressly rely upon paragraph 276ADE(1)(vi) of the Rules in her oral submissions before the Judge.
43. The Judge concluded at [27] that the claimant satisfied paragraph 276ADE(1)(vi), namely that 'there would be very significant obstacles to the applicant's integration into' Sri Lanka. The reasoning for this decision is established at [25] of the decision. The Judge found that the claimant had retained a knowledge of the life, language and culture in Sri Lanka but concluded that she would not be able to integrate upon return and she would have no home, no friends, and no immediate source of income. He identifies that the claimant would have difficulties in securing employment. No consideration is given as to the circumstances of how the claimant resided in Sri Lanka prior to her travelling to this country in 2014, nor as to whether the husband's family could provide adequate support in the first few weeks of arrival. A further concern is that the observation at the conclusion of the paragraph as to there being 'no reliable evidence before me demonstrating that within a reasonable period of time' the claimant would secure employment is strongly suggestive of a reversal of the burden of proof. It was for the claimant to explain why she would not be enough of an insider in terms of understanding how life in Sri Lanka is carried on and a capacity to participate in it so as to have a reasonable opportunity to operate on a day-to-day basis and build up within a reasonable time a variety of human relationships to give substance to her private or family life: *Secretary of State for the Home Department v. Kamara* [2016] EWCA Civ 813, at [14]. This required the claimant to explain how her experiences in the years before she travelled to this country could not aid her integration upon return. The identified failings can only be considered to be material errors of law.

Article 8 (Private life) - Outside of the Immigration Rules

44. The Judge considered the claimant's private life rights at [21] of his decision, observing that the family attend a Catholic Church. The Judge detailed the contents of a letter from a friend of the claimant who baldly asserts that the claimant would have difficulties being a practicing Christian in Sri Lanka. There is no judicial assessment of this piece of evidence; it is simply recited without more. There appears to be no relevant finding of fact made. However, at [24] the judge considers cumulatively all factors he has previously addressed. A real concern arises as to the adoption of an approach where factors relied upon in the cumulative assessment are themselves inadequately assessed. I am satisfied that on several occasions in this decision the Judge simply recites evidence favourable to the claimant, with no identification as to whether positive weight is properly to be given to the evidence in the proportionality assessment, and then a subsequent reference to the undertaking of a cumulative assessment improperly acts as confirmation of the application of positive weight.
45. When considering the proper weight to be given, if any, to a simple observation by a (non-expert) friend of the claimant as to the ability of a Catholic to practice her religion in Sri Lanka, I take judicial notice that there are over 1.2 million Catholics in Sri Lanka (some 6% of the population), with 12 cathedrals in the country including St Lucia's Cathedral in Colombo. No proper weight could reasonably be placed upon this evidence.
46. The Judge then turned his attention to the provisions of section 117B of the 2002 Act. I am satisfied that he materially erred in placing positive weight upon the fact that the claimant is financially independent through her employment in this country and speaks 'some' English. Whilst speaking English and being financially independent may add to the strength of private life that is a different matter to concluding that where the factors exist there is a public interest in favour of the claim: *Rhuppiah v Secretary of State for the Home Department* [2018] UKSC 58; [2018] 1 W.L.R. 5536
47. I conclude that the Judge materially erred in respect of the claimant's article 8 (private life) appeal under the Rules.

Remaking the decision

48. Though I have dismissed the Secretary of State's appeal in respect of the human rights appeal concerned with article 8 family life, I am satisfied that there is a necessity to set aside the private life element of the Judge's decision and proceed to remake the decision on that element of the claimant's case.
49. I therefore confirmed at the hearing that I set aside the First-tier Tribunal's decision in respect of article 8 and (1) family life under the Rules and (2) private life both under and outside of the Rules. With

the consent of the parties, I proceeded to remake the decision in respect of (2) at the hearing.

Article 8 (Private life) - Immigration Rules

50. I am satisfied that the claimant is simply unable to meet the burden placed upon her by paragraph 276(1)(vi) of the Rules. In seeking to establish that there would be very significant obstacles to her integration upon return to Sri Lanka, her evidence is silent on key issues, particularly how she engaged in everyday life before relocating to this country in 2014. Both her witness statement and that of her husband are noticeably silent on this matter. The burden rests upon the claimant to establish that there are very significant obstacles to her returning to her home country and evidential silence on a key matter can properly be considered adverse to the assertion: *R (Kaur) v. Secretary of State for the Home Department* [2018] EWCA Civ 1423; [2018] Imm. A.R. 1364. The claimant's appeal on article 8 private life grounds under the Rules is dismissed.

Article 8 (Private life) - Outside of the Immigration Rules

51. I commence by observing section 117B(1) and the public interest in the maintenance of immigration control.
52. The claimant relies upon her relationship with her husband, having entered the country lawfully and her employment as establishing a protected private life.
53. I find that having entered the country lawfully, the claimant has established a private life in this country and has sought to integrate into her local community through her employment and her children's attendance at school and nursery.
54. I note that there is no requirement to give 'little weight' to family life formed while immigration status is precarious: *GM (Sri Lanka) v. Secretary of State for the Home Department* [2019] EWCA Civ 1630, [2020] I.N.L.R. 32. However, the claimant has limited ties to this country, having enjoyed precarious immigration status since her arrival in this country. Her husband also enjoys precarious immigration status.
55. I observe that the maintenance of effective immigration control is in the public interest, and such public interest is not diluted by the consideration that an article 8 claimant has at no time been a financial burden on the State, is self-sufficient and is likely to remain so indefinitely: *Forman (ss 117A-C Considerations)* [2015] UKUT 412 (IAC); [2015] Imm. A.R. 1231.
56. I conclude that the circumstances as presently exist are not such to establish that the weight to be given to the claimant's private life

rights outside the public interest in removal. The appeal on this ground is dismissed.

Notice of decision

57. The decision of the First-tier Tribunal promulgated on 28 May 2021 did not involve an error of law in respect of the claimant's human rights appeal on article 8 (family life) ground outside of the Immigration Rules.
58. **The First-tier Tribunal's decision to allow the claimant's appeal on this human rights ground is confirmed.**
59. The decision of the First-tier Tribunal promulgated on 28 May 2021 involved the making of a material error on a point of law and is set aside on the following grounds only:
- (1) Article 8 (family life) under the Rules: paragraph EX.1 of Appendix FM to the Rules
 - (2) Article 8 (private life) under the Rules: paragraph 276ADE.
 - (3) Article 8 (private life) outside of the Rules.
60. The Upper Tribunal was not asked to remake (1) above.
61. The decision is remade in respect of (2) and (3) above and the claimant's appeal is dismissed on these grounds.

Signed: D O'Callaghan
Upper Tribunal Judge O'Callaghan

Date: 7 February 2022

Fee Award

A further concern that arises from the Judge's decision is that he considered a fee of £140 to have been paid or was payable and so made a whole fee award of £140 in favour of the claimant.

It is clear on the face of the papers placed before the Judge that a Lord Chancellor's Certificate of Fee Satisfaction was issued on 17 March 2020 and so the claimant was exempt from paying a fee. It is therefore the case that no fee award should have been paid. The approach adopted by the Judge is of concern.

I set aside the Judge's decision as to a fee award and replace it with a decision that as no fee was paid, no award is made.

Signed: D O'Callaghan
Upper Tribunal Judge O'Callaghan

Date: 7 February 2022