

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

Appeal Number: PA/02064/2016

#### THE IMMIGRATION ACTS

Heard at Newport (Columbus House) On 6 July 2017 Decision & Reasons Promulgated On 14 July 2017

**Before** 

## **UPPER TRIBUNAL JUDGE GRUBB**

Between

A L (ANONYMITY DIRECTION MADE)

**Appellant** 

and

#### THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

### **Representation:**

For the Appellant: Mr R Sharif of Fountain Solicitors

For the Respondent: Mr D Mills, Senior Home Office Presenting Officer

### **DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an anonymity order. Unless the Upper Tribunal or Court directs otherwise, no report of these proceedings shall directly or indirectly identify the

appellant. This direction applies to both the appellant and to the respondent and a failure to comply with this direction could lead to Contempt of Court proceedings.

#### Introduction

- 2. The appellant is a citizen of Uganda who was born on [] 1996. He claims to have last entered the UK clandestinely in a lorry travelling from Belgium on 4 August 2015. Entry clearance which had previously been granted to him and upon which he had previously entered the UK on 5 March 2015 and again on 14 July 2015 before leaving clandestinely to travel to Belgium, expired on 9 August 2015.
- 3. On 24 August 2015 the appellant contacted the Home Office and on 27 August 2015 he claimed asylum.
- 4. On 12 February 2016, the Secretary of State refused the appellant's claims for asylum, humanitarian protection and under the ECHR.

# The Appellant's Appeal to the First-tier Tribunal

- 5. The appellant appealed to the First-tier Tribunal. In a decision dated 17 November 2016 Judge M Loughridge dismissed the appellant's appeal. He rejected the appellant's account that he was at risk on return to Uganda as a result of inter-clan violence.
- 6. The appellant sought permission to appeal to the Upper Tribunal. Permission was initially refused by the First-tier Tribunal on 16 January 2017, but on 13 March 2017 the Upper Tribunal (UTJ Finch) granted the appellant permission to appeal.
- 7. On 22 March 2017, the Secretary of State filed a rule 24 response seeking to uphold the judge's adverse findings and his dismissal of the appellant's appeal.

# The Appellant's Claim

- 8. The appellant's claim is that he is from the Pageya clan in Uganda. In 2005, his clan was attacked by a clan from a nearby village, the Nguni clan; the leader of which is Ogle Sevic (aka Ogwara Peter who is a police officer). The attack took place at night and many of his village were killed, including his father, grandparents, brother and sister. He and his uncle managed to escape and went to stay with friends in Kenya for two or three years.
- 9. Around 2008, he returned to Uganda to live with his mother. However, shortly after he went to live at an orphanage called the "S" which was arranged by his uncle. The appellant's uncle was concerned that the Nguni clan would eventually track them both down and kill them.
- 10. In 2015, the appellant's uncle considered that it was no longer safe for the appellant to remain in the main buildings of the "S" and so the appellant moved to a building used by the staff and others. However, the appellant went to the main premises every day which was about 45 minutes away by taxi.

- 11. On 1 July 2015, at around 10.00pm men came to the "S" and the appellant heard gunshots. But they ran away when an armed guard shot at them. The appellant, and others, ran away.
- 12. The next day a group of ten armed men with their faces covered returned to the "S" and asked where the appellant had gone and searched the premises.
- 13. The appellant subsequently learned that his uncle was killed in a clan fight on 5 July 2015.
- 14. On 14 July 2015, the appellant left Uganda and flew to the UK.
- 15. The appellant had a girlfriend in Uganda whom he had met in January 2014 who lived in the village where he was born with her parents. She also rented a room where they met. When he left Uganda, she was pregnant and in late August 2015 her family were attacked at their home which was burnt down and they had to move.

### The Judge's Decision

16. First, the judge noted that the appellant's account was "broadly consistent" (at para 27) where, he said this:

"In some respects the Appellant's account is broadly consistent. For example, he has always said that when he was eight years old his clan's village was attacked by a clan from a neighbouring village, and many people were killed including most of his family; that he managed to escape, with his uncle; that they initially went to Kenya, but then returned to Uganda, to Jinja, at which stage he initially lived with his mother but then started living at an orphanage called [the "s"]; that his uncle was always worried that the rival clan would track them both down; and that, in July 2015, precisely that happened and although he managed to escape his uncle was killed several days later."

