



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: IA/28321/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 19 September 2014

Determination Promulgated  
On 15 October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE E B GRANT

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR SHAFIQ HUSSAIN  
(ANONYMITY ORDER NOT MADE)

Respondent

**Representation:**

For the Appellant: Mr I Jarvis, Senior Presenting Officer  
For the Respondent: Mr Z Nasim of Counsel

**DETERMINATION AND REASONS**

1. This is an appeal by the Secretary of State who was respondent before the First-tier Tribunal (hereinafter referred to as the Secretary of State) against the determination of First-tier Tribunal Judge Camp promulgated 14 April 2014. Judge Camp allowed the appeal of Mr Shafiq Hussain, the appellant before the First-tier Tribunal

(hereinafter referred to as the respondent) against refusal of his application for leave to remain outside of the Immigration Rules.

2. The Secretary of State sought permission to appeal the determination on 20 May 2014. FTTJ Molloy granted permission to appeal in the following terms:

*“The grounds of appeal record Judge Camp making reference to the decision in, inter alia, **Gulshan** (Article 8 - new Rules - correct approach) Pakistan [2013] UKUT 640 and argue that although he has indicated that he is determined that there were compelling circumstances which required him to consider Article 8 of the Human Rights Convention outside the Immigration Rules, he did not address specifically what those compelling circumstances were. A true construction of the material paragraphs of his decision show that Judge Camp did not expressly set out what the compelling circumstances are. Accordingly there is an arguable error of law upon a material matter.”*

3. Mr Hussain also sought permission to appeal albeit out of time. On 30 June 2014 as First-tier Tribunal Judge I granted permission to appeal in the following terms:

*“The grounds submit the FTTJ erred in law by failing to make any findings under the Immigration Rules (Appendix FM). The explanation for the delay in applying for permission is because the appellant’s representative wrongly thought the appellant’s concerns about the determination could be accommodated in a Rule 24 notice following grant of permission to appeal following an application made by the respondent. However that is incorrect following **EG and NG (UT Rule 17: withdrawal: Rule 24: scope) Ethiopia [2013] UKUT 00143**. Although the appellant’s representatives were mistaken and that is no excuse for the significant delay in making the application for permission to appeal, given that the FTTJ arguably erred in law in failing to make any findings under the Immigration Rules, and given that the respondent already has permission to appeal in relation to the Article 8 findings, it is in the interests of justice that time should be extended so as to permit all the arguable errors of law to be addressed. Permission to appeal out of time is granted and the application is hereby admitted. The grounds submit the FTTJ erred in law by failing to make findings on the appellant’s suitability for leave to remain. It can be seen from paragraph 10 of the determination that the parties agreed that the only live issue was the question of suitability. The FTTJ then failed to make any findings in respect of that live issue. In failing to make any findings the FTTJ arguably erred in law. The grounds may be argued.”*

### **The Secretary of State’s Application**

4. The grounds submitted the FTTJ erred in law by failing to specify the compassionate circumstances which meant the appeal should be allowed under Article 8 outside of the Immigration Rules. In so doing the FTTJ misdirected himself as to the guidance of the Tribunal in **Gulshan [2013] UKUT 00640**. The FTTJ failed to give adequate reasons and case specific findings that justify a departure from the Immigration Rules.
5. Before me the Secretary of State sought permission to widen her grounds of appeal to rely upon the following matters

- (i) A material misdirection in law regarding the false documentation she used to obtain the appellant's visa; the FTTJ misdirected himself as to a matter of law in relation to AA (Nigeria) [2010] EWCA Civ 773.
  - (ii) A material misdirection in law concerning delay in removal.
  - (iii) A material misdirection in law in connection with ZH (Tanzania) [2011] UKSC 4.
6. The Secretary of State submitted that if permission to appeal was to be granted that the respondent wished to withdraw the concession made at the appeal hearing that family life existed between the appellant and his son.

### **The Appellant's Application**

7. The appellant sought permission to appeal out of time on the basis that the FTTJ failed to make any findings or reasoned findings on the Immigration Rules.
8. After hearing submissions from both sides permission was granted to each party to appeal the determination of FTTJ Camp which was then set aside by me and the matter came back before me to remake the decision. The findings of fact made in favour of Mr Hussain, that he did not know the visa in his original passport was false; and, that he enjoyed family life with his son, were preserved.

