



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/06906/2014
& Others

THE IMMIGRATION ACTS

Heard at Field House
On 27 June 2017

Decision & Reasons Promulgated
On 30 August 2017

Before

MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE O'CONNOR
UPPER TRIBUNAL JUDGE SMITH

Between

MM v SSHD (AA/06906/2014)
EDO AND OTHERS v SSHD
(HU/01879/2015; HU/01881/2015; HU/01882/2015; HU/01883/2015)
SSHD v KHATTAB (HU/13552/2015)
SSHD v COMERY (IA/00866/2016)
SSHD v BOATENG-DANSO (IA/23617/2015)
SSHD v KAUR (IA/30887/2015)
SSHD v BOPOLONGA (IA/31116/2015)
SSHD v BOATENG AND BEMPONG (IA/31918/2015)
SSHD v WANG (IA/32046/2015)
SSHD v OKPALA (IA/32286/2015)
PATEL v SSHD (IA/32901/2015)
ECO v STEPHEN (OA/07779/2015)
SSHD v SHINWARI (RP/00104/2016)

DECISION AND REASONS

INTRODUCTION

1. The Tribunal has arranged to hear in the same list a number of appeals from a single judge, Judge Majid. This no doubt unusual arrangement has been prompted by the following factors. First, many decisions by judge Majid give rise to successful applications for permission to appeal. Secondly, the grounds of appeal have considerable similarities: they frequently include assertions that insufficient reasons are given for even a well-informed reader to work out the reasons for the decision, that there is no reference in the decision to the relevant law or the contested facts, and sometimes that there were problems of communication or of fairness during the hearing. Thirdly, the determinations themselves are very short and substantial parts of them are word for word the same, or nearly so, from determination to determination, leaving only relatively small parts dealing with the individual case. Thus, despite the dissimilarities between the appeals before the First-tier Tribunal that are determined by Judge Majid's decisions, the numerous appeals from them to this Tribunal are essentially similar and raise similar issues.
2. We are aware of the dangers that may be posed by collecting together a number of appeals in this way. There is the possibility that we will be influenced in making our decision on any appeal by factors that do not in truth belong to that appeal. There is also the difficulty of reputation: parties and judges may, whether consciously or not, attribute faults to a judge only for the bad reason that there is a weight of opinion against him. On the other hand, when a body of appeals sharing characteristics such as those set out above are heard together, we have the advantage of comparison, and in the present case we have decided that it is necessary in the interests of justice that as well as deciding the individual appeals on their own merits we should consider the Judge's work as it appears in these decisions as a whole. It is only by making comparisons that it is possible to say whether a particular paragraph or series of paragraphs is indeed common to several determinations. It is only by making comparisons that it is possible to say whether a particular apparent error is the result merely of a slip, or whether it pervades a judge's work.
3. There is a further factor, which we express with considerable caution. It is this. In the Upper Tribunal we hear numerous appeals in which a single point of error or omission is said to be discoverable in the determination under appeal. We have, of course, no duty to the First-tier Tribunal or its judges, other than perhaps to be clear in any guidance we give to them: our duties are to the law, the parties and the interests of justice. Nevertheless, in undertaking those duties we are likely to make our decisions on the assumption that each appeal is from a decision of a judge who has been duly appointed and trained, and, broadly speaking, may be considered to know and do the job with a degree of skill and competence. The overwhelming majority of decisions under appeal are capable of giving the reader confidence that that is the case. Where there is an omission or slip in an otherwise apparently wholly competent and careful judgment it may well be that on appeal the proper conclusion is that the judge did have the correct facts, or law, or principle in mind, and that the point on which the appeal is brought is therefore without merit. That is one of the reasons why any alleged error must be looked at in the context of the decision as a whole. This is the universal experience of those who take judicial decisions on the work of others, whether on appeal or review.

4. It would, however, be quite wrong for those determining appeals to make assumptions about the merits of a particular ground of appeal in a context that does not apply to the judge in question. If, therefore, it should be that review of a judge's decisions leads to the conclusion that there is something lacking in the skill or competence that he brings to his task, it is right that we should say so. A suspicion that might arise from examining only one case, as is normally the position on appeal, may be either confirmed or wholly dispelled by examining a group of cases.
5. We are also aware that Judge Majid has a physical disability: he is blind. Indeed, he mentions that expressly or by implication in several of the decisions under appeal. We understand that the statutory duty to make reasonable adjustments is carried out by the provision of an assistant to help him to appreciate the contents of documents. It may be wholly unreasonable to expect him to assimilate a complex matter in writing at short notice. But it is not, and indeed cannot reasonably be, suggested that blindness prevents a person learning or applying law, or performing the crucial judicial tasks of hearing both sides and reaching, and expressing, a properly reasoned conclusion. It is failure in these areas that form the grounds of appeal we have to consider.
6. We each have considered all the issues raised by each of the appeals, and we have each made substantial contributions to this decision. In this general part of our decision (paras [7] - [47]), we consider those issues that appear to us to be common to many or all of the decisions under appeal. It is to be read with the decisions on the individual appeals, which follow.

THE JUDGE'S TASK

7. In every one of the decisions under appeal there occurs the following paragraph, word for word or very nearly so:

“I reminded myself of the judgment of Henry J (later on promoted to be a Lord Justice) in ex parte Gondolia [1991] Imm A.R. 519. It is not incumbent upon me to isolate every single piece of evidence and indicate whether I have found it relevant to the issue. I am only obliged by the superior precedents to give “sufficient and adequate” reasons and I am not under a duty to refer to each and every piece of evidence and it therefore does not follow that because I have not referred to certain facts, they have not been taken into account.”
8. It is perhaps worrying that the judge finds it necessary to resist the hypothetical critic of his decision on the ground of lack of detail; it would in addition be surprising if a sentiment in an extempore judgment on judicial review of the Immigration Appeal Tribunal refusing permission to appeal in a primary purpose appeal in the late 1980s were today to be regarded as the *locus classicus* on the duties of a Judge of the First-tier Tribunal. In fact, not merely does the judgment in Gondolia not appear to contain any such guidance as that cited, but it is impossible to draw such general wisdom from it either. The decision of this Tribunal in Kalim v SSHD (IA/30716/2014) contains a careful examination and analysis of Gondolia by Deputy Upper Tribunal Judge O’Ryan, which we endorse and adopt with gratitude. That

was an appeal by an appellant against a decision of Judge Majid, so although it is unreported it is highly likely that it was brought to the Judge's attention. The appellant complained that the Judge had failed to consider the relevant Immigration Rules, failed to consider the evidence, failed to make findings of fact, and failed to give adequate reasons for his conclusion. The judge found that the inadequacies of the determination demanded that it be set aside, with no findings preserved.

9. It is difficult to see that there could be any good reason for the judge to cite Gondolia. His doing so, and the words surrounding the citation, suggest not merely that he has not read (or has forgotten) Gondolia itself, but that he has also not read any of the other numerous decisions on the duties of a judge in this regard. Even if he wanted to confine himself to the era of Gondolia, the judge's own research ought to have led him to the words of Schiemann J in R v IAT ex p Mohd Khan [1992] Imm AR 367, 374, another primary purpose case:

"In my judgment adjudicators should indicate with some clarity in their decisions:

- (1) what evidence they accept;
- (2) what evidence they reject;
- (3) whether there is any evidence as to which they cannot make up their mind whether or not they accept it;
- (4) what, if any, evidence they regard as irrelevant."

10. That view might be regarded as the opposite extreme, and would have revealed to any inquiring lawyer that Henry J could not be regarded as having had the last word. The Judge should also be aware of the starred judgment of the IAT in Slimani v SSHD (01/TH/00092), binding on him, in which Collins J as President points out that it is wrong to try and follow a checklist, but that it is in all cases necessary to give proper reasons.

- "7. ... It is of course essential that proper reasons are given by adjudicators and (albeit now only in summary form) by the tribunal. But it is not necessary to deal in detail with every matter; the reasons need only deal with the substantial points which have been raised: see Re Poyser & Mills Arbitration [1964] 2 Q.B. 467. They must tell the losing party why he has lost and enable him to appreciate whether there has been any appealable error. In Save Britain's Heritage v Secretary of State for the Environment [1991] 1 WLR 153, Lord Bridge said this:-

"The three criteria suggested in the dictum of Megaw J [in Re Poyser & Mills Arbitration] are that the reasons should be proper, intelligible and adequate. If the reasons given are improper they will reveal some flaw in the decision-making process which will be open to challenge on some ground other than the failure to give reasons. If the reasons given are unintelligible, this will be equivalent to giving no reasons at all. The difficulty arises in determining whether the reasons given are adequate, whether they deal with the substantial points that have been raised or enable the reader to know what conclusion the decision-maker has reached on the principal controversial issues. What degree of particularity is required? I do not think one can safely say more in general terms than that the degree of particularity

required will depend entirely on the nature of the issues falling for decision".

...

9. ... The observations of Schiemann, J in R v I.A.T. ex p. Amin [1992] Imm AR 367 at 374 are all too often cited as if they were a statutory requirement and are regularly misunderstood. ... Those observations were in the context of a failure by the adjudicator to give adequate reasons for her findings on primary purpose in relation to a marriage application and the headnote in the report correctly refers to the observations under that heading: see [1992] Imm A.R. 367 Heading 3. They do not mean nor could the learned judge have intended that they should mean that an adjudicator must carry out the exercise specified in them in relation to all the evidence given before him.

10. But even in relation to specific issues which are material and which have to be properly reasoned, they go too far. The reality is that it is quite impossible to set out a detailed check list of what must be done in all cases. It will in many cases be quite unnecessary to set out evidence regarded as irrelevant; indeed, very few judges would recognise that as an exercise they carry out in giving judgment following a trial. Equally, the circumstances will dictate whether there is a need to identify the evidence upon which they cannot make up their minds, although in deciding on credibility it may be necessary to deal with such evidence. The only guidance needed is that the conclusions reached must be justified and it must be clear that any adverse findings in particular are based on evidence put before the adjudicator or the tribunal and a proper explanation must be given to show why the conclusions on the issues of substance have been reached. We have no wish to encourage lengthy decisions. Succinctness is a virtue provided that the guidance given by Lord Bridge which we have already cited is followed and the decision does show why the findings of material fact have been made and the important conclusions have been reached."

11. In giving his decision in Kalim, the Deputy Judge referred also to the decision of this Tribunal, given by the President, in MK (duty to give reasons) [2013] UKUT 641 (IAC), of which again Judge Majid should have been aware. The headnote is as follows:

"(1) It is axiomatic that a determination discloses clearly the reasons for a tribunal's decision.

(2) If a tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it is necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight is unlikely to satisfy the requirement to give reasons."

12. The decision itself cites another statement to the same effect, by Lane CJ in R v IAT ex parte Khan [1983] QB 790.

13. The second half of Judge Majid's Gondolia paragraph is a not inaccurate statement of the position that might be taken on an appeal against a First-tier Tribunal decision, but it is odd to find it given as a sort of excuse. The truth of the matter is that if there

is anything in the judge's mind as something that a party might consider needed mentioning, then it should be mentioned and dealt with, rather than being omitted with an explanation such as this.

14. Any assurance that the reader of a decision might derive from what is said in that paragraph is, however, likely to be put in serious question by what follows, again in each case and again word for word or more or less so:

“I am concerned only with “dispositive” reasons which are obviously relevant to my Decision – of course “dispositive” means that the reason involved enables me to deal with an issue fairly. An example of that is if a person is getting the income of £1,000,000 per annum then the “maintenance” issue is dealt with if I have reliable evidence for this datum and I need not spend time giving reasons for matters I deem to be “marginal”.

15. This is wholly obscure. The first half of the first sentence, before the dash, looks as though it might be intended as a reference to the principle that irrelevant matters usually do not need to be included in a decision, although of course even that is not a universal rule. Even interpreted like this, however, the words pose some problems. ‘Obviously’ does not seem right, because the question is whether the matters are relevant, not whether they are obviously relevant. The whole phrase beginning ‘which’ seems to suggest that there are some “dispositive” reasons’ that are not obviously relevant and so do not concern the judge. And it is far from clear exactly what ‘reasons’ itself means: in the context it looks as though it is a reference to the facts that might need to be found in order to establish a legal entitlement, but ‘reasons’ is not the word for that. Perhaps it means the judge’s expressed reasons for his findings, but in that case what is said seems to become even more obscure. No light is shed by the words following the dash. Nothing in a judge’s consideration can be other than dealing with any issue fairly. If that is what a dispositive reason means, then it is the whole of the judge’s work. One might have expected that a statement of this sort would indicate that the crucial things that need mentioning are those that have been the subject of concern between the parties and (or) those that regulate the outcome of the litigation. That, however, is clearly not what Judge Majid is saying here.
16. There is then the example. The obscurity deepens. If there is an issue as to ‘maintenance’, the judge will need to determine it, and give reasons for his conclusion. It is impossible to conceive of a case where that would not be true; and the fact that the judge might consider that he had ‘reliable evidence for this datum’ would not absolve him from the duty of expressing his decision and the reasons for it. It could not be ‘marginal’. There is, however, a further concern that arises from this example. The issue has always been whether maintenance is ‘adequate’; and it is difficult to see how the mere fact that ‘a person is getting the income of £1,000,000 per annum’ could answer ‘the “maintenance” issue. It would depend what was left out of that income, after other commitments, for the requisite maintenance.
17. We are of course aware that a judicial decision is not a statute, and is not to be subject to the same process of detailed interpretation. The problem here, however, is that the

paragraph in question does not appear to be intelligible whatever process of interpretation is applied to it. We accept that none of the above concerns would be of great importance if the rest of the decisions showed that whatever he said in these paragraphs the judge was aware of what he needed to do, and did it. Unfortunately, that is not the case.