17. Secondly, at para 28 the judge concluded that certain aspects of the appellant's account were not plausible. He said this:

"Conversely, in many respects the Appellant's account lacks plausibility. For example, if the Appellant's uncle became sufficiently concerned about the Appellant's safety for him not to be able to live at [the "S"], and to have to move to a different address some considerable distance away, why was it nevertheless considered safe for him to be physically present at [the "S"] during the day, and in the evenings? It simply doesn't make sense. Also, why did it take Ogale Sevic 10 years to trace the Appellant and his uncle? If finding them was within his power, it is likely to have happened far more quickly. It is also highly improbable in my view that if Ogale Sevic and other members of his clan went to the effort to travel 400 km from Gulu to Jinja, they would have made such an incompetent attempt to kill the Appellant on 1 July 2015. The Appellant's account is that several men exchanged gunfire with a security guard at [the "S"], and that the security guard managed to fend them off, and they left, albeit two dogs were killed; and that the next day a group of 10 armed men with covered faces went back to [the "S"] and asked whether they knew where the Appellant had gone, and searched the premises. It is highly unlikely my view that Ogale Sevic would send just two men to [the "S"] initially, who were fended off by a single armed security guard, if he had 10 men at his disposal."

18. Thirdly, the judge identified an inconsistency in the appellant's account concerning his uncle's involvement with the "S" at para 29:

"I also consider there to be several significant inconsistencies in the Appellant's account. For example, as far as I am aware he did not mention in his asylum interview, or in his witness statement, that his uncle was a leader at [the "S"], whereas in oral evidence he claimed this to be the case albeit that his uncle was rarely at the premises because his role was not a day-to-day/hands-on role. It seems very odd that he would not mention his uncle's connection with [the "S"] earlier on. Indeed, he gave the impression in the asylum interview that he didn't know much about his uncle's movements at all, and that they essentially lived separate lives."

- 19. Fourthly, the judge dealt with the background evidence and the absence of any such evidence concerning inter-clan violence at paras 31-33 as follows:
  - "31. However, the Appellant does not fear the Ugandan government, his fear is of the Nguni clan, and no meaningful objective evidence has been submitted in relation to inter-clan violence. I raised this with Ms Francina towards the end of the hearing. She said that it is well known that violence between clans, and between tribes, has been taking place in Uganda for centuries, and is still the situation. Effectively, her position seems to be that I should take judicial notice of inter-tribal/inter-clan violence/warfare, and that it is not necessary for the Appellant to establish this by way of objective evidence.
  - 32. I believe Ms Francina has significantly misunderstood the present-day situation in Uganda. There have undoubtedly been difficulties in the past, and widespread violence between the various factions which exist in Uganda. However, this has largely been because of political issues, and the quest for power within the country as a whole. I am not aware of problems either now or in the recent past of the type described by the Appellant namely one village being attacked and destroyed by a neighbouring village. The ongoing difficulties are between President Museveni's government and his political opponents, or those perceived to be in opposition to the government, and not at a local, clan level.
  - 33. I therefore decline the suggestion that I should take judicial notice of ongoing intertribal/inter-clan violence of the type alleged by the Appellant, either now/in 2015, or back in 2005. Accordingly I find the Appellant's account of the attack on his village in Gulu in 2015, and the attack on [the "S"] in July 2015, to be implausible. Lack of plausibility does not inevitably mean that the account is not credible, but it is the background against which I assess credibility."
- 20. Fifthly, the judge then dealt with a crucial part of the evidence relied upon by both parties. This consisted in a number of emails and correspondence. There was an email dated 4 February 2016 from Ms Maertens who was head of the International Team of the organisation based in Canada which was responsible for the "S". That email was sent following an enquiry from the Home Office concerning the claimed incident on 1 July 2015 when the appellant said the "S" had been attacked. That email confirmed that no such attack had occurred. In addition, there was an email from Ms Maertens the following day (5 February 2016) confirming that the appellant had been at the "S" for a couple of months but it was later found that he was too old to stay in the home and he was sent back to his family.