### **The Secretary of State's Submissions**

9. Mr Jarvis submitted that having seen the appellant's mobile telephone with recent photographs he accepted the relationship between parent and child was ongoing.
10. In terms of the Immigration Rules the Secretary of State made plain in the refusal dated 19 June 2013, that suitability requirements were and are in place, specifically S-LTR.1.6. which says that the presence of Mr Hussain is not conducive to the public good because his conduct including character, associations, or other reasons make it undesirable to allow him to remain. The conduct referred to is the making of an application for an NTL visa supported by false documents.
11. Mr Jarvis submitted that EX. 1 only comes into play if someone does not fall for refusal under the suitability requirements of Appendix FM. It is the Secretary of State's case that EX.1 does not apply in this case because Mr Hussain in coming to the United Kingdom with a false visa in his passport - something which is not denied- and in making an application to the Secretary of State supported by a copy of the false visa endorsement and with a false letter falls within the suitability criteria at S-LTR.1.6. This is relevant and it is not a discretionary matter. In order to succeed Mr Nasim would have to show that the reliance upon S-LTR.1.6. by the Secretary of State was unlawful.
12. Mr Jarvis referred to the guidance submitted by Mr Nasim regarding paragraph 320(19) of the Immigration Rules. This is guidance issued to Entry Clearance Officers. Mr Nasim will say that this guidance can be read into the in country Rules.

This guidance does not say that use of a false document cannot be raised. It only gives a non-exhaustive list of scenarios. It is the Secretary of State's case that this is not specific guidance on S-LTR.1.6. It does at one end of the spectrum talk about war crimes and the hiring of illegal workers and dishonest dealings with the government. But Section 3 of the same page does not limit the application. Mr Jarvis submitted that my assessment of S-LTR.1.6. should take into account that it cannot be said the use of a false visa documents in this case a false endorsement in a passport, can never be raised as a suitability matter under S-LTR.1.6. This means that Mr Hussain does not have access to EX.1.

13. Mr Jarvis submitted that the fact that Mr Hussain did not know false documents had been used in support of the 2009 application misses the point. **AA (Nigeria) v Secretary of State for the Home Department [2010] EWCA Civ 773** looked at the interpretation of a false representation. But where it referred to false documents the Court of Appeal was quick to agree with the Secretary of State's rationale, see for example paragraph 67 which states

*"First, 'false representation' is aligned in the rule with 'false document'. It is plain that a false document is one that tells a lie about itself. Of course it is possible for a person to make use of a false document (for instance a counterfeit currency note, but that example, used for its clarity, is rather distant from the context of this discussion) in total ignorance of its falsity and in perfect honesty. But the document itself is dishonest. It is highly likely therefore that where an applicant uses in all innocence a false document for the purpose of obtaining entry clearance, or leave to enter or to remain, it is because some other party, it might be a parent, or sponsor, or agent, has dishonestly promoted the use of that document. The response of a requirement of mandatory refusal is entirely understandable in such a situation. The mere fact that a dishonest document has been used for such an important application is understandably a sufficient reason for a mandatory refusal. That is why the rule expressly emphasises that it applies 'whether or not to the applicant's knowledge'."*

14. What the Court of Appeal have said in **AA (Nigeria) [2010] EWCA Civ 773** when looking at the question of a false document is that even where the falsity occurred because of some other party such as a parent or third party, the response of mandatory refusal is entirely understandable.
15. Whether Mr Hussain knew that the documents were false is relevant but it is immaterial because it is accepted that false documents were used in connection with the 2009 application. The Secretary of State has a general prohibition against the use of those documents. To dilute the suitability Rule S-LTR.1.6. by a mens rea assessment would not be warranted. Case law including **Ahmed Benabbas [2005] EWCA Crim 2113** makes it plain the use of false passports has a serious detrimental effect on immigration control and the fact that Mr Hussain was not convicted or sentenced for entry to the United Kingdom with a false visa in his passport is irrelevant.
16. Overall as a matter of law Mr Hussain cannot show the Secretary of State cannot rely on use of a false document under S-LTR.1.6. 1 and this carries weight outside of the Immigration Rules too.
17. EX. 1 through the Rules is not in play which is a further aspect of the public interest under the Secretary of State's policy. If there are eligibility or suitable issues one

does not get to rely on one's relationship with a child. It is plain and obvious why that would be the case.