SUBSTANTIVE LAW

18. In many of the decisions Judge Majid says this:

‘I cannot ignore the “legal requirements” stipulated by immigration law. It is incumbent upon me to advert to the new Rules giving respect to the intention of the House of Commons dictated by the supremacy of Parliament.’

19. That is perhaps confused as an exposition of the constitutional position, but certainly the judge’s job is to apply the law. It is perhaps a little surprising that this passage seems only to come at the very end of his decisions, almost as an afterthought, and is sometimes followed immediately, in the next sentence, by a demonstrably wrong statement of the law to be applied. We may give examples:

‘The Appellant can benefit from the relevant Rules because she is a genuine student who should be helped’ (in a case in which the question was whether the student met the detailed requirements of the rules and the judge did not find that she had met them; he had no power to ‘help’ her). [Kaur: IA/30887/2015]

‘The Appellant ought [sic] to benefit from the relevant Rules since the compassionate circumstances of the case lead to that conclusion” (in a case where the relevant Rules are neither identified nor applied by the Judge, and do not include any provision for compassionate circumstances). [Boateng-Dansoh: IA/23617/2015]

“The Appellant should be aware that the current fiscal crisis cannot allow judges to permit people to remain in the UK when British citizens need jobs” (not surprisingly, this sentiment is not found in any of the law the Judge was supposed to be applying). [EDO and others: HU/01882/2015]

‘The Appellant cannot benefit from the relevant Rules because the evidence he had presented to the Respondent has led it to make the negative decision” (confirming what might otherwise have been only a suspicion from the previous paragraph that the judge did not appreciate he had to make the decision himself, which is confirmed again at the end of the decision: the “negative decision about the deception is “reasonable” and [the appellant] “is stuck with it”). [Patel: IA/32901/2015]

“The Appellant can benefit from the relevant rules and the discretion advocated by the Superior Courts” (in a case in which neither the rules nor discretion was in issue). [Okpala: IA/32286/2015]

20. Many of the cases depend on the application of the Immigration Rules. Taken as a whole, those rules are notoriously complex, but an individual case usually raises a specific issue on the application of one or more provisions of the Rules to the facts.

Judge Majid refers in general terms to the Rules, but in none of the decisions under appeal does he set out the part of the Rules that is in issue, and to be frank, in none of the decisions under appeal does he give the least reason to suppose that he is aware what the relevant requirements of the Rules are. The conclusions cited above indicate that; and we give details in our decisions on the individual appeals. As a result, whoever wins the case can have no confidence that ‘the “legal requirements” stipulated by immigration law’ have been followed at all. It is not surprising that in a number of the appeals before us, the grounds of appeal focus on the inadequacy of reasons given. Parties to an appeal are entitled to know why they have won or lost.

21. No more than the most basic principles of law are referred to in the decisions, and even these seem to be quite often wrong. Again, we give examples:

“The burden of proof is upon the Appellant and the standard of proof is the balance of probabilities” (in an asylum appeal). [Shinwari: RP/00104/2016].

“The Appellant ... does not meet the basic requirement of being outside the country from which he is seeking protection” (in another asylum case; the appellant is in the UK and claims that he will be persecuted in Bangladesh). [MM: AA/06906/2014].

“The best interests of the children are involved and that creates a knockout element” (the opposite of what the authorities say). [Okpala: IA/32286/2015].

“Whenever one feels that the case misses the point marginally judicial discretion should help” (there is no judicial discretion available).[Okpala: IA/32286/2015].

“I am willing to exercise my discretion in favour of the Appellant’s very young children” (different case; same problem). [Wang: IA/32046/2015].

“I am happy to exercise “discretion” because one cannot overlook the compassionate facets of this case” (different case again: same problem).[Stephen: OA/07779/2015].

“According to the IDI guidance viz paragraph 320, refusal of leave is not permitted unless “there are aggravating circumstances” (same case as the foregoing; a gross misapprehension in the context of a case about whether the appellant met the requirements of the Rules as part of a human rights appeal; the Rules provide time after time that leave is to be refused if the requirements of the Rules are not met, and paragraph 320 had no application to the case). [Stephen: OA/07779/2015].

“John Smith, a patriot” (status abolished in 1981). [Boateng: IA/31918/2015].

“My attention is drawn of the case of the Upper Tier Tribunal of the most recent case of Sala (case 00411 of 2016) and a careful perusal of that case has led me to believe that my negative decision is fully justified bearing in mind the current fiscal crisis and the views announced in that case” (this “careful perusal” evidently did not enable the judge to appreciate that the decision, wholly concerned with whether there is a statutory right of appeal in certain EEA cases concerning unmarried partners, had absolutely nothing to do with the case he was considering, which was about a married couple, both Ghanaian, and their children, both Ghanaian; the ‘views

announced’ in Sala could not do anything to justify his decision, and ‘the current fiscal crisis’ has of course nothing to do with either Sala or the appeal the Judge was deciding). [EDO and others: HU/01882/2015].

“The new provision in paragraph 117 of the Immigration Act 2014 clearly says that there is no “public interest” in a case where a person has some things in his/her favour like employability, education gained and the English language fluency. This statutory concept permits the Respondent to reject an Application for any discretionary or other relief by making sure that such conditions do exist in a particular case” (the provision in question appears to be section 117B of the 2002 Act; the summary of the provisions and their effect is inadequate and inaccurate). [EDO and others: HU/01882/2015].

22. In our judgment, these errors, and others to be found in Judge Majid’s decisions, are serious. They give the impression that the judge has very little idea of either his own (limited) powers or the content of the law that is in issue in the appeals before him. The error about the standard of proof in an asylum appeal is the sort of thing that the Upper Tribunal might well think was just an unimportant slip of the pen or ill-advised use of a standard paragraph if it occurred in a decision that was in other respects clearly an application of the appropriate law and standard of proof; but in Judge Majid’s decisions there is so little attention paid to the law or (as we shall show below) the actual facts of the cases that no such allowance can be made. The point about not being outside the country from which protection is sought demands more detailed comment. In the case of MM (AA/06906/2014), the appellant had obtained a visa to travel to the United Kingdom where, after a period of time as a student, he claimed asylum when threatened with removal as an overstayer. No doubt issues of credibility arise: they are fully discussed in the Secretary of State’s decision and the basic facts of the applicant’s history are rejected. Judge Majid makes no decision on the applicant’s credibility; indeed, he makes no reference to the reason the appellant claims to be at fear of persecution or the evidence relied upon to support that claim. Instead, the Judge concludes that the appellant is excluded from protection because of his obtaining a visa from the Bangladeshi government before he travelled. The judge heard oral evidence from the Applicant and cannot have thought he was not outside Bangladesh, so he must think that a history of obtaining a visa removes a person from the Refugee Convention. That is a misconception so basic that it is difficult to deal with briefly and coherently: suffice it to say that it essentially ignores the terms of the Convention, the authorities from (at latest) Ravichandran [1996] Imm AR 97 onwards, and the entire trend of state and judicial status determination.
23. The Judge’s impression that he is empowered to allow an appeal on the basis of his discretion or dismiss it on the basis of his impression of the economy is similarly a really serious error. First-tier Tribunal Judges, Immigration Judges and Adjudicators have never had a power to dismiss an appeal on the grounds of a general feeling of justice or some other factor, when the Appellant meets the requirements of the relevant Rules. They have had power to allow appeals if they thought that a discretion found within the terms of a Rule should be exercised differently, but no general discretion to allow appeals, and the limited power was abolished by the

Immigration Act 2014. A judge who expresses himself (and acts) in the way indicated in the examples above is rightly going to be suspected of being ignorant of his jurisdiction, or exceeding it, or both.

24. What makes this feature of the decisions particularly troubling is that it appears to replace, rather than supplementing, the necessary consideration of the legal issues actually raised by the appeals. So far as the latter are concerned, Judge Majid's decisions are almost wholly silent.
25. Another difficulty in appreciating what the judge considers his job to be appears from the following statement, to be found in some form in a number of the decisions:

"In reaching my decision I am fully conscious of the fact that the overriding objective of the judicial function guides that judges in pursuing expedition and efficiency in disposal of cases should not sacrifice justice. Thus I am alert to the fact that my Decision does not violate any of the following legal principles applicable in this case and coming from binding precedents. These principles are:-

- (a) I am conducting an appeal and not a Judicial Review and therefore cannot restrict myself in conducting the proper evaluation of the evidence on the matters of fact; if a factual issue is properly raised before the Respondent the evidence surrounding that issue can always be taken into account. I must say to the Presenting Officer that my consideration of this appeal is not confined to points of "law". Of course, if I was sitting in an appellate court, I would have to be concerned only with the points of "law"."

26. We have read and re-read this. We do not know what it means. As one of the examples cited above indicates (in relation to the appeal of Patel: IA/32901/2015), Judge Majid does not always realise that it is his task to make a decision on the evidence, rather than merely deciding that the Secretary of State was entitled to reach the conclusion she did. It may be that it is intended to mean that evidence, if available, is always admissible. Perhaps that is the reason why in another of the cases under appeal the Judge decides that the Secretary of State was wrong to conclude in September that she had not provided with the evidence of a relationship that she and the Rules require, because it was provided in late October. We do not know. The particular iteration of this sentiment is taken from the case of Shinwari (RP/00104/2016) where it is preceded by a reference (avoiding any discussion of the actual law) to a controversy between the parties, and then this:

"This controversy was fully discussed and the Presenting Officer Mr Harvey said the Home Office is entitled to have its own interpretation of the revocation clause. It is not just background circumstances but individual circumstances that can be taking into account. If I may say so Mr Harvey conducted himself with special competence before me. He was the picture of politeness and I did not outline my contradictory view to him - my view is contained in [the paragraph already cited] below.

27. Again, it is difficult, perhaps impossible, to know what is meant. Evidently the judge disagreed with the submission that 'individual circumstances that can be taking into account' ([18]), but why it is said that the contrast with Judicial Review provides this

'contradictory view' (referring to [22(a)] of the decision) is mystifying. The conclusion on whether individual circumstances could be taken into account would presumably be a decision on a point of law, and the Judge was obviously required to decide it. Taking them into account would then be making a decision not confined to points of law. So far as we can read the decision the Judge decided neither the question of law nor the question of fact; as an explanation for these failures the passage cited is wholly inadequate.

EVIDENCE AND THE FACTS

28. Specific reference to the facts of cases is sparse; in some of the decisions it is even sparser than specific reference to the law. We have already identified two clear errors of law in the third and fourth examples in the second set above (paragraph 21). Those two statements come from the same decision (Okpala: IA/32286/2015). It is a decision in which, in 30 paragraphs (the decision, running to over seven pages, is an unusually long one for Judge Majid) the Judge gives no hint at all of what the case is about except to say that there are children involved and that the appellant depends on "the robust exercise of discretion for her children not to be separated from her", that "the Appellant's story has become complicated", and that there is a social worker's opinion that "the Appellant does not pose a danger to her children any more". The rest is silence.
29. This is a case in which refusal decisions were made in respect of a mother and her four children. The Secretary of State's decision letter runs to 12 pages in small print. The only available ground of appeal was that the decisions breached the Human Rights Act 1998. There does not appear to have been any threat that the mother would be separated from her children, who were all (as we have said) the subject of adverse decisions and (if the formal parts of Judge Majid's decision are correct) on whose behalf no appeal against those decisions was raised.
30. There is no indication of how the issue of separation came to arise. There is no indication of what the trouble was that caused the appellant to be assessed as a danger to her children, how it was resolved, or how Judge Majid decided the issue (as distinct from reciting the view of an unnamed social worker).
31. There is almost no indication of what took place in the hearing, except for what we have already mentioned, and the following. In the middle of a hotchpot of generalities in paragraph 17 is a series of assertions about freedom of speech for academic lecturers and its recognition by courts and Tribunals (except apparently the Employment Appeal Tribunal) "in particular when a postgraduate research document is being considered". This discussion occupies nearly half a page – a substantial proportion of the decision. Unlike almost all the rest of the decision, it is not a paragraph frequently used by the Judge to give his decisions what bulk they have. The reader has to assume that it refers to something that was in the Judge's mind as a result of evidence or submissions at the hearing, for there is nothing in the Secretary of State's decision, or the other documents on file, that could raise it. What the issue was, who said what about it, what is the relevance of the judge's

observations, and how he resolved the issue, all remain matters of speculation. All that the reader can tell is that there are numerous features of the case that the judge needed to decide but did not.

32. A similar difficulty arises in another case featuring twice in paragraph 21 above, citing reference to the “compassionate facets” and to paragraph 320 (Stephen: OA/07779/2015). There is nothing in the facts of the case or elsewhere in the decision that begins to show why the judge was thinking about paragraph 320 of the Immigration Rules, which largely contains provisions dealing with those who would be successful under the Rules but for some form of misconduct. We do not know whether there is a whole aspect of the case that emerged only at the hearing and whose only visible relic is this reference, or whether the judge was simply not attending to what he was doing. We suspect the latter, but in either event it is a cause for concern. The reference to the “compassionate facets”, on the basis of which the appeal was apparently allowed, is entirely unspecific. It was crucial to identify what the facts were that elevated this case above the ordinary run of cases governed by the application of the Rules. The appellant applied as a spouse, there was little evidence that the relationship was subsisting and no evidence that the financial requirements of the rules could be met. The only factors detectable from the determination as going in the appellant’s favour are that the parties are married and her husband “has been fully committed to her welfare”. There is no indication of how the facts and evidence before the judge could lead to an identification of “compassionate facets” particular to the case before him and sufficiently strong to override the rules.
33. Another case, Wang (IA/32046/2015), concerned the partner of a British citizen; there were, by the time of the hearing, two children. The Judge refers to them as the appellant’s grandchildren: but that is the least of the factual difficulties in the case. The respondent refused the appellant’s application for further leave for a number of reasons given in detail in the refusal decision. The first was that she had obtained her existing leave by fraud (this is an ETS case). The second is that she did not appear to meet the specific requirements of the rules in relation to income, having failed to evidence the minimum level required, and having submitted a payslip that appeared to be unreliable in that it was dated after the application to which it was attached. Thirdly, the appellant failed to meet either the suitability or the eligibility requirements of the parent route. Fourthly, the applicant did not meet the requirements of the rules in relation to a grant of leave in recognition of private life: in particular, she was a relatively frequent visitor to her home country. Finally, there is consideration of the case under article 8 outside the Rules. The Secretary of State makes a number of observations about the deception, and concludes that it is so clearly in the public interest that the appellant be required to leave the United Kingdom that a separation from her child (then only one) is justified: they can be looked after by their father.
34. The grounds of appeal take issue with the finding of deception, and assert that the appellant’s removal would be disproportionate. They make no reference to the Rules.