- 21. However, an email dated 22 February 2016 by an individual ("J") who claimed to be the "Head of Staff" at the "S" confirmed that the appellant was one of the boys at the "S" and sought to confirm the appellant's account, including the attack in July 2015. A letter from the "Head of Devotions" ("R") at the "S" dated 1 August 2016 was in similar terms.
- 22. In a further email dated 6 November 2016 from J, it was suggested that Ms Maertens had sent an email to the Home Office confirming what J had said and recognising that she had not provided the correct information in her email of 4 February 2016 for "safety reasons".
- 23. The judge noted the documentary evidence at para 26 together with the fact that no email from Ms Maertens had been produced by either party and there was no evidence that the appellant's legal representatives had attempted to contact Ms Maertens to obtain a copy of it:

"The first point to make is that I must determine the appeal on the basis of the evidence before me. This does not include an email from Ms Maertens confirming that the email from [J] dated 22 February 2016 is accurate. There is, however, an email from [J] dated 6 November 2016, which appears to suggest that such an email from Ms Maertens exists. If it does, I do not really understand why Ms Maertens has not been asked by Ms Francina to provide a copy. Although there was not a lot of time between the Respondent's Response to the directions dated 9 September 2016 and the hearing, Ms Francina certainly appears to have contacted [J] himself after that Response, but there is no evidence of any attempt to contact Ms Maertens. That is unfortunate because the existence of such an email is a critical issue. I will have to do the best I can to determine whether such an email exists on the basis of the other evidence available."

- 24. Before the judge, in response to directions was a statement made on behalf of the Secretary of State by Kelvin Hibbs attaching all the relevant emails held by the Home Office noting that the responsible person ("RM") no longer worked for the Home Office and his electronic account had been deleted. The printed email whilst containing those from Ms Maertens dated 4 February 2016 and 5 February 2016 to which I have referred, did not include any email from her confirming J's account and retracting what she had previously said.
- 25. At paras 34-42, the judge gave detailed reasons for preferring the evidence of Ms Maertens set out in her emails of 4 and 5 February 2016 to that of J and R set out in their documents as follows:
  - "34. The most important evidence is, in my view, the emails, and the letter from [R]. There is a stark difference between what Ms Maertens told [RM] in early February 2016, and what [J] said in an email dated 22 February 2016, an email 6 November 2016, and the letter from [R] dated 1 August 2016. The Appellant's argument in relation to the emails is, essentially, that Ms Maertens felt unable to disclose the full picture because she did not know who [RM] was, and that she subsequently confirmed to [RM] that the 22 February 2016 email from [J] was true. I have already dealt with that situation in paragraph 26 above.

- 35. The first observation I would make in relation to the emails is that it is unlikely that [RM] would print off hard copies of some emails but not others. It is not impossible, but it is unlikely, in my view.
- 36. My second observation is that although it is possible that [the "S"] did not inform Ms Maertens or anyone else at her organisation of the incident in July 2015, in an attempt to keep it secret, what is not plausible is that Ms Maertens' comments about the Appellant being found to be too old to be living there, and being sent away, were wrong. Given that she is the head of the sponsoring organisation she will obviously be aware of whether there is an age limit for the boys at [the "S"]. In contrast, the Appellant said in oral evidence that there was no age limit, and that many boys just as old as him stayed at [the "S"], and some even older; and that he continued to live at [the "S"] until he was about 18½ years old, and was never sent away.
- 37. On balance, I prefer the evidence from Ms Maertens, which means that what the Appellant has said is not true, and undermines his overall credibility. It cannot even be said that Ms Maertens was simply not aware of the position 'on the ground' because she has clearly personally spent time at [the "S"] including, it seems, subsequent to the months in 2010 when she says the Appellant was there.
- 38. Do the 22 February 2016 and 6 November 2016 emails from [J], and the letter from [R], constitute reliable evidence? Or have they been fabricated in order to support the Appellant's case?
- 39. Some aspects of the 22 February 2016 email are difficult to make sense of. For example, [J] talks about the man who killed the Appellant's family trying to shut down [the "S], having to change the name to [], and ongoing concerns about the safety of the boys. Why would closing down the orphanage be an objective for Ogali Sevic, given that in July 2015 the Appellant's uncle was killed and the Appellant himself disappeared? Surely, from Ogali Sevic's perspective, it was a case of 'mission accomplished'.
- 40. Of even more difficulty for the Appellant is the reference in the 22 February 2016 email to volunteers from Canada not being received anymore because of the situation. This email was written just a couple of weeks after an email from Ms Maertens in which he made no mention of staff having had to stop going to [the "S"]. Similarly, the 6 November 2016 email refers to the international ["S"] staff facing an "immigration ban", and yet no confirmation of this has been provided by Ms Maertens. Whilst I accept this email was only a few days before the hearing, it would have been relatively straightforward to obtain a corroborating email from her, which could have very significantly supported the Appellant's case.
- 41. Overall, I do not find the emails from [J], or the letter from [R], to be reliable, and I do not place any weight on them. It is inconceivable, in my view, that, as at 22 February 2016 volunteers from Canada were no longer going to [the "S"] because of the problems alleged to have been experienced, including the murder of a member of staff some six months previously, given that Ms Maertens said in an email just two weeks or so earlier that nothing happened in July 2015, and made no mention of any problems at all at [the "S"].
- 42. In contrast, I place considerable weight on the emails from Ms Maertens, and I reject the suggestion that she did not feel able to disclose information about the July 2015 incident because of fears for the safety of the boys at [the "S"]. [RM] had clearly identified himself in his initial email as a Senior Decision Maker with the Home Office, and he appears to have been using an official Home Office email