18. If a person fails to meet the requirements of the Immigration Rules they can still argue that their case has compelling features. **MF (Nigeria) [2013] EWCA Civ 1192. Haleemudeen [2014] EWCA Civ 558** is binding and makes clear failure to meet the requirements of Appendix FM is not the starting point. It is more than that, a person must show very compelling matters indeed.
19. In terms of private life rights, representations made about delay and failure to remove do not benefit Mr Hussain. **AZ (Bangladesh) [2009] EWCA Civ 158** applies. A three year delay was small when placed in context. The delay in this case does not outweigh the public interest in removal.
20. The decision of the Upper Tribunal in **R (on the application of Shou Lin Xu) v Secretary of State for the Home Department (legacy cases - "conclusion" issue) IJR [2014] UKUT 375 (IAC)** makes it clear that the Secretary of State is entitled to proceed on the basis that those unlawfully in the UK will leave of their own accord. The Secretary of State is not obliged to issue a removal direction decision. Mr Hussain should have left but did not.
21. If an assessment of Article 8 outside of the Immigration Rules is required, recent legislative changes to the Nationality, Immigration and Asylum Act 2002 incorporates a new section 117B. The Act is aimed at the Tribunal. Section 117B(6) does not act as an absolute rule which means removal would be disproportionate. Taking into account the unlawfulness of Mr Hussain's stay in the United Kingdom and the use of false documents and the precariousness of his position, the Secretary of State says that removal is proportionate in this case even taking into account his relationship with his child.

### **Mr Nasim's Submissions**

22. Mr Nasim submitted there was no issue with regard to suitability requirement. The only issue between the parties was the suitability requirement and whether Mr Hussain should be excluded because of paragraph 1.6 because of the use of the false ILR stamp in his passport. The only guidance Mr Nasim had been able to find is in relation to paragraph 320(19) which has the precise wording in relation to conduct and character. The guidance is very much clear and outlines the sort of cases for which the particular provision is relevant. The wording of Appendix FM in relation to exclusion is similar to paragraph 320(19). For refusal on grounds of suitability there has to be something of a serious nature. When one talks about whether something is conducive to the public good there are examples about threats to national security and war crimes. These are matters that are really serious which will have an impact on foreign policy and national security.
23. Mr Hussain was 22 years old when he arrived on the instructions of his father. Mr Hussain first became aware that the ILR stamp in his passport was false when he lost his passport and asked for a transfer to the new passport. He was then informed that

the copy endorsement and the letter he supplied with his application were counterfeit.

24. **AA (Nigeria) v Secretary of State for the Home Department [2010] EWCA Civ 773** was concerned with paragraph 320(7A) where someone produces false documents when seeking entry clearance. Paragraph 320 (7A) is directed at Entry Clearance Officers. In this case we do not have a copy of the application completed by the appellant. He made an application for the transfer of the stamp that had been in a lost passport. He did not pursue that application once he had been informed the stamp was not genuine. He was shocked. He had no idea it was not genuine. In order to have made false representations an applicant must have deliberately practised deception or by someone acting on his behalf.
25. In **Ahmed Benabbas [2005] EWCA Crim 2113** there were aggravating factors and a recommendation for deportation. There is no recommendation for deportation here and no issue about a false passport. The passport was a genuine passport in Mr Hussain's name. He was not pretending to be someone else. He left Pakistan on his own passport endorsed with a false visa. In **Ahmed Benabbas [2005] EWCA Crim 2113** passports had been stolen in an armed robbery. The Court of Appeal were also looking at whether the Crown Court judge got it right by recommending deportation.
26. It is the primary submission of Mr Hussain that the Secretary of State's case is not made out at all under the suitability requirement which is intended to be geared towards different circumstances and the only guidance Mr Hussain can find is in relation to paragraph 320(19). The burden is on the Secretary of State and this has not been made out at all. The consequence for Mr Hussain would be permanent exclusion.
27. Mr Hussain's case about delay is important. He is not suggesting that he can remain because of delay by the Secretary of State. Mr Hussain made his application in 2011 and eventually had to bring a judicial review application to get a decision. He did not want to be left in limbo forever and it is not right for the Secretary of State to say it is not conducive for him to remain here when she was quite content to leave him in limbo. **R (on the application of Shou Lin Xu) v Secretary of State for the Home Department (legacy cases - "conclusion" issue) IJR [2014] UKUT 375 (IAC)** is a different matter altogether.
28. At pages 21 and 22 of Mr Hussain's bundle is the refusal dated 21 December 2011. This predates the changes to the Immigration Rules. No issue was taken by the Secretary of State in terms of suitability at that time and no issue was taken with his passport and the first time this was raised as an issue was in the 2013 refusal letter.
29. Mr Nasim submitted the Tribunal should exercise discretion in favour of Mr Hussain. There was no intention by Mr Hussain to deceive the Secretary of State. Mr Nasim submitted that Mr Hussain meets the requirements of Appendix FM. He is an individual who has ties to the United Kingdom because he has a British child with