35. The Judge says in his decision that he has borne every provision of the Rules “in mind meticulously”, but does not make any further reference to them. Nor, more alarmingly, does he make any reference to the allegation of deception or the grounds challenging it. He does not even include his standard paragraph setting out the burden of proof in cases where deception is alleged (although that paragraph is often included in decisions where it can have no relevance). As a result, the appellant is deprived of what she must partly have sought – a judicial finding that the deception was not established; and the parties are both deprived of any assurance that the judge even knew that that was a crucially important feature of the challenged decision. The Judge also makes no reference to the appellant’s failure to meet the income requirements of the Rules. It is trite law that these factors would need to be taken into account even where a decision is sought outside the Rules, because the Rules set out the Secretary of State’s understanding of the balance of public interest under article 8 and the extent to which the requirements of the rules are met, and the question whether the appellant has been guilty of deception, are factors that must feed the proportionality exercise. Additionally, s 117A of the Nationality, Immigration and Asylum Act 2002 sets out factors that every court or tribunal is required to consider when undertaking the article 8 balance, some of which require findings of fact. Dr Majid makes no reference to the provisions, to the requirements, to the relevant facts, or to his assessment. All that can be clear to the reader is that the judge has failed to deal with the contentions of the parties, to apprehend the facts or to apply the law to them. This is indeed the case in which the judge purports to allow the appeal on the basis of exercising his discretion in favour of the children.
36. As Collins J said in Slimani, there is a virtue in brevity. But the basic requirements of a judicial decision must be met in all cases. It is necessary to set out sufficient of the facts to give a context to the dispute; sufficient of the evidence and submissions to show what the dispute was; findings on any disputed material fact and sufficient and adequate reasons for those findings; and adequate reasons for the conclusion, derived from the facts and the applicable legal rules. In the decisions under appeal before us it is not easy to find even one of those basic requirements being met. The reasons given are not proper, intelligible or accurate. The failures amount to errors of law.

OTHER MATTERS

37. Given that Judge Majid makes no detailed reference to facts or to law, it might be expected that his decisions are short, and indeed they are. Despite that, however, they are full of observations many of which are of dubious correctness, some of which are of dubious relevance, and a few of which are wholly inappropriate.
38. The decisions all begin with standard paragraphs. That is something we do not criticise, although even when using a standard paragraph a judge is of course responsible for ensuring that the assertions in it are true. Given the points we have set out above there must be some doubt of the accuracy of the statements in standard paragraph 2 that “I have read [the] refusal carefully and have taken into account its text in assessing this case, paying specific attention to the justifications advanced for

the negative decision” or that in standard paragraph 3 that the Judge has borne in mind all the paragraphs of the Immigration Rules and the provisions of the “recent Immigration Act 2014” (no reference ever seems to be made to previous legislation). There may even be doubt about standard paragraph 6 “To make this Decision comprehensive, I have carefully read all the documents”.

39. The next paragraph usually records simply that there was oral evidence “consistent with the assertions in the application”. The paragraph usually numbered 8, immediately preceding the Gondolia paragraph, usually reads as follows or something very similar:

“I have outlined the evidential elements of the evidence adduced on behalf of the Appellant which are relevant to the fair disposal of this appeal. I have taken into account all of the documentary and oral evidence in making up my mind on factual issues. To avoid repetition, I shall refer to some evidence in my deliberations below.”

40. In the light of the preceding discussion it is clear that this assertion is unfulfilled. In most cases, none of the “evidential elements of the evidence” have been outlined, nor are they going to be, whether or not they are “relevant to the fair disposal of” the appeal. Not merely is repetition avoided: there is nothing capable of being the subject of repetition.
41. By the end of the paragraph on “dispositive” reasons the initial standard paragraphs have finished. Allowing more than half a page for headings and so on, the determination is at the beginning of page 3, and at about paragraph 12. This is the point where there are, in most (but not all) the decisions, a few references to a few of the facts, and to one or two matters that occurred at the hearing. Usually the important references occupy less than a page, often much less. Sometimes there is a supplement of irrelevant matters: in one case, where the sponsor’s nationality was not seriously in dispute (Wang: IA/32046/2015), the Judge took it upon himself to find as a fact that the sponsor was a British national because although he did not produce his passport he recited what he said was the number on it. Sometimes the supplementary observations are ill-judged: in the case of EDO and others (HU/01882/2015), the Judge observes at some length that he criticised the Presenting Officer, apparently for taking the point that the appellant had been an overstayer for about 14 years before he was arrested for fighting; then on another issue in the same case he writes that he “must admire” the Presenting Officer, “who should not be condemned for suspecting the Appellants’ credibility”; a similar observation in another case is cited at para 26 above.
42. After these references to the hearing, the evidence and the facts, the Judge sets out his observations on the law. Sometimes the observations are concise; sometimes they are relevant; we have considered their accuracy above, and we have also noted that the law relating to deceit is sometimes mentioned when it is not relevant, or omitted when it is relevant. But much of what appears in this part of the decisions is material that simply should not be there; the Judge makes no attempt to tie down as relevant to his decision even those parts of his disquisition that refer to the law. The

following is a particularly egregious example, from the case in which the only issue was whether the Secretary of State was permitted in terms of the Refugee Convention to withdraw the appellant's refugee status (Shinwari: RP/00104/2016).

"22. In reaching my decision I am fully conscious of the fact that the overriding objective of the judicial function guides that judges in pursuing expedition and efficiency in disposal of cases should sacrifice justice. Thus I am alert to the fact that my Decision does not violate any of the following legal principles applicable in this case and coming from binding precedents. These principles are:-

- (a) [the discussion of Judicial Review set out above]
- (b) One must be cautious in applying the immigration concepts since "the Secretary of State holds all the cards. The Secretary of State drafts the Immigration Rules; the Secretary of State issues IDIs and guidance statements; the Secretary of State authorises the public statements made by his/her officials. - Pokhriyal v SSHD [2013] EWCA Civ 1568, per Jackson LJ.
- (c) Mr Justice Turner who is not known to be an immigration lawyer was handling an immigration case for judicial review. Subsequent to a lucid analysis of the relevant issues covering 81 paragraphs, he announced that "immigration" control should be handled fairly and it should be encouraged when a migrant is good for this nation and its economy - Case No: CO/11203/2011 [2013] EWHC 891 (Admin) (18/04/2013).

23. To make sure that my decision is totally in accordance with the law I have obeyed the following principles of interpretation in this case:-

- (a) if the other party asserts something that the Appellant is guilty of then the Appellant should be able to say that the asserting party must prove that assertion; otherwise the Appellant must not be saddled with the inference. I must seek the forgiveness of Lord Woolf and his supporters for using the Latin tag for this principle; this rule of interpretation is known as contra proferentem. Since this principle of interpretation is for the protection of a vulnerable Appellant I am pleased to have it in my judicial armoury.
- (b) the "Golden Rule" of interpretation should be used for the benefit of the Appellant. As predicated in the Bedford case 1921 even the expressed language of the binding statute should be ignored if the interpretation put forward by a particular party leads to an absurd decision - in that case it was held by the old CCA (Criminal Court of Appeal) that the statutory language "on the pavement" could be ignored where a woman was asserting that she was not "on the pavement" and she was standing on the floor of her own flat and tapping on the window to attract the attention of the people who were on the pavement.

24. The test of arguability leads to the appeal to the UTT (Upper Tier Tribunal) against the decision taken by a judge in the First Tier Tribunal. Senior trainers with manifest expertise in judicial craft have advised me that "arguability" is a very easy test to meet and permit an appeal. "First you decide you do not like a

decision taken by a junior judge and then worry about the permission on the ground of “arguability” because one can always say something is arguable because it is desirable that any defective decision at the lower level is corrected on appeal. Thus the arguability test is “very easy” to meet.

25. The present Conservative Government did not succeed in abolishing the Human Rights Act 1998 making the Human Rights Convention 1950 devoid of legislative effect. Indeed the Commission established to abolish the ECHR (headed by the senior civil servant Home Office Permanent Secretary) could not give a report which could justify the abolition of the ECHR as it was the main objective of this commission. This commission was very well put together and included in its members Lord Lester who is known to be the father of the Human Rights Convention – obviously Lord Lester was not in favour of the abolition of the Convention. The upshot of this background is that an immigration judge will not be fair to deny the relief available under the Convention if Parliament does not abolish the 1998 Act which brought into force the ECHR in the municipal jurisdiction of the UK.
26. The Judicial Committee of the House of Lords was the predecessor of the present British Supreme Court. It faced the argument in the case of Pepper v Hart [1993] AC 593 that the record of the speeches of the MPs in the House of Commons was too rambling to allow a person to work out the proper intention of Parliament. However in this case the HL held that judges may refer to Hansard as a guide to interpretation of legislation. Now this is an established principle and the intention of Parliament can be worked out by referring to it. Accordingly referring to the MPs speeches in Parliament I am obliged to note that the Human Rights Convention and the Act bringing it into force (the HR Act 1998) have not been abolished and Parliament does not oblige me to obviate relief under them.”
43. In one of the other decisions (Comery: IA/00866/2016) this text is expanded with some memories of a radio interview given by Lord Lester of Herne Hill. In another decision, Wang (IA/32046/2015), the warning said to be derived from Pokhriyal is changed to being applicable to working out the best interests of the child (in fact the consideration is specifically directed by Jackson LJ at to be applicable only and precisely to prohibiting the Secretary of State from seeking “to rely upon extraneous material in order to persuade a court or tribunal to construe the rules more harshly or to resolve an ambiguity in the Government's favour”; none of the decisions under appeal involves any detailed or contested interpretation of the wording of the rules). In another decision, Khattab (HU/13552/2015), there is a paragraph containing an anecdotal reference to an apparently extrajudicial observation of Lawton LJ cited (so far as we understand it) as investing the First-tier Tribunal with inherent power to exercise a discretion to allow appeals. Nearly all the decisions contain some material of this sort. The passage set out above, not one word of which appears to be relevant to the case in hand, occupies about a third of the entire text of the decision.
44. There are two other matters to which we should refer. The first is that, as will have been apparent from some of the passages we have quoted; it does not look as though any attempt has been made to check the decisions for grammatical or linguistic error. The phrase “the evidential elements of the evidence” is in a standard paragraph. It

ought not to have survived being in one draft. The second factor is that as well as the principal issue we have to determine, that is to say whether the determinations display error of law, there are allegations of unreasonable and inappropriate conduct by the judge during the hearing. It is very telling that one such allegation is made by a representative who won his case (Khattab: HU/13552/2015), and so did not need to complain: he has no axe to grind. He wrote a letter to the President of the First-tier Tribunal. With the consent of Mr Wilding we gave our permission for its material parts to be introduced into the hearing as, essentially, a late Rule 24 response to the Secretary of State's grounds of appeal. As so amended, it reads as follows:-

"Rule 24 Response

1. All grounds of appeal raised by the Respondent are conceded.
2. In addition, it is submitted that there was procedural unfairness/irregularity on the following basis:
 - a) It was extremely difficult for the participants in the hearing (including the court interpreter) to understand what IJ Majid was saying, which caused significant confusion on numerous occasions.
 - b) His comments and questions were of tangential relevance to the case and it was difficult for the witness and legal representative to grasp the points he was trying to make.
 - c) He became angry with both witnesses and legal representative as a result of the strained communication and frequent misunderstandings.
 - d) He was unwilling and/or unable to hear legal submissions.

I would go so far as to suggest that the nature of the proceedings before IJ Majid were so shambolic as to bring the Tribunal into disrepute and undermine public confidence in an effective judicial system."

45. Another difficulty during the course of the hearing arose in Stephen OA/07779/2015, and is considered below. In that case, we find that the Secretary of State's grounds are made out. In the other case, all we need to do is record that the points raised by Mr Moran caused us serious concern, particularly as they appear to be endorsed by the note made by the Presenting Officer. We do not need to reach a view on them; we hope that no party to an appeal will ever feel it right to make such allegations again.

CONCLUSIONS

46. It seems to us that the complaints made about Judge Majid's decisions are entirely well-founded. Nobody reading them could detect how the judge reached the conclusion he did, acting within the law and applying the relevant substantive law to the facts as found. That is partly because the law and the facts are never the subject of any detailed reference, disputes on the facts are not identified, and there are next to no findings of relevant fact; more seriously it is because the Judge's statements in

his decisions, either by direct assertion or by disquisition on the irrelevant, give real reason to suppose that he is not even trying to act within the law and apply the relevant substantive law to the facts as found.

47. We regard the body of his work that we have examined in the course of these appeals as wholly failing to meet the standards that are demanded by the office of a judge and expected by the parties. As a result, every one of the decisions under appeal shows error of law, in most cases serious error, in most cases multiple serious errors. Whether the decisions are looked at together or separately, they show that nobody should assume that Judge Majid has an adequate knowledge of the law or of his task as a judge. If his decisions continue to have the features we have identified in the foregoing examination, they are clearly open to criticism.
48. We turn now to our individual examination of the appeals before us.