address. The fact that Ms Maertens has clearly stated that the Appellant was at the "S"] "in 2010 for a couple of months" and that he subsequently volunteered at the sister project to help run a soccer program, adds considerable weight to the cogency of her evidence. Put simply, she clearly recalls the Appellant, and I find her evidence compelling. I note that there was a short delay between the initial enquiry by [RM] on 28 January 2016 and the reply by Ms Maertens on 4 February 2016, which gave ample opportunity for her to check the position with the staff at [the "S"] if she felt the need. There may be other evidence which contradicts what she has said, and indicates that she was not aware of the full situation when she wrote those emails, but if so it is not evidence which is before. I am not persuaded that I should set aside her evidence purely on the basis of an email from [J] which claims that she sent another email, effectively retracting that evidence. There was an opportunity for such an email to be obtained and include in the Appellant's bundle, but that has not happened."

26. Finally, at para 43, the judge noted the absence of any objective evidence to support the inter-clan violence described by the appellant as having occurred in 2005 and thereafter:

"Similarly, no objective evidence has been put forward to indicate that inter-clan violence on the scale described by the Appellant in 2005 was an ongoing problem at that time, and without such evidence I regard it as implausible. Clearly I cannot say with absolute certainty that it did not occur. However, even on the relatively low standard of proof applicable in protection claims, I find that it did not happen."

27. Consequently, the judge found that the appellant's account was "largely false" (at para 44) and dismissed his appeal on asylum grounds and under Arts 2 and 3 of the ECHR.

### **Discussion**

- 28. In the grounds, which Mr Sharif supplemented in his oral submissions, the appellant challenges the judge's adverse factual finding on a number of bases.
- 29. First, Mr Sharif submitted that it was contradictory for the judge to state in para 27 that the appellant's account was "broadly consistent" and then in para 29 to go on and identify inconsistencies in his account. Mr Sharif pointed out that, in any event, although the judge said that there were "several significant inconsistencies", in para 29 he only identified one. Mr Sharif submitted that, in fact, that was not even an inconsistency because when the full transcript of the appellant's asylum interview was considered, at page 20 of 71, the appellant had said "my uncle had connection there who took me there" referring to the "S".
- 30. As Mr Mills submitted, that the fact that the appellant's account was "broadly consistent" did not mean that it was true. In fact, all the judge was seeking to state in para 27 (set out above) was that the elements of the appellant's account starting with the attack on his village in 2005 and ending with the attack on the "S" in July 2015 was part of his account throughout.
- 31. I do not accept Mr Sharif's submission. The judge was not required to accept the account simply because it was "broadly consistent" and went on to identify aspects

of the appellant's account which were implausible or inconsistent in paras 28 and 29. He also noted that there was no background evidence consistent with the appellant's claimed inter-clan violence. Further, he grappled with the apparently conflicting documentary evidence concerning the events in 2015. Provided those matters were properly matters that the judge could rely upon to doubt the appellant's claim as truthful, there was nothing inherently wrong and legally incoherent in the judge noting that the appellant's account was "broadly consistent". It is perhaps noteworthy that the judge begins his statement in para 27 with the words "[i]n some respects" the appellant's account is broadly consistent.