whom he is in contact and he has brothers and sisters in the United Kingdom as explained in his witness statement. Application of S-LTR.1.6. would result in permanent exclusion from the United Kingdom which cannot be right. And there was no prosecution of Mr Hussain by the Secretary of State. Section 117 lists factors to take into account but they are just factors to take into account. The court has always had to consider these factors under Article 8 in any event.

30. Mr Hussain has a well-established family life. He is not excluded by suitability requirements. He meets the requirements of Appendix FM and it would be disproportionate if he is removed. He has been involved with his child since the child was born and the child is now 3 years of age. The mother has children from previous relationships and is dependent upon Mr Hussain in relation to financial support for his son. It is in his son's best interests for Mr Hussain to remain in the United Kingdom.

### Decision

31. The suitability criteria relied upon by the respondent is in the following terms:

*S-LTR. 1.6. The presence of the applicant in the UK is not conducive to the public good because their conduct (including convictions which do not fall within paragraphs S-LTR 1.3 to 1.5, character, associations, or other reasons, make it undesirable to allow them to remain in the UK.*

32. On 4 September 2009 Mr Hussain applied to the Secretary of State for a No Time Limit (NTL) endorsement to be placed in his new passport. In support of this application he provided a copy of an endorsement from his previous passport and a letter which were both found to be counterfeit. It is the Secretary of State's case that Mr Hussain's presence is not conducive to the public good because his conduct, character, associations or other reasons make it undesirable to allow him to remain in the United Kingdom.
33. Reliance has been placed upon **R (on the application of Shou Lin Xu) v Secretary of State for the Home Department (legacy cases - "conclusion" issue) IJR [2014] UKUT 375 (IAC)**. Mr Hussain did not leave the United Kingdom when he knew he had no lawful basis to remain in the United Kingdom.
34. In the First-tier Tribunal Judge Camp found that Mr Hussain did not know the endorsement in his previous passport was false. Had he known about it he would hardly have gone to the Secretary of State for a replacement to be endorsed into his new passport.
35. The Secretary of State has a general prohibition on the use of false documents in connection with applications for entry clearance something approved of in the Court of Appeal in **AA (Nigeria) v Secretary of State for the Home Department [2010] EWCA Civ 773** where the court found that when looking at the question of a false document, even where the falsity occurred because of the action of some other party, the response of mandatory refusal was entirely understandable. By analogy the

Secretary of State was properly entitled to reject the application for an NTL endorsement because two false documents were relied upon. It does not matter that Mr Hussain did not know about the falsity. I find that the Secretary of State was entitled to rely on the production of two false documents in support of an application for an NTL endorsement as conduct falling for refusal under the suitability requirements of S-LTR 1.6. I find that Mr Hussain's conduct includes remaining unlawfully in the United Kingdom once he knew he had no right to remain from December 2009. At that stage he was not an impressionable 22 year old young man sent away by his father to the United Kingdom, but an adult aged 27 who should have done the right thing and left the United Kingdom as soon as he knew he had no leave to remain.

36. I therefore find that the Secretary of State is entitled to rely on the production of false documents in connection with an application for an NTL endorsement under S-LTR 1.6.
37. Having found that the Secretary of State was right to refuse Mr Hussain on grounds of suitability I find that EX.1 is not accessible under the Immigration Rules to Mr Hussain and in coming to this conclusion I apply **Sabir (Appendix FM - EX.1 not free standing) [2014] UKUT 00063 (IAC)**.
38. I find that the reliance by the Secretary of State on S-LTR 1.6 is not unlawful. I find that the use of false documents in an application for an NTL endorsement can be relied upon by the Secretary of State notwithstanding that Mr Hussain knew nothing of the falsity. I find that there is no route by which Mr Hussain is entitled to leave to remain under Appendix FM and the Immigration Rules.