AA/06906/2014

MM

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Representation:

For the Appellant: Mr M Aslam, instructed by Chancery solicitors

For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

49. We have in this case made an anonymity order in favour of the Appellant since the appeal concerns a protection claim. The Appellant appeals against a decision of First-Tier Tribunal Judge Majid promulgated on 15 November 2016 (“the Decision”) dismissing the Appellant’s appeal against the Secretary of State’s decision dated 9 September 2014 refusing his asylum and human rights claims and directing his removal under section 10 Immigration and Asylum Act 1999. The appeal against the Decision is on protection and human rights grounds.
50. We do not need to set out the facts of this case since those appear at [22] of our general decision above. By a Rule 24 response dated 21 February 2017, the Respondent invited the Tribunal to set aside the Decision and remit the appeal to the First-tier Tribunal for re-making. The concession is in the following terms (so far as relevant):-
- “2. Whilst the Respondent considers that the FtTJ arrived ultimately at the correct position it is accepted that the reader would be none the wiser as to why the appeal was dismissed and arguably demonstrates a lack of anxious scrutiny, especially given the reference to homosexuality at [10].”
51. The Respondent’s concession is rightly made. The issues for the Judge to determine were, so far as the protection claim is concerned, whether the Appellant has a well-founded fear of persecution or would be at real risk on return to Bangladesh. In

relation to the claim based on his family and private life, the Judge needed to determine whether the Appellant meets the Immigration Rules and, if not, whether he should be permitted to remain for reasons existing outside the Rules.

52. There are some general and largely correct statements of some features of the law in asylum appeals at [4]. At [2] the judge says he has read the refusal carefully. At [5] the judge notes that the respondent doubts the appellant's credibility, which is right. At [10] the judge says that the refusal letter "does not accept that [the appellant] is a homosexual with commonly accepted immutable characteristics which make him vulnerable to persecution". Neither the appellant's claim nor the refusal letter make any reference to homosexuality. At [8] and [9] the judge appears to indicate that the only issue assigned before him was credibility. Thereafter the Judge fundamentally misunderstands the facts of the Appellant's case at [11] to [12] of the Decision. We assume that the Judge was aware that the Appellant was outside his country of origin since he gave evidence in person at the hearing. It appears therefore that the Judge thought that the Appellant could not succeed in his asylum claim because he had obtained a visa to travel to the UK from his home country. But that visa was as a family visitor. Whilst, as we observe at [22] of our decision above, the fact of having come as a visitor and only claiming asylum some two years later may give rise to some credibility issues, that fact did not prevent the protection claim succeeding in and of itself.
53. That fundamental error then led to the Judge making no findings on credibility, the subject of the submissions before him, on the core of the Appellant's protection claim or whether he would be at real risk on return to his home country. The Decision plainly cannot be allowed to stand. The Judge also made no findings on the Appellant's human rights claims whether under or outside the Rules.
54. Whether or not the Appellant's appeal ultimately succeeds, he is entitled to know the reasons for the outcome. The Decision does not provide adequate findings or reasons for the conclusions, fails properly to consider the claims made or the evidence before the Judge and, insofar as the claim is considered at all, fundamentally fails to understand the facts of the claim. In consequence, the reasons for the Decision reached were not open to the Judge on the evidence and the conclusion reached is therefore unsustainable.
55. The Decision therefore discloses a material error of law and we set it aside. Given the fundamental nature of the errors of law found and the Appellant's entitlement to have the facts of his claim properly determined, we agree with the parties that it is necessary for this appeal to be remitted to the First-tier Tribunal for redetermination by a Judge other than Judge Majid.

HU/01879/2015; HU/01881/2015; HU/01882/2015; HU/01883/2015

EDO AND OTHERS

and
SECRETARY OF STATE FOR THE HOME DEPARTMENT

Representation:

For the Appellants: In person

For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

56. We make an anonymity direction in this appeal pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, given that two of the appellants are minors. Unless and until a Tribunal or court directs otherwise, the appellants herein are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. Failure to comply with this direction could lead to contempt of court proceedings.
57. This is an appeal against a decision of First-tier Tribunal Judge Majid, promulgated on 14 March 2017, dismissing the appellants' appeals against the Secretary of State's decision(s) of 23 June 2015 refusing their human rights claims. The appellants are nationals of Ghana. The first and second appellants are husband and wife and the third and fourth appellants are their minor children (born in the United Kingdom on 16 May 2007 and 21 January 2009, respectively).
58. At the outset of the hearing before the Upper Tribunal Mr Wilding accepted that: (i) the First-tier Tribunal's decision should be set aside as a consequence of the numerous material errors of law contained therein; and, (ii) the fundamental nature of such errors requires the appeal to be remitted to the First-tier Tribunal to be determined afresh by a different judge. We concur with both concessions, as did the appellants. Although, as a consequence of the concessions made by the Mr Wilding, we need not set out in detail the nature of the errors in the Judge Majid's consideration of the appeal, we do consider it appropriate to summarise them, if for no other reason than to enable Judge Majid to understand why this particular decision has been set aside.
59. Two passages from the Judge's decision in the instant case are set out at [21] above, with observations as to the nature of the errors that can be identified therein. We need not repeat those observations. The Judge's decision also suffers from the frailties considered in our general conclusions above at [7] - [17] and [19] - [20].
60. The Judge Majid's overarching conclusion is reflected in the following paragraph:
- "[16] Accordingly, in view of my deliberations in the preceding paragraphs and having taken into account all of the oral and documentary evidence as well as the submissions at my disposal, cognisant of the fact that the burden of proof is on the Appellant and the standard of proof is the balance of probabilities, I am persuaded that the Appellants do not come within the relevant Immigration Rules as amended."

61. We observe that the appellants challenge to the Secretary of State's decision was limited, by section 84(2) of the Nationality, Immigration and Asylum Act 2002, to reliance on the ground that, "*the decision is unlawful under section 6 of the Human Rights Act 1998*". If a Tribunal concludes that the requirements of the Immigration Rules are not met it is incumbent upon it to complete the task required of it by statute i.e. to determine whether the decision under challenge is unlawful under section 6 of the Human Rights Act 1998. The instant decision does not disclose a discrete conclusion on the one ground that the appellants were entitled to pursue on appeal; neither can such conclusion be inferred from reading the FtT's decision in the round.
62. Although Judge Majid makes reference to section 117 of the 2002 Act at [18] of his decision, such reference is not made in the context of determining the appeal on human rights grounds outside the confines of the Rules and in any event it is incomplete, and for the most part the observations therein are incorrect in law. The failure of Judge Majid to reference, or summarise, the effect of section 117B(6) of the 2002 Act, a provision which should be at the heart of any decision in this appeal made on Article 8 grounds outside the Rules, provides significant support for the conclusions that the Judge did not turn his mind to analysis of such ground and that, if he did, he failed to take cognisance of a material matter.
63. In any event the decision under the Immigration Rules is also fundamentally flawed. First, it does not disclose which of the immigration rules consideration was given to, nor does it provide any satisfactory reasons as why the requirements of those (unidentified) rules were not met.
64. Insofar as the FtT's decision purports to incorporate any reasoned analysis of the issues before it, this is contained at [20] and [21]. Even superficial scrutiny of this reasoning identifies that Judge Majid failed to undertake a thorough, if any, examination of the circumstances of the minor appellants, failed to place those circumstances in their proper legal context (and in particular it is to be observed that one of the children has lived in the United Kingdom at the relevant date for a period in excess of seven years and one has a statement of educational needs) and took into account immaterial matters – such as the current fiscal crisis.
65. The losing party is entitled to know the basis upon which the appeal was lost. It is axiomatic that this requires the decision to disclose sufficient reasons to enable such an understanding to be garnered from it. Judge Majid's decision in the instant case falls a long way short of adhering to the aforementioned basic tenet of a lawful decision.
66. For the reasons given above, we find that the FtT's decision discloses an error of law capable of affecting the outcome of the appeal and we set it aside. Given the fundamental nature of the errors identified we conclude that it is necessary for this appeal to be remitted to the FtT to be determined afresh by a judge other than Judge Majid.

HU/13552/2015

**SECRETARY OF STATE FOR THE HOME DEPARTMENT
and
RAWAN KHATTAB**

Representation:

For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer

For the Respondent: Mr A Moran, instructed by Alex Moran Immigration & Asylum

67. This is an appeal by the Entry Clearance Officer Amman. The respondent, whom we shall call 'the claimant', is a national of Syria. She applied for, and was refused, entry clearance to join Khalil Alathoub, her husband, who is in the United Kingdom and is recognised as a refugee. The grounds of appeal to the First-tier Tribunal set out the facts and the claimant's case in some detail. The Entry Clearance Officer's decision is challenged on the grounds that, contrary to what he thought, there is ample and persuasive evidence that the marriage between the claimant and her husband is a genuine and subsisting relationship, dating from before his flight, and that the requirements of paragraph 352A(iv) (which was the sole ground of refusal) are met. Human rights grounds are also raised.
68. Despite Judge Majid's claim to have "adverted to the main reasons in the Refusal Letter meticulously", to have "carefully perused the Appellant's documents to reach my decision" and (again) that he "took into account the reasons in the Refusal Letter", his decision contains no reference either to paragraph 352A or to the human rights grounds. He allows the appeal apparently on the basis that the claimant has herself established a claim to asylum, although no evidence of that was led. He asserts, incorrectly, that the "Respondent thinks that the option of internal flight within Syria is available to the Appellant". The decision appears to be contained in the following sentence:
- "However I can give the benefit of my judicial discretion in this case because the Appellant cannot be deprived of compassion in the UK even in these hard economic times".
69. The decision contains a number of the other features we have identified above as common to most of Judge Majid's decisions. In addition at paragraph 7 the judge says that "he is alert to the fact that my Decision in this case does not violate any of the following specific legal principles". This assertion and the specific legal principles that follow occupy about one third of the six-page decision. None are relevant except a factual (not legal) observation, apparently not founded on evidence in the case under examination, that "Syrians are maltreated by their own president". Amongst the others are:
- "7. In reaching my Decision I am fully conscious of the fact that the overriding objective of the judicial function guides that judges in trying to pursue

expedition and efficiency in the disposal of cases should not sacrifice justice. Thus I am alert to the fact that my Decision in this case does not violate any of the following specific legal principles applicable in this case and coming from binding precedents. These principles are:-

...

(c) Executive discretion is not noted by many material executives and in this respect they should be made aware of it because it can bring a lot of relief to individuals who deserve fair exercise of discretion in their favour.

(d) The celebrated British politician, Mr Tony Benn, in his own words, had "100% success" in persuading President Saddam Hussain to release hostages in December 1990. When the Iraqi Airways chartered plane landed at Gatwick, applying the law literally, the Immigration Officers (IOs) at the airport, started to check the passports of the hostages to verify whether they had the right to enter the UK. Using his executive discretion, a Home Office Minister (part of the eminent personages who had come to welcome the hostages) stopped IOs saying, "They have already suffered a lot; don't make them stand in a queue for this purpose". Consequently, no further passport was checked.

...

(g) The Home Office is rapidly changing the rules in every area and a judge would be unfair if he used the changes to the detriment of a genuine Appellant". [The provisions the judge ought to have been considering were last changed in September 2002].

70. The Entry Clearance Officer's grounds of appeal are that the judge completely misapprehended the nature of the appeal, applied the wrong standard of proof to the issues he should have been determining, had not addressed the issues under appeal and as a result proceeded unfairly, because the parties had no opportunity to address the issues on which he appears to have decided the case. Mr Moran, in a reply which we admitted out of time, conceded the grounds in full. In the letter to which we have referred above, he described the hearing as "shambolic".
71. Whatever may be the accuracy of that description, we have no hesitation in agreeing with the parties that Judge Majid's decision wholly fails to deal with the issues under appeal. There is almost nothing in the substantive parts of the decision that would have appeared in a proper determination of the issues under appeal, and the decision itself at no point makes any determination of those issues. We **set it aside** for error of law.
72. The parties before us agreed that this was a case in which it would be appropriate for us to examine the issues ourselves. We indicated that we were inclined to agree with Mr Moran that the evidence before the judge was sufficient to establish on the balance of probabilities that the requirements of paragraph 352A were met at the date of the decision. Mr Wilding did not oppose that view.
73. We therefore allow the appellant's appeal.

IA/00866/2016

**SECRETARY OF STATE FOR THE HOME DEPARTMENT
and
MARCIA CORRINE COMERY**

Representation

For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer

For the Respondent: Mr L Adenakan, instructed by Morgan Pearce Solicitors

74. This is an appeal by the Secretary of State. For ease of reference, we refer below to the parties as they were in the First-Tier Tribunal. The Respondent appeals against a decision of First-Tier Tribunal Judge Majid promulgated on 14 March 2017 (“the Decision”) allowing the Appellant’s appeal against the Secretary of State’s decision dated 29 January 2016 refusing her human rights claim based on her relationship with a British citizen and her private life established in the UK.
75. The Appellant is a national of Jamaica. She entered the UK on 24 March 2002 as a visitor and obtained further leave to remain as a student until 31 October 2003. Thereafter, she overstayed. She made an application for leave to remain on 11 May 2010 which was refused on 19 February 2011 with no right of appeal. The Appellant was served with notice of removal on 17 March 2015 whereupon she made the human rights claim which is under consideration in this appeal.
76. The central issues in this appeal were whether the Appellant could qualify under Appendix FM of the Immigration Rules based on her relationship with a partner. The Respondent did not accept that the relationship was genuine and subsisting and, in any event, concluded that there were no insurmountable obstacles to the couple continuing their relationship in Jamaica. In relation to her private life, the Appellant has not been in the UK for twenty years and the Respondent did not accept that there was evidence that the Appellant would face “very significant obstacles” to reintegration in Jamaica. Nor did she accept that there were any exceptional circumstances justifying the grant of leave to remain outside the Rules.
77. The Decision is largely discursive and, as noted at [43] above contains a lengthy passage bearing distinct similarities to that set out at [42] of our general decision above. The central reason why the Judge allowed the appeal appears at [28] to be that “the Appellant comes within the relevant immigration law as amended and should have the benefit of discretion”. As we note at [23] of the Decision, there is no power to allow an appeal on the basis of discretion in a case such as this; the Appellant either meets the Rules or her case must be assessed under Article 8 ECHR and if appropriate allowed outside the Rules. The difficulty, as we have previously identified, is that the Judge does not specify under what provision the Appellant succeeds nor why. It is notable that, although the Judge refers to having taken account of “all of the oral and documentary evidence as well as the submissions at

my disposal” there are no findings on the central issues whether the Appellant is indeed in a genuine relationship as she claims and whether there would be insurmountable obstacles to that relationship continuing in Jamaica.