- As regards Mr Sharif's contention that the judge was wrong in para 24 to state that 32. there were "several significant inconsistencies", clearly he is correct to the extent that the judge went on only to identify one inconsistency. However, again that inconsistency is prefaced by the words "for example". Mr Sharif nevertheless submitted that it was not an inconsistency at all when the transcript of the appellant's interview was read. Whilst the appellant does refer to his uncle having a "connection" with the "S", the point still remains that subsequently (but not in his interview) the appellant claimed that his uncle was "a leader". Although the point is, perhaps, not as strong as the judge represented it to be, it nevertheless remains an inconsistency. Had it been the only reason for doubting the truth of the appellant's account, the actual inconsistency might well not have been able to bear the weight required for such a finding but, in truth, it formed only one of a number of reasons given by the judge for doubting the appellant's account. I am wholly un-persuaded that any imperfection in the judge's reasoning in para 29, if the other reasons for his findings are sustainable, was ultimately material to his adverse finding.
- 33. Secondly, Mr Sharif, relying upon the grounds, submitted that the judge's reasoning in para 28, setting out a number of aspects of the appellant's account which were implausible, was unsustainable in law. The grounds relies upon the decision of the Court of Appeal in <a href="https://example.com/HK v SSHD">HK v SSHD</a> [2006] EWCA Civ 1037 where the court points out the dangers of reasoning based upon "inherent probability" when considering evidence relating to societies with customs and circumstances that may be very different from those to which a decision maker in the UK would be familiar.
- 34. It is not necessarily impermissible for a judge to rely in his or her reasoning on an aspect of an appellant's account as being implausible. In <u>Y v SSHD</u> [2006] EWCA Civ 1223, having cited <u>HK</u>, Keene LJ (with whom Ward and Carnwath LJJ agreed) accepted this at [26]:

"None of this, however means that [the judge] is required to take at face value an account of facts proffered by an appellant, no matter how contrary to commonsense and experience of human behaviour the account may be. The decision maker is not expected to suspend his own judgment, nor does Mr Singh contend that he should. In appropriate cases, he is entitled to find that an account of events is so far-fetched and contrary to reason as to be incapable of belief."

35. There are, however, dangers in doing so as was recognised by the Court of Appeal in <u>HK</u> particularly where a particular cultural context (with which a judge may not be

familiar) is not taken into account. In  $\underline{Y}$ , having considered  $\underline{HK}$ , Keene LJ identified the dangers (at [27]):

"A decision maker is entitled to regard an account as incredible by such standards, but he must take care not to do so merely because it would not seem reasonable if it had happened in this country. In essence, he must look through the spectacles provided by the information he has about conditions in the country in question."

- 36. Consequently, where a judge has recourse to reasoning which, expressly or implicitly, doubts the plausibility or possibility of the events occurring as an individual claims, in the absence of other evidence such as documents to substantiate that reasoning, the judge runs the risk that his or her conclusion is simply speculation or a purported commonsense conclusion that does not stand up to objective scrutiny. But, that is not to say that the implausibility of an individual's account can never form part of the reasoning leading a judge to reject an appellant's account as true. A judge must always bear in mind that sometimes the implausible happens. The more features of the appellant's account that are implausible, the more likely it is that the appellant's account cannot stand up to scrutiny as true.
- 37. Mr Mills submitted that it was reasonably for the judge to conclude that the matters he referred to in para 24 were implausible. I accept that submission. First, it was open to the judge to take the view that it was implausible that the appellant's uncle would move the appellant from the main building of the "S" in order to protect him whilst the appellant went back to the "S" every day and spent his time there. Secondly, if, as the appellant claimed, the leader of the rival clan was a police officer and it was the appellant's case that his uncle feared he could be traced, it was improbable that it would take ten years, between 2005 and 2015, for that individual to track down the appellant and his uncle. Thirdly, it was open to the judge to find as improbable the appellant's account that, having found the appellant, the rival clan chief (being a police officer) would make such an incompetent attempt to kill the appellant initially; only to send back ten armed men the following day.
- 38. In my judgment, the reasoning of the judge in para 28 was properly open to him as a matter of law.
- 39. Thirdly, turning now to the emails and other documents, Mr Sharif submitted that the judge was wrong in law to state in para 35 that it was unlikely that the Home Office official would fail to print off Ms Maertens' retracting email if it had been sent but all of the remaining ones. He pointed out that the email trail put into evidence by the respondent was itself incomplete at page 2 terminating without the substance of an email sent by the Home Office to Ms Maertens being included.
- 40. In my judgment, Mr Sharif's submission places far too much emphasis upon what the judge said in para 35 that it was unlikely that the Home Office Officer would fail to print off and keep on file all relevant emails. The fact of the matter is that no such email was put before the judge retracting Ms Maertens' earlier emails which contradicted the appellant's account of the incident occurring in July 2015. The judge was entitled to have regard to the fact that the appellant's legal representatives had