### **Article 8**

39. **MF (Nigeria) [2013] EWCA Civ 1192** makes it clear that failure to meet the requirements of the Immigration Rules may not be the end of the matter. If Mr Hussain can show compelling circumstances he is entitled to have his appeal considered outside of the Immigration Rules under Article 8.
40. At §40-47 of **Haleemudeen [2014] EWCA Civ 558** Beatson LJ found:

*40. I, however, consider that the FTT Judge did err in his approach to Article 8. This is because he did not consider Mr. Haleemudeen's case for remaining in the United Kingdom on the basis of his private and family life against the Secretary of State's policy as contained in Appendix FM and Rule 276ADE of the Immigration Rules. These new provisions in the Immigration Rules are a central part of the legislative and policy context in which the interests of immigration control are balanced against the interests and rights of people who have come to this country and wish to settle in it. Overall the Secretary of State's policy as to when an interference with an Article 8 right will be regarded as disproportionate is more particularised in the new Rules than it had previously been. The new Rules require stronger bonds with the United Kingdom before leave will be given under them. The features of the policy contained in the Rules include the requirements of twenty year residence, that the applicant's partner be a British citizen in the United Kingdom, settled here, or here with*



*leave as a refugee or humanitarian protection, and that where the basis of the application rests on the applicant's children that they have been residents for seven years.*

41. *The FTT's decision on Mr Haleemudeen's Article 8 appeal is contained in [34]-[41], which I summarised and set out in part at [21] – [23] above. Those paragraphs do not refer, either expressly or implicitly, to paragraph 276ADE of the rules or to Appendix FM. None of the new more particularised features of the policy are identified or even referred to in general terms. The only reference to the provisions is in the FTT's summary (at [30]) of Mr. Richardson's submission that the reference to the new Rules in the refusal letter was of little relevance because at the time of Mr. Haleemudeen's application those Rules had not been promulgated and thus did not apply to his case. That submission could not succeed in view of the decision of the House of Lords in Odelola's case, to which I refer at [25] above.*
42. *The authorities make it clear that the focus of any assessment of whether an interference with private life pursuant to the requirements of immigration control is proportionate should be whether the Secretary of State's decision is in accordance with those provisions. See in particular the decisions of the Immigration and Asylum Chamber of the Upper Tribunal, presided over by its then President, Blake J, in Secretary of State for the Home Department v Izuazu [\[2013\] UKUT 45](#) at [40] and [42]-[43], of Sales J in R (Nagre) v Secretary of State for the Home Department [\[2013\] EWHC 720 \(Admin\)](#) at [26] and [29]-[31], and of this court in MF (Nigeria) v Secretary of State for the Home Department [\[2013\] EWCA Civ 1192](#), reported at [\[2014\] 1 WLR 544](#) at [44]-[46].*
43. *In Nagre's case Sales J stated (at [26] and [29]) that it is necessary to find "particular factors in individual cases ... of especially compelling force in favour of a grant of leave to remain" even though those factors are not fully reflected in and dealt with in the new Rules and "to consider whether there are compelling circumstances not sufficiently recognised under the new rules to require the grant of such leave". In MF (Nigeria), albeit in the context of deportation and Article 8, this court stated (at [44]) that the Rules are "a complete code", and that the provision in paragraph 398(c) that where the exceptions to mandatory deportation in paragraphs 399 and 399A do not apply, "it will only be in exceptional circumstances that the public interest in deportation will be outweighed by other factors" involves the application of a proportionality test as required by the Strasbourg jurisprudence".*
44. *Mr. Richardson's preferred position was that the Rules are only the starting point for an assessment of proportionality. It was with evident reluctance that he accepted that, at least in this court, in the light of the authorities, it is necessary to find "compelling circumstances" for going outside the Rules. But he argued that, even on that basis, it was wrong to criticise the decision of the FTT in this case. He submitted that the FTT was aware of the changes to the Rules in relation to the consideration of Article 8, had referred to the new Rules at [30] when summarising his submissions, and at [39] referred to their "apparent harshness". The FTT judge did this before considering the question of the proportionality of the interference with Mr Haleemudeen's Article 8 rights outside the Rules and under the general law.*
45. *He submitted that the FTT then considered proportionality in accordance with the approach laid down by the House of Lords in Huang v Secretary of State for the Home Department*