78. The reasons given for concluding in the Appellant’s favour are said to be the Judge’s “deliberations in the preceding paragraphs”. However, for the most part, those paragraphs are general in nature and have no bearing on this Appellant’s case. The closest one comes to a reason for finding in her favour is at [10] to [12] of the Decision where the Judge refers in limited terms to the partner’s eye problems and notes that that the Appellant gives “crucial help” to her partner. This is said to be a “dispositive factor”.
79. Although Mr Adenakan sought to persuade us that any error of law in the Decision was immaterial, he was unable to direct us to any findings or reasons which disclosed whether the Appellant’s case is allowed under the Rules or outside them. Although at [11] the Judge appears to indicate that the case “comes within the applicable rules”, Mr Adenakan was constrained to accept that the Judge failed to consider whether there would be insurmountable obstacles to family life continuing in Jamaica. His submission that the Judge’s reference to the Appellant offering care to her partner is a finding that she is in a genuine and subsisting partner relationship with him is unpersuasive. The Judge’s description of the relationship at [11] and [12] could equally apply to the relationship of carer and patient (as we observed during the hearing). The comments made at [14] and [15] of the Decision referring to “elderly dependent relatives” might indeed point in that direction. Ultimately, we do not know since the Judge has failed to enunciate his reasons for concluding as he does in the Appellant’s favour.
80. Equally, if the appeal is allowed outside the Rules (as the reference to “discretion” might be intended to indicate), then the Judge also needed to assess the impact of section 117B, Nationality, Immigration and Asylum Act 2002. He needed to take into account that the Appellant is an overstayer. There is no such analysis in the Decision.
81. There is also reference at [13] of the Decision to there being “special arrangements’ in the respect of Jamaica whereby a person of Jamaican background can exceptionally ‘switch’ even though they come as a visitor”. The Judge does not there refer to any document and even indicates that neither the Presenting Officer or anyone else in court knew about them. We confess that we have no idea either to what the Judge intended to allude and Mr Adenakan was unable to assist us in this regard. The Appellant is factually an overstayer, contrary to what the Judge appears to have thought by reference to such “special arrangements”.
82. The Respondent’s sole ground of appeal in this case is that no reasons have been given for allowing the appeal. She says simply that such reasons as are given do not enable her as the losing party to know why she has lost (nor why the Appellant has won). She is not alone in that. The Respondent’s ground is made out. We are

satisfied that the Judge failed properly to direct himself in accordance with the Immigration Rules, primary legislation (section 117) and case law. Much of the Judge's reasoning is devoted to irrelevant, general political comment which has no bearing on the issues. He has failed to make findings on the central issues and even where findings are made they are inadequately reasoned. It is also for the Appellant's benefit that the Decision be set aside as the basis on which a Judge's decision is reached in the human rights context may have a bearing on the period and route of leave to be granted.

83. We find that the Decision discloses a material error of law and we set it aside. Given the fundamental nature of the errors of law found and the Appellant's entitlement to have the facts of her claim properly determined, it is necessary for this appeal to be remitted to the First-tier Tribunal for redetermination by a Judge other than Judge Majid.

IA/23617/2015

**SECRETARY OF STATE FOR THE HOME DEPARTMENT
and
JONES BOATENG-DANSOH**

Representation:

For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer

For the Respondent: Miss D Ofei-Knatia, instructed by Genga & Co solicitors

84. For ease of reference, we refer below to the parties as they were in the First-Tier Tribunal.
85. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Majid, promulgated on 16 September 2016, allowing the appellant's appeal against the Secretary of State's decision of 9 June 2015 refusing his human rights claim.
86. The appellant is a national of Ghana, born 1 May 1965. He entered the United Kingdom on 17 May 1994 and claims to have continuously resided here since. He made an asylum claim upon arrival, which he "*did not pursue*" and, subsequently, made an application for an EEA Residence Card on 2 September 2009, which was refused on a date not disclosed in the Tribunal's papers. Thereafter the appellant made a human rights application under cover of a letter dated 1 April 2015. It was asserted therein that he had been in a relationship with a British citizen (Veronica Boakye) between 2000 and 2009, and that there were three (British citizen) children born of the relationship, (in March 2002, March 2003 and January 2009, respectively). This relationship had, as of 1 April 2015, recently rekindled and the 'couple' were once again living with each other.
87. In her decision of 9 June 2015, the Secretary of State, *inter alia*, concluded:

- (i) The appellant does not have a genuine and subsisting relationship with a British partner, he and Veronica Boakye not having lived together in a relationship akin to marriage for the past 2 years. Therefore, the appellant does not meet the requirements of the 'partner route' under Appendix FM to the Immigration Rules;
- (ii) Although the appellant has a genuine and subsisting relationship with his three children he does not have sole parental responsibility for them. He claims to live with them and their mother. He cannot, therefore, meet the requirements of the 'Parent route' under Appendix FM to the Rules;
- (iii) It is not accepted that the appellant has lived in the United Kingdom continuously for 20 years. He cannot, therefore, meet the requirements of paragraph 276ADE(1)(iii) of the Rules;
- (iv) It is not accepted that there would be very significant obstacles to the appellant integrating into life in Ghana. The requirements of paragraph 276ADE(1)(vi) are, therefore, not met; and
- (v) It is not accepted that there were any exceptional circumstances justifying the grant of leave to remain outside the Rules.

88. Judge Majid's overarching conclusion is reflected in the following passage:

"[16] Accordingly, in view of my deliberations in the preceding paragraphs and having taken into account all of the oral and documentary evidence as well as the submissions at my disposal, cognisant of the fact that the burden of proof is on the Appellant and the standard of proof is the balance of probabilities, I am persuaded that the Appellant comes within the relevant Immigration Rules as amended."

89. The grant of permission to appeal to the Upper Tribunal identifies the core challenge thus:

"3. The grounds on which permission to appeal is sought submit that the Judge failed to give adequate reasons for finding that the Appellant satisfied the requirements for leave to remain as a parent. Arguably the failure to give adequate reasons goes much wider than this. Arguably there is a failure to give any clear indication of the basis on which the appeal was allowed."

90. Although not a point taken by the Secretary of State before us, we observe that the appellant's challenge to the Secretary of State's decision was limited, by section 84(2) of the Nationality, Immigration and Asylum Act 2002, to reliance on the ground that *"the decision is unlawful under section 6 of the Human Rights Act 1998"*.

91. It maybe that the Secretary of State did not seek to pursue this point as a consequence of the combination of the appeal having been allowed under the Immigration Rules and the Secretary of State's position that the Rules identify the public interest in immigration cases. Nevertheless, even if a Tribunal concludes that the requirements of the Immigration Rules are met it is still incumbent on it to complete the task required of it by statute - in this case to determine whether the decision under

challenge is unlawful under section 6 of the Human Rights Act 1998. The decision made on such issue should be explicit in the FtT's decision. Judge Majid's decision does not disclose a discrete conclusion on this ground.

92. Moving on, given the terms of paragraph 16 of the Judge Majid's decision and terms of the grounds of challenge, it is necessary to embark upon an analysis of the reasons given by the Judge for his conclusion that the appellant "*comes with the relevant Immigration Rules*". One would have anticipated, as an irreducible minimum, that the decision would be explicit in its identification as to which of the numerous immigration rules in play in the instant appeal the appellant was found to have met. It is not.
93. Ms Ofei-Knatia did not seek to suggest that Judge Majid gave any consideration to the Partner or Private Life Routes under the Rules she submitted, however, that there was sufficient in Judge Majid's reasoning to infer that he had allowed the appeal under the 'Parent Route' (paragraph R-LTRPT of Appendix FM) - the appellant, by the time of the appeal hearing before the FtT, having left the family home.
94. The relevant immigration rule (E-LTRPT 2.3): materially requires that the appellant demonstrate either that:
 - (i) He has sole parental responsibility for (one of) his British citizen children; or,
 - (ii) That Ms Boakye is not his partner (a partner for the instant purposes including a person who has been in a relation with the appellant for less than two years prior to the date of application).
95. If the appellant demonstrates either of the aforementioned he would also need to meet the requirements of paragraph EX.1 of the Rules because of his immigration status (E-LTRPT.3.2.). In the instant case the material requirement therein is that:

“(ii) it would not be reasonable to expect the child to leave the UK”
96. With this in mind we turn back to Judge Majid's decision. Paragraphs 1 to 11 thereof are unremarkable - containing a summary the appellant's background, the evidence, the parties' submissions as well as a number of legal self-directions - many of which have been the subject of analysis in our general conclusions above.
97. Judge Majid's 'findings' begin at [12] - under the heading "*The Proceedings*":

“[12] In the documents it is clear that the biological children of the Appellant need his care and he has left me in no doubt that he is fully willing to give this to them. Their best interests alone can inspire discretion in his favour. Furthermore, one cannot overlook the fact that this is a complex case which should come to an end.

[13] The son, [P] is linked to the Appellant. I gathered from the oral evidence that he is fully benefitting from the appellant's father figure status going to football matches."

98. These findings are immediately followed, under the heading "*Relevant Law*", with self-directions as to the applicability of section 55 of the Borders, Citizenship and Immigration Act 2009 [14(a)] and the *ratio* of the decision of the Supreme Court in ZH (Tanzania) [2011] UKSC 4 [14(b)]. The only further reasoning is to be found in paragraphs 14(c) and 15 of the decision:

"[14(c)] ... The Home Office in this case has, by issuing the Children's passports acknowledged that they are British. In their case one may raise the rhetoric question "To where can they be deported?"

[15] I cannot ignore the "legal requirements" stipulated by immigration law. It is incumbent upon me to advert to the new Rules giving respect to the intention of the House of Commons dictated by the supremacy of Parliament. The Appellant ought to benefit from the relevant Rules since the compassionate circumstances of this case lead to that conclusion. The best interests of the three children with DNA evidence should not be undervalued."

99. It is uncontroversial that Judge Majid failed to direct himself to the terms of any of the relevant immigration rules. This is not, of itself, an error but no doubt contributed to the judge's failure to identify, or determine, the pertinent issues within each of these rules.
100. As we have alluded to above, it is not contended that Judge Majid made any findings relevant to a consideration of the Partner and Private Life routes under the Rules. Nor, we find, does the judge's decision disclose any conclusions on the key issues in dispute under the Parent Route of Appendix FM. In particular, there is nothing within [12] to [16] of Judge Majid's decision which, even implicitly, amounts to a finding that the appellant either has sole responsibility for one or more of his children, or that Ms Boakye is not his partner for purposes of the relevant immigration rule. Furthermore, there is no consideration of whether the requirements of paragraph EX.1 have been met.
101. The losing party, in this case the Secretary of State, is entitled to know the basis upon which she has lost the appeal. It is axiomatic that this requires the FtT's decision to disclose sufficient reasons to enable such an understanding to be garnered from it. Judge Majid's decision does not disclose such reasoning. It is impossible to elicit from Judge Majid's decision which of the immigration rules he concluded the appellant met the requirements of, the decision contains no findings of fact on relevant issues and, in so far as it does disclose any reasoning such reasoning could not lawfully lead to the conclusion reached.
102. Consequently, in addition to the errors identified in the general conclusions above - which also pervade the instant determination, and irrespective of the fact that Judge

Majid did not determine the only permissible ground of challenge before him i.e. whether the SSHD's decision leads to a breach of section 6 of the Human Rights Act, the decision is fundamentally flawed by legal error and falls well below the standard one would expect of a First-tier Tribunal judge.

103. For the reasons given above, we find that the FtT's decision discloses an error of law capable of affecting the outcome of the appeal and we set it aside. Given the fundamental nature of the errors identified we conclude that it is necessary for this appeal to be remitted to the FtT to be determined afresh by a judge other than Judge Majid.