not sought to obtain from Ms Maertens the email which, it could be reasonably concluded, if she had sent such an email she would have retained a copy of it. This was documentary evidence which the judge could reasonably expect to have been obtained and which, in its absence, he was entitled to take that fact into account in assessing the veracity of the appellant's account (see TK (Burundi) v SSHD [2009] EWCA Civ 40). In addition, the judge gave a number of reasons at paras 36-42 (set out above) why he preferred the evidence of Ms Maertens – as the Head of the team in Canada of the organisation responsible for the "S" – as set out in her emails of 4 and 5 February 2016. It was clear that the enquiry came from the UK Government to her and it was open to the judge to take the view that in those circumstances there was no good reason to believe she would have other than set out the true position in the emails that were before him. In those emails she acknowledged the appellant's presence at the "S" but, again, there were also inconsistencies between what she said and the appellant claimed, including that there was no age limit at the "S" (when there was).

- 41. The judge gave a very detailed and careful assessment of all the evidence, in particular the email and documentary evidence. For the reasons he gave, it was properly open to the judge to accept the evidence of Ms Maertens in her emails of 4 and 5 February which contradicted the appellant's account that an incident took place at the "S" in July 2015.
- 42. I would add that the judge was also, as Mr Mills submitted, entitled to take into account the absence of any background evidence to support the underlying basis of the appellant's claim namely that there was from 2005 ongoing inter-clan violence of which his village, his family and he were victims. The appellant's legal representative was unable to produce any background evidence to support that aspect of his claim.
- 43. For these reasons, I reject each of the appellant's grounds challenging the judge's adverse credibility finding and his conclusion that the appellant had not established that he would be at risk on return to Uganda.
- 44. The final ground relied upon by Mr Sharif concerned Art 8. He submitted that the judge had erred by failing to consider the appellant's Art 8 claim which was specifically raised in the skeleton argument relied upon by the appellant's (then) legal representative at the hearing. He accepted that there appeared to have been no oral submissions made by the legal representative in respect of Art 8. Nevertheless, Mr Sharif submitted that Art 8 had been relied upon in paras 25-29 and was a matter which the judge had to determine.
- 45. Mr Mills accepted that Art 8 was raised in the skeleton argument but, he submitted, the skeleton was in generic terms and no oral submissions appear to have been made. He submitted that the judge's failure to consider Art 8 was not material and his claim was weak and dependant upon him having no family in Uganda which was inconsistent with the judge's adverse credibility finding in the asylum claim.

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46. On balance, I accept Mr Sharif's submission on this ground. It does appear that the judge overlooked the fact that the appellant, in the skeleton argument, relied upon Art 8 when in para 2 of his determination he stated that: "There is no claim under Article 8 of the ECHR". The judge, as a consequence, neither sets out any of the evidence relevant to the appellant's Art 8 claim nor makes any findings in respect of para 276ADE and Art 8. Whilst the appellant's claim may be weak, it is difficult in the absence of any consideration or recitation of the relevant evidence by the judge to reach the conclusion that the appellant's claim under Art 8 was bound to fail and so the judge's omission to consider it was not material.

**47.** In these circumstances, I have concluded that the judge should have considered Art 8 and that the appropriate disposition of this appeal is to remit the appeal to the First-tier Tribunal and to Judge Loughridge to consider the appellant's claim under Art 8 alone.

#### **Decision**

48. For the above reasons, the judge did not materially err in law in dismissing the appellant's claim for asylum and under Arts 2 and 3 of the ECHR.

49. However, the judge did err in law by failing to consider the appellant's Art 8 claim. The appeal is, accordingly, remitted to the First-tier Tribunal to be heard by Judge Loughridge to reach a decision solely on the appellant's Art 8 claim.

Signed

A Grubb Judge of the Upper Tribunal

Date: 14 July 2017