*[2007] UKHL 11, reported at [2007] 2 AC 167 at [16] – [17]. It weighed the factors in favour of and against removal according "appropriate weight to the judgment of [the] person with responsibility for a given subject-matter and access to special sources of knowledge and advice".*

46. *Mr Richardson also submitted that the penultimate sentence of [39] of the FTT's decision (set out at [23] above) showed that the reference to "apparent harshness" was a reference to the operation of the Rules and a reflection of the level of interference with Mr Haleemudeen's private life because of the particular factors in his case rather than to the Rules themselves. It was, he contended, a statement that, in the particular circumstances of Mr Haleemudeen and his family, the Rules worked harshly against them. He submitted that it was a statement which satisfied the "compelling" or "exceptional" circumstances requirement for going outside the Rules and was not an application of the impermissible "near miss" approach.*
47. *I do not accept these submissions. The passages from the judgments in the cases of Nagre and MF (Nigeria) appear to give the Rules greater weight than as merely a starting point for the consideration of the proportionality of an interference with Article 8 rights. But, even if Mr Richardson is correct to characterise the relevance of the Rules as only a starting point, the single reference in [39] of the FTT's decision to "apparent harshness" does not in my judgment suffice. I do not consider that it is necessary to use the terms "exceptional" or "compelling" to describe the circumstances, and it will suffice if that can be said to be the substance of the tribunal's decision. In this case, as I have stated, the FTT gave no explanation of why this is so, or identified particular features of Mr Haleemudeen's case which justified considering proportionality outside the Rules.*
41. This very recent Court of Appeal decision makes it clear that there must be particular features which justify considering proportionality under Article 8 outside of the Immigration Rules.
42. Mr Nasim submits those features are the contact that Mr Hussain enjoys with his son, the assistance he provides for his upbringing which is more than just financial and, the best interests of Thomas to have an ongoing relationship with his father. It is also submitted that Mr Hussain has been prejudiced by delay in his removal and delay by the Secretary of State in taking an appealable decision on his case. Lastly Mr Hussain did not know about the false visa in his passport.
43. There was no delay in taking any decisions on Mr Hussain's applications. The Secretary of State refused his application for an NTL endorsement in December 2009 two months after the application was made. In October 2011 Mr Hussain applied for leave to remain outside of the Immigration Rules which was properly refused with no right of appeal in December 2011. Mr Hussain chose not to leave the United Kingdom and in due course made an application for Judicial Review to force the Secretary of State to give him a decision which included the right to an in-country right of appeal. The Judicial Review application was settled in March 2013 and the new appealable decision issued in June 2013. Any arguments that there have been delays by the Secretary of State are not sustainable. It is settled law that arguments about delay and failure to remove do not assist Mr Hussain. **AZ (Bangladesh) [2009]**

**EWCA Civ 158 and R (on the application of Shou Lin Xu) v Secretary of State for the Home Department (legacy cases - "conclusion" issue) IJR [2014] UKUT 375 (IAC) apply.**

44. Following the discovery that he was in the United Kingdom unlawfully in December 2009, Mr Hussain did not respect the laws of the United Kingdom and leave and return to Pakistan as he should have done. In the full knowledge his immigration status was precarious he formed a relationship with Lyndsey Kingston and conceived a child born 3<sup>rd</sup> August 2011.
45. I find that there are no circumstances in this appeal which require consideration of proportionality outside of the Immigration Rules. Mr Hussain is not the first and will not be the last illegal immigrant to foster a relationship and conceive a child in the full knowledge his immigration status was precarious and that he had no right to be in the United Kingdom. He does not live with his son. The relationship with the mother has broken down. Thomas is still very young. There was no evidence before the Tribunal about Thomas's attachment to his father from either Lyndsey Kingston or any professional such as a social worker. The best interests of Thomas do require his father to remain in the United Kingdom but there is a strong public interest in Mr Hussain's removal. The public interest and the respondent's policy is reflected in the Immigration Rules. They take into account the existence of children. Mr Hussain does not meet the requirements of the Immigration Rules.
46. It is not necessary for me to consider the new Section 117B of the 2002 Act because this is not a case where any consideration of Article 8 outside of the Immigration Rules is required.

**Conclusions:**

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision

I re-make the decision in the appeal by dismissing it

**Anonymity**

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Signed

15 October 2014

Judge E B Grant  
Deputy Upper Tribunal Judge