IA/30887/2015

**SECRETARY OF STATE FOR THE HOME DEPARTMENT
and
AMANDEEP KAUR**

Representation:

For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer

For the Respondent: Mr S Ahmed, instructed by 12 Bridge Solicitors

104. For ease of reference, we refer below to the parties as they were in the First-Tier Tribunal.
105. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Majid, promulgated on 5 October 2016, allowing the appellant's appeal against the Secretary of State's decision of 7 January 2015.
106. The appellant is a national of India, born 3 April 1986. She entered the United Kingdom (accompanied by her husband) on 4 February 2011 with leave conferred until 13 March 2012, the date on which she, also, made an application for further leave, as a Tier 4 Migrant. This application was originally refused in a decision of the 4 May 2012 and on the same date a decision was made to remove the appellant pursuant to section 47 of the Immigration, Asylum and Nationality Act 2006.
107. Thereafter, First-tier Tribunal Judge McMahon allowed an appeal brought by the appellant on the basis both that she met the requirements of the Immigration Rules and that there had been no basis in law for the Secretary of State to make the removal decision. In a decision of 14 February 2013, the Upper Tribunal (UTJ Jordan and DUTJ Lewis) set aside the FtT's decision and, upon re-making it:
- (i) dismissed the appeal against the decision to refuse to vary leave - concluding that: (i) the requirements of the Immigration Rules had not been met and (ii) the Secretary of State's decision did not lead to a breach of Article 8 ECHR); and,

- (ii) allowed the appeal against the decision to remove the appellant on the basis that such decision was not in accordance with the law;

108. The next relevant event is the decision under challenge of 7 January 2015, which states that it is made in response to the appellant's application of the 13 March 2012. By way of that decision the Secretary of State purports to "*refuse to vary* [the appellant's] *leave*" and to make a "*Decision to Remove*" the appellant. The decision letter does not identify under the auspices of which legal provision the decision to remove is made, nor does it pay any regard to the Upper Tribunal's decision of 14 February 2013, which was, of course, the determination of the appellant's appeal against the Secretary of State's initial decision refusing to vary her leave.
109. Turning then to the decision of the First-tier Tribunal. Judge Majid proceeded on the basis that the appeal was brought against the decision to refuse to vary the appellant's leave. This, though, cannot be correct. The appellant's leave was due to expire on 13 March 2012. Her leave was, however, extended by virtue of section 3C of the Immigration Act 1971 as a consequence of the making of the application to vary leave on that date. It was further extended by the subsequent appeal against the refusal of such application i.e. the decision to refuse to vary leave. The appellant's section 3C leave came to end on the date her appeal rights were initially exhausted, i.e. on or around the end of February 2013.
110. It is clear, therefore, the Secretary of State's decision of 7 January 2015 'refusing to vary' the appellant's leave did not bring the appellant's leave to an end but rather it was brought an end as a consequence of the appeal process (relating to the decision of 4 May 2012) having been exhausted. There is, therefore, no route, within section 82 of the Nationality Immigration and Asylum Act 2002, or otherwise, providing jurisdiction for the FtT to determine an appeal brought against the decision of 7 January 2015 refusing to vary the appellant's leave.
111. This though does not deprive the appellant of a remedy against the actions of the Secretary of State. Section 82 of the 2002 Act (prior to its amendment by the Immigration Act 2014) provided for a right of appeal against a removal decision. The decision of 7 January 2015 identifies that a decision to remove the appellant was made on that date, although it does not disclose the legal basis upon which the Secretary of State purported to make such decision. Unfortunately, none of these issues were raised before, or considered by, Judge Majid, who proceeded on the incorrect basis that the decision under appeal was the decision of the Secretary of State to refuse to vary the appellant's leave.
112. In any event, even if we were to assume (as the Judge Majid did) that the decision under appeal was that of the Secretary of State refusing to vary the appellant's leave, the decision on that issue is replete with legal errors such that it must be set aside.

113. The Secretary of State founded her decision of 7 January 2015 on the fact that the CAS supplied by the appellant with her application of 13 March 2012 did not specify that the course that she wished to pursue represented academic progression from the course she had previously undertaken. This is exactly the issue that the Upper Tribunal concluded in the Secretary of State's favour in its decision of 14 February 2013.
114. Before Judge Majid the appellant relied upon policy guidance issued by the Secretary of State on 25 July 2016, headed "*Tier 4 of the Points Based System*", to support the contention that academic progression is not restricted to the study of a course of a higher level than that previously studied, but that it can also invoke consideration of a combination of factors, including whether the taking of the course supports career aspirations. Mr Ahmed asserted before us, in support of his contention that the Judge Majid's decision should not be dislodged, that (i) the Judge accepted this submission, as it was entitled to do, and (ii) that the Judge thereafter concluded, having considered the evidence before him, that the appellant had demonstrated academic progression.
115. If this is Judge Majid's reasoning process, then it is far from clear from the terms of his decision. Insofar as there is any reasoning disclosed in the Judge Majid's decision it is as follows:

"[20] ... Judges like me should not allow an arbitrary reason to obstruct the perfectly proper educational plans of a genuine student - this student as the Appellant's bundle has confirmed has paid £3000 for the qualification she is undertaking at a particular college.

[21] I accept the fact that the Upper Tribunal's decision is not binding on me. The appeal before me is in relation to evidence freshly submitted to me and I am free to take any view of that - either I accept the cogency of the evidence or reject it; it is convenient for me to say here that all of the evidence leads me to accept the new evidence before me.

[23] I cannot ignore the "legal requirements" stipulated by immigration law. It is incumbent upon me to advert to the new Rules giving respect to the intention of the House of Commons dictated by the supremacy of Parliament. The Appellant can benefit from the Rules because she is a genuine student who should be helped as articulated above.

[24] Accordingly, in view of my deliberations in the preceding paragraphs and having taken into account all of the oral and documentary evidence as well as the submissions at my disposal, cognisant of the fact that the burden of proof is on the Appellant and the standard of proof is the balance of probabilities, I am persuaded that the Appellant comes within the relevant Immigration Rules as amended."

116. This reasoning, in addition to the errors identified in our general conclusions above which, for the most part, also pervade this decision, is also brimming with further legal error, the most significant of which can be summarised thus:

- (i) The Judge failed to apply the starred decision in Devaseelan [2002] UKAIT 00702 to his considerations (there had already been a decision by the Upper Tribunal on exactly the issue that fell for consideration in the instant appeal);
- (ii) The Judge failed to direct himself to the applicable requirements of the Immigration Rules, and in particular the requirements that it was said by the Secretary of State that the appellant failed to meet;
- (iii) The Judge misdirected himself when stating that because the appellant 'is a genuine student' she could benefit from the Rules. The Rules plainly required the appellant to demonstrate more than the fact that she was a genuine student;
- (iv) The Judge erred in directing himself that it was his function to 'help' the appellant. His function was to determine the appeal before him impartially, not to 'help' one of the parties to the appeal to succeed;
- (v) Insofar as the Judge took account of the policy guidance identified above, he erred in so doing - such guidance post-dating the decision under appeal.

117. For all these reasons, we find that the FtT's decision discloses multiple errors of law capable of affecting the outcome of the appeal, and we set it aside. Given the fundamental nature of the errors identified we conclude that it is necessary for this appeal to be remitted to the FtT to be determined afresh by a judge other than Judge Majid.

IA/31116/2015

**SECRETARY OF STATE FOR THE HOME DEPARTMENT
and
SANDRA BOPOLONGA**

Representation:

For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer

For the Respondent: Mr C Mpangi, Respondent's Partner

118. This is an appeal by the Secretary of State. For ease of reference, we refer below to the parties as they were in the First-Tier Tribunal. The Respondent appeals against a decision of First-Tier Tribunal Judge Majid promulgated on 24 October 2016 ("the Decision") allowing the Appellant's appeal against the Secretary of State's decision dated 10 September 2015 refusing her human rights claim based on her relationship with Mr Mpangi who is a person settled in the UK and their two children and her private life established in the UK.

119. The Appellant is a national of DRC. She entered the UK on 21 January 2005 with leave to remain as a spouse until 11 January 2007. An application made on 12 January 2007 for indefinite leave in that category was refused on 7 March 2007. Thereafter, she overstayed. She made an application for leave to remain on the basis

of her family and private life on 20 February 2015 leading to the decision under appeal.

120. The issues which required determination in this appeal are whether the Appellant can meet Appendix FM of the Immigration Rules based on her relationship with her partner and/or their children. The Respondent rejected the application based on the Appellant's relationship with her partner because she did not accept that it had subsisted for two years prior to the application. In particular, she did not accept the evidence of a marriage said to have taken place in DRC in 2004 because the Appellant did not produce the original certificate. The Respondent rejected the application based on the Appellant's relationship with her children because the Appellant shares parental responsibility for them with her partner. The Respondent also decided, when considering the case outside the Immigration Rules, that the family could relocate to DRC.
121. The Judge allowed the appeal. The main reason for doing so appears at [20] of the Decision where he describes the children's best interests as a "knock-out blow". As we observe at [21] above in relation to another appeal, that is an incorrect statement of the law. The children's best interests are a primary consideration but are not paramount and are capable of being outweighed by other matters. Here, the Appellant's overstaying is relevant but that factor finds no mention in the Decision.
122. Mr Mpangi, who spoke on the Appellant's behalf, asked us to uphold the Decision. He produced to us the originals of the copy documents on which the Appellant relied in her application to evidence the marriage having taken place. As we observed in the course of the hearing, there may be some issues in relation to those documents but it is inappropriate for us to comment further; in light of our conclusion that this appeal must be remitted, it will be for another First-tier Tribunal Judge to adjudicate on what those show. As Mr Wilding also pointed out in reply, even if the Appellant's relationship with Mr Mpangi is as she claims, the Judge would still need to consider paragraph EX.1 of Appendix FM and whether there are insurmountable obstacles to family life continuing in DRC. That is because the Appellant had no leave to remain in the UK when she made her application. The Judge made no finding on that issue.
123. At [22] of the Decision, the Judge purports to apply the Immigration Rules to the Appellant's case and to find them satisfied. He does not cite the rule which he there purports to apply. Nor does the appeal succeed under the Rules if the children's best interests are the driver for allowing the appeal. As Mr Wilding pointed out in his submissions, those may be reason to allow the appeal outside the Rules but since the Appellant is not the children's sole carer she cannot succeed under the parent route within the Rules. Unfortunately, due to the Judge's failure to advert to the rule he has in mind, we, as both parties, are in the dark as to why the Judge thought that the Appellant's appeal could succeed under the Rules. As we note in our general decision, this is a common failing.

124. The Respondent's sole ground of appeal alludes to the lack of reasons for allowing the appeal. That ground is made out. It is entirely unclear why the Judge allowed the appeal. If the children's best interests are in fact that reason, the Judge has fundamentally erred in his understanding of the importance to be accorded to those interests. There is no attempt to factor in the public interest.
125. The Decision therefore discloses a material error of law and we set it aside. Given the fundamental nature of the errors of law found and the Appellant's entitlement to have the facts of her claim properly determined, it is necessary for this appeal to be remitted to the First-tier Tribunal for redetermination by a Judge other than Judge Majid.

IA/31918/2015; IA/31924/2015

**SECRETARY OF STATE FOR THE HOME DEPARTMENT
and
EMELIA BOATENG AND CHARLES NUAMAH BEMPONG**

Representation:

For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer

For the Respondents: Ms M Harris, instructed by Rahman & Co solicitors

126. This is an appeal brought by the Secretary of State. For ease of reference, we refer below to the parties as they were in the First-Tier Tribunal. In a decision promulgated on 24 October 2016, First-tier Tribunal Judge Majid allowed appeals against the Secretary of State's decisions of 15 September 2015 refusing both Ms Boateng ("the first appellant") and Mr Bempong ("the second appellant") a Derivative Residence Card.
127. The appellants are nationals of Ghana and assert that they are married. They are the parents of a British citizen child, born in 2004. By the time of the hearing before the First-tier Tribunal the core issue in dispute between the parties was that of the responsibility for this child's care, it being asserted that the appellants shared such responsibility equally.
128. By regulation 15A(4A) of the 2006 Regulations an applicant for a Derivative Residence Card must, *inter alia*, be the "primary carer" of a British citizen child. Primary carer is defined in regulation 15A(7) as follows:

"(7) P is to be regarded as a "primary carer" of another person if

(a) P is a direct relative or legal guardian of that person; and

(b) P -

(i) is the person who has primary responsibility for that person's care; or

(ii) shares equally the responsibility for that person's care with one other person who is not an exempt person"

129. The grounds of appeal to the Upper Tribunal submit, *inter alia*, that Judge Majid erred in failing to: (a) engage with the reasons for refusal; (b) make a finding on the core issue of whether either of the appellants is the primary carer to their child (or whether they are both primary carers); and, (c) provide adequate reasons for his conclusions.
130. The overarching conclusions of Judge Majid are reflected in the following paragraphs of his decision:

“[23] I cannot ignore the “legal requirements” stipulated in immigration law. It is incumbent upon me to advert to the new Rules giving respect to the intention of the House of Commons dictated by the supremacy of parliament. The Appellant can benefit from the relevant Rules because the evidence at my disposal inspires me to allow this appeal which is eminently in the interests of the children and their parents. I can never forget the fact that it is better for children to have both parents living with them and also the evidence at my disposal shows that they have British nationality. With the Nationality Act 1981, nationality is conferred upon anyone due to birth and therefore if the children’s father tell me that he is British I cannot accept this without further legal investigation.

[24] Accordingly, in view of my deliberations in the preceding paragraphs and having taken into account all of the oral and documentary evidence as well as the submissions at my disposal, cognisant of the fact that the burden of proof is on the Appellant and the standard of proof is the balance of probabilities, I am persuaded that the Appellant comes within the relevant Immigration Rules as amended.”

131. Nowhere in these paragraphs does the Judge identify that the relevant legal regime underpinning the instant appeals is to be found in the 2006 EEA Regulations; indeed, the only mention of these Regulations is to be found in paragraph 17 of his decision, in which there is a criticism of the Presenting Officer’s cross-examination.
132. Such a failure is not of itself sufficient to demonstrate that the Judge did not apply his mind to the correct considerations. When, however, it is taken in conjunction with: (a) the fact that the appeals were allowed on the basis that the appellants came “*within the relevant Immigration Rules*” and not that they met the requirements of regulation 15A of the 2006 Regulations – or some other kindred expression; and, (b) the mis-characterisation of the issue in dispute at [16] of the Judge’s decision (in which it is said that the main issue “*is whether the husband was the primary carer of the children and therefore the result of the appeal hangs on the evaluation of their best interests*”) we are led inexorably to the conclusion that the Judge failed to apply the correct legal regime to its considerations.
133. Ms Harris seeks to sweep aside these criticisms by reminding us that the appellants gave evidence, by way of witness statements and orally at the hearing before the FtT, as to their respective responsibilities in the care of their child. She submits that on a proper reading of the Judge Majid’s decision the appellants were found to be truthful in that evidence and, consequently, the Judge must have made a finding to the effect

that the appellants share equally the responsibility for their child's care. For this reason, it is said, the decision to allow the appeal cannot be impugned.

134. We reject this submission. First, there is no finding in the Judge's decision, either explicit or implicit, that the appellants gave truthful evidence in all regards. If there is an argument that positive credibility findings are implicit in Judge Majid's decision, that argument cannot go beyond what was necessary for the Judge to determine the issue that he wrongly thought was before him.
135. In any event, even if we are wrong in this and the Judge found the appellants to be credible in the entirety of their evidence, such a finding does not ineluctably lead to a conclusion that the requirements of regulation 15A(7) of the 2006 Regulations are met. There is still an assessment required, on the accepted evidence, of whether one of the parents had primary responsibility for the child's care or that responsibility is "*share[d] equally*". That assessment has not been carried out by Judge Majid.
136. There are also numerous other errors to be found in Judge Majid's decision. There is, once again, an inappropriate reference to the decision in Gondolia, observations in relation to which have already been made in our general conclusions above. The Judge also devotes four paragraphs of reasoning to "*serious allegations of fraud*" made against the appellants. No such allegations have been made. The Secretary of State's case, as set out in the decision letter, is that the appellants had not produced sufficient evidence to demonstrate that they met the requirements of the 2006 EEA Regulations.
137. When the decision is read as a whole, and in its proper context, it is beyond dispute that the losing party, in this case the Secretary of State, is unable to understand the basis upon which she lost the appeal. It is plain that Judge Majid did not correctly understand the issue that was in dispute between the parties and, as a consequence, his decision provides no reasons as to why such issue fell to be decided in the appellants' favour.
138. For these reasons, we find that the FtT's decision discloses an error of law capable of affecting the outcome of the appeal and we set it aside. Given the fundamental nature of the errors identified we conclude that it is necessary for this appeal to be remitted to the FtT to be determined afresh by a judge other than Judge Majid.

IA/32046/2015

**SECRETARY OF STATE FOR THE HOME DEPARTMENT
and
XIAOMEI WANG**

Representation:

For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer

For the Respondent: Ms C Record, instructed on a direct access basis

139. This is an appeal by the Secretary of State. For ease of reference, we refer below to the parties as they were in the First-Tier Tribunal. The Respondent appeals against a decision of First-Tier Tribunal Judge Majid promulgated on 11 October 2016 (“the Decision”) allowing the Appellant’s appeal against the Secretary of State’s decision dated 17 September 2015 refusing her human rights claim based on her relationship with her partner Mr Wen Li who is a person settled in the UK, and their two children.
140. This is the case to which we refer at [33] and following of our general decision. It is not therefore necessary for us to recite the facts or the issues with which the Judge needed to grapple.
141. As we note at [35] of our general decision, the Judge has made no finding in relation to the alleged deception, this being a case where the Respondent asserted that the Appellant had obtained her English language certificate by use of a proxy test taker. There is also no reference to the question whether the Appellant meets the income requirements of the Rules, or finding on it.
142. As in other cases, the Judge appears to determine the appeal in the Appellant’s favour because of the children’s best interests. He appears to find at [24] of the Decision, that, because the Appellant is “fully committed to the best interests of her children” she can succeed under the Rules. In common with other appeals before us, the Judge fails to give any indication which rule he considers he is applying. As we also observe at [43] of our general decision, the Judge wrongly cites Pokhriyal as authority for a proposition to which it has no application. The Judge’s conclusion appears to be that the appeal should be allowed under the Rules based on some unspecified and unreasoned exercise of his discretion. The outcome itself may be a permissible one when the best interests of the children are factored into the equation. That is though an assessment to be made outside the Rules, not an exercise of discretion. It is therefore inconsistent with the finding at [24] that the Appellant meets the Rules. There is no discretion to be exercised in the application of the Rules. Either the Appellant meets the Rules or she does not.
143. Further, as we observe at [35] of our general decision, if and insofar as the Judge considered that the appeal should be allowed outside the Rules, it was incumbent on him to conduct a proportionality exercise. He could not do so without reaching a finding whether deception had been exercised by the Appellant. Nor could he do so without first determining whether the Appellant could meet the Rules, in particular the income threshold. As we note above, he did not make any findings on those issues. Those matters would be relevant to the proportionality assessment, particularly taking into account section 117 of the Nationality, Immigration and Asylum Act 2002 to which no reference is made (either expressly or implicitly).

144. The Respondent's sole ground of appeal is that the Judge has provided inadequate reasons for allowing the appeal. That ground is made out. We, like the Respondent, find ourselves unable to discern whether the appeal was allowed under the Rules or outside them and, if so, based on what findings or for what reasons. In this particular case, it is of equal importance to the Appellant to have findings of fact made, in particular in relation to the allegation of deception. As we noted in the course of the hearing, if the allegation of deception cannot be established, it will be also to the Appellant's advantage in the longer term to have a clear finding that this is the case.
145. The Decision therefore discloses a material error of law and we set it aside. Given the fundamental nature of the errors of law found and the Appellant's entitlement to have the facts of her claim properly determined, it is necessary for this appeal to be remitted to the First-tier Tribunal for redetermination by a Judge other than Judge Majid.

IA/32286/2015

**SECRETARY OF STATE FOR THE HOME DEPARTMENT
and
ESTHER YAH-OMA OKPALA**

Representation:

For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer
For the Respondent: Ms J Chandrasingh, of Royal College of Nursing Information Advice Service

146. This is an appeal brought by the Secretary of State. For ease of reference, we refer below to the parties as they were in the First-Tier Tribunal. In a decision promulgated on 24 October 2016, First-tier Tribunal Judge Majid allowed the appellant's appeal against the Secretary of State's decision of 21 September 2015 refusing her application for leave to remain on human rights grounds.
147. The appellant is a national of Nigeria, born on 10 June 1974. She entered the UK in June 2007 as a student and, it appears, has since remained here lawfully. Her three children reside with her in the UK (born in Nigeria on 19 May 2001, 18 May 2003 and 29 May 2005, respectively). Two of these children lawfully entered the UK in February 2010, and the third in July 2010 at the same time as the appellant's now estranged husband.
148. By way of the rule 24 response received by the Upper Tribunal on 22 June 2017 the appellant accepted that: (i) the First-tier Tribunal's decision should be set aside; and, (ii) the fundamental nature of the errors therein required the appeal to be remitted to the First-tier Tribunal to be determined afresh by a different judge. We concur, as did Mr Wilding.

149. Although, as a consequence of the concession made by the appellant, we need not set out in detail the nature of the errors in the FtT's consideration of the appeal, we do consider it appropriate to summarise them.
150. We have already set out, in our general conclusions above, a number of passages from Judge Majid's decision in this appeal (see [19] and [21]). The observations made in [28] to [31] above also relate to the instant case. We do not repeat these observations here, but they form part of our consideration of the lawfulness of the Judge's decision.
151. In addition, this is yet another case in which Judge Majid purports to allow the appeal solely on the basis that the appellant meets the requirements of the Immigration Rules in circumstances where the only ground of appeal available to the appellant was that the Secretary of State's decision was unlawful under Section 6 of the Human Rights Act 1998. There is an even greater irrationality in such a approach in the instant case because the appellant accepted before Judge Majid (and continues to accept) that she cannot meet the requirements of the Rules.
152. The errors that can be found in this decision do not end there, however. Given the concession made by the appellant that the appeal should be remitted to the First-tier Tribunal, and given the clear errors we have already identified above, rather than expend any more unnecessary judicial ink in providing a detailed analysis of the further errors we simply summarise them thus:
- (i) Judge Majid erred in directing itself at [22], [29] and [30] of his decision, that the immigration rules in play in the instant appeal contain a discretion which he was entitled to exercise for himself;
 - (ii) Judge Majid misdirected himself in paragraph 12(a) of his decision by treating the best interests of the children as being a "knock-out" factor. The children's best interests are a primary consideration but are not paramount. They are capable of being outweighed by other matters (see Zoumbas v SSHD [2013] UKSC 74 at [10(2)]); and,
 - (iii) In any event, the Judge's decision fails to disclose any lawful analysis of the children's best interests;
153. For the reasons given above, we find that the FtT's decision discloses multiple errors of law capable of affecting the outcome of the appeal and we set it aside. Given the fundamental nature of the errors identified we conclude that it is necessary for this appeal to be remitted to the FtT to be determined afresh by a judge other than Judge Majid.

IA/32901/2015

SAILESHKUMAR KHANTIBHAI PATEL
and
SECRETARY OF STATE FOR THE HOME DEPARTMENT

Representation:

For the Appellant: Mr A Otchie, Counsel

For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

154. The Appellant appeals against a decision of First-Tier Tribunal Judge Majid promulgated on 4 October 2016 (“the Decision”) dismissing the Appellant’s appeal against the Secretary of State’s decision dated 14 August 2015 refusing him leave to remain as a Tier 2 (General) Migrant.

155. The Appellant is a national of India. The Appellant entered the UK as a student on 10 March 2011. His leave in that category was extended to 30 October 2014. He made an in-time application on 29 October 2014 which was refused by the decision under appeal. The Respondent refused the application on the basis that the Certificate of Sponsorship (“COS”) on which the Appellant relied in his application was false. The application was therefore refused under paragraph 322(1A) of the Immigration Rules (“the Rules”) on the basis that the Appellant had exercised deception. As a result, the Appellant was given zero points for sponsorship, appropriate salary and maintenance and therefore also failed to satisfy paragraph 245HD of the Rules. He was also refused because he did not have a relevant qualification for the purposes of paragraph 245HD(d) of the Rules.

156. The central issue for the Judge to determine were accordingly whether the Appellant had exercised deception. As we note at [26] of our general decision, the Judge was required to determine this issue for himself based on the evidence before him. True it is in this case that he does refer to the correct burdens and standards of proof at [15] of the Decision. However, when it comes to determining the issue, the Judge says this:

“[17] Clear and convincing evidence is required for the Home Office to allege deception or any other moral turpitude against an Appellant. Such evidence is available for the Respondent to make the negative decision in this case and therefore I am bound to dismiss this appeal.

[18] I cannot ignore the “legal requirements” stipulated by immigration law. It is incumbent on me to advert to the new Rules giving respect to the intention of the House of Commons dictated by the supremacy of Parliament. The Appellant cannot benefit from the relevant Rules because the evidence he had presented to the Respondent has led it to make the negative decision.”

157. In relation to the Judge’s prior consideration of the evidence, paragraph [14] of the Decision is capable of amounting to a finding that the Respondent has discharged her burden. Based on the evidence recited at [11] of the Decision, that finding would be open to the Judge. However, contrary to the self-direction which follows, the Judge fails to take into account at [17] of the Decision, whether what is said by the

Appellant as recorded at [13] satisfies the burden on the Appellant. The Judge makes no finding as to whether the Appellant's explanation is credible. He appears to find at [18] that deception has been exercised because the Appellant produced the evidence on which the Respondent relied (i.e. the COS). But that is not the test.

158. The Judge also suggests at [19] in his conclusions that the burden is on the Appellant to the standard of a balance of probabilities. That is both wrong and contrary to his earlier self-direction (at least insofar as deception is concerned). As we observe at [22] of our general decision, if the reasoning in the Decision were otherwise sound, we might be inclined to view this as an immaterial error given the earlier self-direction. As it is though, although the Judge has earlier directed himself properly in accordance with relevant case law as to the burdens and standards of proof in a deception case, there is little sign that the Judge has thereafter applied the relevant test. Certainly, if he has, there is no evidence of his reasoning or findings leading him to the ultimate conclusion that he was bound to dismiss the appeal.
159. As Mr Wilding points out, even leaving aside the COS issue, the Appellant fails in this case unless he can provide evidence of a qualification meeting the requirement of paragraph 245HD(d) of the Rules. However, the errors of law in the Decision remain material. The Appellant is entitled to a reasoned determination of the deception issue not least because that has an impact on applications he may wish to make in the future, applying paragraph 320(7B) of the Rules.
160. The Decision therefore discloses a material error of law and we set it aside. Given the fundamental nature of the errors of law found and the Appellant's entitlement to have the facts of his claim properly determined, we agree with the parties that it is necessary for this appeal to be remitted to the First-tier Tribunal for redetermination by a Judge other than Judge Majid.

OA/07779/2015

**ENTRY CLEARANCE OFFICER - NIGERIA
and
ELIZABETH ALAGO OLAIYE STEPHEN**

Representation:

For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer

For the Respondent: No appearance

161. This is an appeal by the Entry Clearance Officer ("the ECO"). For ease of reference, we refer below to the parties as they were in the First-Tier Tribunal. The Respondent appeals against a decision of First-Tier Tribunal Judge Majid promulgated on 8 August 2016 ("the Decision") allowing the Appellant's appeal against the ECO's

decision dated 23 March 2015 refusing her entry for settlement with her British national partner. The Appellant is a national of Nigeria.

162. There were two issues in this appeal for the Judge to determine. The first was whether the Appellant is in a genuine and subsisting relationship with her sponsor. The second was whether the sponsor's income meets the relevant threshold. If the Appellant did not meet the Rules, then it was also necessary to determine whether her human rights would be breached by the refusal to allow her to enter.
163. In this case, one of the Respondent's grounds relates to the procedure adopted by the Judge at the hearing. It is said that the Judge "appeared to sacrifice his independence". That is a particularly troubling allegation. For that reason, by directions sent on 28 February 2017, Deputy Upper Tribunal Judge Zucker ordered that the parties should produce at the hearing all notes and/or record of proceedings made by them or their representatives at the hearing before Judge Majid. The Respondent has produced her notes. There has been no response from the Appellant or her sponsor.
164. By a letter received on 8 June 2017, the sponsor requested a change of the hearing date on 27 June 2017 on the basis that he lost his mother on 20 May 2017 and had to travel to Nigeria for the burial and church services afterwards and would not be back in the UK until 6 July 2017. By notice sent on 15 June 2017 ("the Notice"), the Tribunal informed the Appellant that the request would be considered only on receipt of the booked air tickets for the trip to Nigeria. No response was received.
165. In light of the Appellant's (or sponsor's) failure to comply with the Directions or to respond to the Notice, we determined that it was in the interests of justice to proceed in the sponsor's absence. We also noted that, if we reached a conclusion that the Decision should be set aside and the appeal be remitted, it would be in the Appellant's interests to have that done as soon as possible to facilitate an earlier redetermination of her appeal. We therefore indicated that we would determine the Respondent's appeal based on her grounds and all the materials on file.
166. In relation to the first of those grounds, the legal representative withdrew from the hearing before Judge Majid. That is for reasons recorded at [4] of the Decision. In short, the Judge says that the representative "took a dislike" to the Judge and indicated that neither he nor the sponsor could understand the Judge's questions. There is an issue raised by the Respondent based on her notes of the hearing whether what the Judge says about the questioning (that he was not in fact asking questions) is accurate. We do not need to reach any view about what occurred though since the procedural unfairness relied upon by the Respondent arises from what happened subsequently.
167. Understandably perhaps, the Judge, finding himself left only with the sponsor in person, wished to assist him. That is perfectly proper within certain bounds. There is however a line which should not be crossed between helping a litigant in person to

put forward his case and putting forward his case for him. In this case, the Judge indicated at [4] of the Decision that “[his i.e. the Judge’s] legal help to him would become apparent in the submissions”. That comment then leads on to a passage at [12] which is the focus of the Respondent’s complaint where the Judge said “I submitted on behalf of the Sponsor as per my promise.”

168. Taking the side of one of the parties is contrary to the requirement for judicial independence. Whilst the Judge may not have intended to cross the boundary of what is appropriate and what he says occurred may simply be badly expressed and contrary to his intention, the combination of what is said at [4] and [12] of the Decision gives rise to the inference that the Judge improperly took the side of the Appellant and in so doing breached judicial independence.
169. That is itself sufficient reason to set aside the Decision. However, we also find that ground two is made out. The section headed “The Relevant Law” is anything but relevant. As we note at [32] of our general decision, there is reference to “compassionate facets” without any clarity as to what those “facets” are. This is also the appeal incidentally which, at [13], makes reference to paragraph 320 which apparently has no relevance to the case at all. There is reference to the Forrester case concerning discretion. Discretion does not arise at all in relation to whether the Appellant meets the Rules. That was the first issue for the Judge to determine. He has entirely failed to do so.
170. The reasons why the Judge apparently concludes in the Appellant’s favour appear to be those set out at [15] to [16] of the Decision as follows:-

“[15] Even though immigration control is strict in this country, no appellate judge has ever said that one should say goodbye to compassion. Thus I am minded to give the benefit of my judicial discretion to this Appellant. If a child’s relationship with his/her parent can be regarded as a “Number 1 family” consideration, a husband’s relationship with his wife should also be considered with care.

[16] I cannot ignore the “legal requirements” stipulated by immigration law. It is incumbent on me to advert to the new Rules giving respect to the intention of the House of Commons dictated by the supremacy of Parliament. This Appellant should be allowed to join her husband who, going by the content of documents at my disposal, has been fully committed to her welfare. It is to his credit that the Respondent has not raised any objection to the fact that the sponsoring husband meets the legal requirement of being settled and resident in the UK.”

171. Whilst the Judge is right to point to the need to have regard to the Rules, he completely fails to remind himself of the provisions of those Rules. Had he done so, he would have noted that the central issues in this case were the genuineness of the relationship between the Appellant and her sponsor and whether the sponsor could meet the income threshold requirements. The Judge’s focus on discretion instead of on the Rules has led him into the error of failing to make any findings on the central issues. If his focus on discretion is intended to indicate that he allowed the appeal

based on Article 8 ECHR, then there is a failure by the Judge to assess proportionality in the particular context of a finding about the ability of the sponsor to maintain the Appellant.

172. As we noted above, the Decision must be set aside based on the conduct of the hearing in this case. The Respondent's second ground concerning the substantive consideration is also made out. The Judge has failed to make relevant findings and failed to provide adequate reasons for his conclusion.
173. The Decision therefore discloses a material error of law and we set it aside. Given the fundamental nature of the errors of law found and the Appellant's entitlement to have the facts of her claim properly determined, it is necessary for this appeal to be remitted to the First-tier Tribunal for redetermination by a Judge other than Judge Majid.

RP/00104/2016

**SECRETARY OF STATE FOR THE HOME DEPARTMENT
and
MANZOOR SHINWARI**

Representation:

For the Appellant: Mr T Wilding, Senior Home Office Presenting Officer
For the Respondent: Mr Basharat Ali, instructed by Aman Solicitors Advocates (London) Ltd

174. This is an appeal by the Secretary of State. The respondent, whom we shall call "the claimant", is a national of Afghanistan. He arrived in the United Kingdom as a minor and claimed asylum. He said that he was born in 1993 (making him 15 at the date of his claim) and that he had a fear of persecution from the Afghan authorities and from the Taliban because of having run away from the latter and because of his father's involvement in Hezb-e-Islami and subsequent death. His claim was refused: the Secretary of State did not believe either his story or his claimed age. He appealed, and the matter came before Judge Herbert in the Asylum and Immigration Tribunal in January 2010.
175. Judge Herbert heard, and assessed, the claimant's evidence. He did not believe the claimant's claim as to his age: he thought it was likely that the claimant would attain the age of 18 during 2010. He was, therefore still a minor, and his evidence had to be assessed with that in mind. He did not believe the claimant's story: he thought that the documentation said to support it had been concocted for the purpose of the claim. He accepted that the claimant's father might have been killed by the Taliban, but said there was "serious doubt" about whether he had been a commander as the claimant claimed; he decided that even making allowances for the claimant's youth

and applying the lower standard of proof applicable in asylum claims, the claimant had not established a fear of persecution for the reasons he claimed.

176. Bearing in mind, however, his conclusion as to the claimant's age, Judge Herbert applied the decision of the AIT in LQ [2008] UKAIT 00005: if the claimant were to be returned at the date of the hearing he would be at risk as a lone minor. He therefore allowed the appeal for that reason alone, indicating that the claimant was entitled to protection until he reached his eighteenth birthday.
177. The Secretary of State acted on the determination and granted the claimant refugee status on 17 February 2010. The grant was due to expire in January 2015. We do not know the reason for the length of the grant, but it has to be remembered that the claimant's age had not been the subject of a full fact-finding determination and no doubt it was safer to grant for a period that would certainly cover the whole of the remaining part of the claimant's minority. It is worth emphasising at this point that there has never been a decision, either by the Secretary of State or by a judge, that the claimant is or ever has been at risk for any reason except as an unaccompanied minor.
178. On 7 January 2015, before the expiry of his leave, the claimant sought its extension. That application was refused, and in addition on 4 August 2016 the claimant's refugee status was revoked on the ground that having reached the age of 18, in the words of art 1C(5) of the Refugee Convention, "the circumstances in connexion with which he was recognised as a refugee have ceased to exist". It was against the decision revoking his refugee status that the claimant appealed, and it was that decision that Judge Majid had to consider. The claimant, assisted by an opinion of the UNHCR, argued through his representative that a change of circumstances had for these purposes to be a change in the country and could not be a change in the individual, however durable.
179. In his decision, although claiming to have read the reasons for refusal and all other documents with care, Judge Majid makes no reference to the issue requiring determination, which was the autonomous international meaning (see R v SSHD ex parte Adan [2000] UKHL 67) of art 1C(5) of the Refugee Convention; accompanied by the question whether, if in principle the claimant's status could be revoked, he were now for some reason other than his minority at risk, so that he should continue to be treated as a refugee. The following rather confused account of the issues appears at paragraph 14 of his decision:

"14. Due to Judge Herbert's findings, it is clear that the Home Office had granted the Appellant refugee status and leave for 5 years. This leave automatically leads to the permanent indefinite leave to remain (ILR) but the Home Office did not do this in his case. That kind of status is withheld if the Appellant is guilty of some serious misconduct and there is a "fundamental and durable" change in the circumstances of the Appellant. In this case, the Appellant in his Witness statement specifically says that he has committed no offence and has been a good person in various ways. The Home Office cannot point to evidence to show why this Appellant should not be given the usual ILR."

180. There are two serious mistakes in that paragraph, the word “and” rather than “or” in the third sentence, and the last sentence which shows that despite his claim to have studied the papers, the judge had no idea at all what the Secretary of State’s position was. In the succeeding paragraphs the judge refers to the point raised by the UNHCR, but again it is seriously misstated: the point about the difference between personal and country changes is wholly omitted; again it is said that the Home Office had no evidence of a “fundamental and durable” change in the claimant’s circumstances, although it is difficult to see that ceasing to be a minor cannot be described precisely in that way. Anyway, the judge seems to make no attempt to decide what article 1C(5) means.
181. Then there is this:
- “19. In addition to the dispositive reasons brought to my notice by Judge Herbert, I must indicate one exceptional and compelling circumstance. I am sure everyone would admire the Appellant’s mother who permitted him to leave Afghanistan on his own for his survival because the Hezb-e-Islami had killed his father and, as cogent evidence persuades me, this violent group had indicated that they were now after the young Appellant. It would not be fair to take a chance with Hezb-e-Islami who are notorious for their misdeeds.
20. Having regard to the dictum given in Paragraph 21 I have good reason to allow this appeal.
21. The use of discretion was examined by the HC in the case Teisha Forrester v SSHD [2008] EWCH 2307. Sullivan J (later on promoted to an LJ and Senior President of all tribunals) did not dispute the SSHD’s contention that the decisions accorded with the Rules, technically, but pointed out that that was not the end of the matter because the SSHD had a discretion which had to be exercised with a modicum of intelligence, common sense and humanity.”
182. The first part of paragraph 19 appears to have no bearing on the claimant’s status at all. The second part appears to incorporate a finding (‘cogent evidence persuades me’) that although the claimant was not at risk from Hezb-e-Islami at the time of Judge Herbert’s determination, he is now. The determination reveals no trace of the evidence supporting that finding. Despite the fact that if that conclusion were sound the appeal would succeed, Judge Majid specifically says that he is allowing the appeal for a wholly different (and unlawful) reason: that the Secretary of State has a discretion to act outside the Immigration Rules, none of which were in any real sense in issue in this appeal. This is the decision which contains the long passage set out above, and also the incorrect statement of the standard of proof in asylum appeals.
183. The Secretary of State’s grounds of appeal, on the basis of which permission was granted, assert that the decision fails to deal with the principal point at issue as detailed in the reasons for refusal, fails to grapple with the fact that the claimant is no longer a minor and (if we may summarise) continues the conclusions of Judge Herbert without relating the facts to the date of the hearing before Judge Majid. There is also a complaint that the judge expressly did not put any concerns to the

Presenting Officer and (whatever they were) does not appear to have set relevant concerns out in his decision either.

184. On behalf of the claimant Mr Ali did his very best to persuade us to uphold the determination, but there can be no doubt that it is riddled with errors of law. It contains no proper discussion of, or answer to the questions posed by the refusal decision and the UNHCR's position, and is written in such a way as to suggest very clearly that the judge was unaware of this issue. If the assertion we have set out above is supposed to be a finding, on evidence before the judge, that the claimant is at risk, the reasoning is hopelessly inadequate in the light of Judge Herbert's decision, which Judge Majid purports to follow, that the claimant had failed to establish the factual basis for his claim in 2008. This is not a case where it would be right to say that the errors in the decision do not matter because the result is correct: there is no basis for a conclusion either that the appeal should have been allowed or that it should have been dismissed.
185. We find error of law and set aside the decision of Judge Majid. The question of the interpretation of art 1C(5) of the Refugee Convention is appropriate for determination in this Tribunal and we shall adjourn this appeal for that purpose before deciding what action to take under s 12(2)(b) of the 2007 Act.

DECISIONS

KHATTAB: HU/13552/2015

For the reasons set out above and as we announced at the hearing, we set aside the decision of Judge Majid promulgated on 23 May 2017. In this case, we re-make the decision allowing the Appellant's appeal.

MM: AA/06906/2014

EDO AND OTHERS: HU/01879/2015; HU/01881/2015; HU/01882/2015; HU/01883/2015

COMERY: IA/00866/2016

BOATENG-DANSOH: IA/23617/2015

KAUR: IA/30887/2015

BOPOLONGA: IA/31116/2015

BOATENG AND BEMPONG: IA/31918/2015

WANG: IA/32046/2015

OKPALA: IA/32286/2015

PATEL: IA/32901/2015

STEPHEN: OA/07779/2015

For the reasons set out in the individual decisions in these cases and in our general decision, we set aside each of the decisions of Judge Majid in each these cases. For the reasons given in our individual decisions, these appeals are remitted to the First-tier Tribunal for re-hearing before a Judge other than Judge Majid.

SHINWARI: RP/00104/2016

For the reasons set out above we set aside the decision of Judge Majid. The appeal is adjourned for further consideration in the Upper Tribunal.



C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 23 August 2017