Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/35009/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15 January 2018	**On 2 February 2018**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

MK
(ANONYMITY DIRECTION MADE)
Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
Respondent

Representation:
For the Appellant: Mr R K Rai, Counsel, instructed by Gills Immigration Law
For the Respondent: Ms R Pettersen, Home Office Presenting Officer

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

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DECISION AND REASONS

1. The Appellant is a citizen of India and her date of birth is [ ] 1983. She came to the UK on 16 March 2011 as a student with her partner with leave until 30 September 2012. On 5 September 2012 she applied for leave to remain under Article 8, which was refused in a decision of 29 August 2013. Her appeal against refusal was dismissed by the FtT. On 20 February 2015 she applied for leave to remain on family and private life grounds and this was refused on 19 May 2015 with an out of country right of appeal only.

2. Following an application for judicial review the application was reconsidered and the refusal maintained on 1 December 2015. The Appellant had an in country right of appeal. The Appellant appealed against this decision. Her appeal was dismissed by First-tier Tribunal Judge Amin in a decision promulgated on 24 April 2017, following a hearing at Taylor House on 15 March 2017. Permission was granted to the Appellant by Judge of the First-tier Tribunal P J M Hollingworth on 27 November 2017.

3. The judge heard evidence from the Appellant and considered the medical evidence, including a psychiatric report by Dr Dhar of 8 March 2017. The judge referred to a previous appeal in 2013 when a judge dismissed the Appellant's appeal on human rights grounds. There was no copy of this before the judge and I have not seen it.

4. The judge made findings at [15] to [42] of the decision. Those can be summarised. The Appellant married her first husband, P, on [ ] 2010. His parents did not approve of the marriage. They came together to the UK in 2011. He was violent to her. He left the Appellant in January 2012. She issued divorce proceedings. (The judge was not provided with a decree absolute but a certificate of entitlement to a decree nisi). Following the breakdown of the marriage the Appellant went to live with her friend BK, who supported her financially. She married S on [ ] 2015 in a religious ceremony. He was violent to her. She left him on 12 May 2015. She contacted Southall Black Sisters for assistance. She reported S to the police. He was arrested for threats to kill, common assault and false imprisonment against her. She is not aware of what happened. She did not provide evidence in the form of a witness statement to the police.

5. The judge found that the Appellant suffered domestic violence at the hands of both husbands. He found that she had narrated a reasonably consistent account of her domestic violence to Dr Dhar and to a Southall Black Sisters. The judge accepted that the Appellant's parents are deceased and she has no family in India. However, she did not accept that she has no friends there. The judge found it "implausible" that the Appellant, having lived in India for 27 years, would not have friends there. The judge found that the Appellant had been supported financially and accommodated by her friend BK and her "uncle" in the UK. The "uncle" is

not related to the Appellant. He lives in Kingston but did not attend the hearing and there was no evidence from him.

6. The judge considered the appeal under paragraph 276 ADE(1)(vi) of the Immigration Rules ("the Rules"). The judge concluded that the Appellant's abusive relationships had now come to an end. P has been deported and she was not aware of his whereabouts. Whilst the judge accepted that she has a "subjective fear" that if she is returned he may trace her, she concluded that there was no evidence that he would know that she had been returned. In relation to her second husband, who was in the UK, the judge concluded that she has no contact with him.

7. The judge made the following findings in respect of the evidence of Dr Dhar:

> "30. I accept the Appellant is suffering from PTSD as evidenced by Dr Dhar and the NHS hospital evidence. The assessments carried out by the in- house counsellor at Southall Black Sisters also supports this diagnosis. The Appellant has been assessed as someone who is at risk of suicide. However, I note from the consultant psychiatrist report [sic] that much of her anxiety and depression has been caused by her immigration status although her breakdown in relationships has contributed to the PTSD symptomps [sic]."

8. The judge stated as follows:

> "31. The Appellant has accepted that she only has Bhupinder as her close friend in the UK and she goes to the local temple to volunteer once or twice a month. The rest of the time she spends looking after Bhupinder's children whilst she works.
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> ....
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> 34. The Appellant has provided no evidence to show why as a single woman she would not be able to relocate elsewhere and set up her life. The Appellant has worked in the UK previously in a food factory (as noted in the GP records) and she will be able to utilise these skills on return. The Appellant has spent 27 years in India and she speaks Punjabi. She is aware of the culture in India and will be able to attend temples there. I accept that there may be initial hardships in settling but this does not reach the level of very significant obstacles to reintegration. The Appellant has a supportive close friend Bhupinder and an 'uncle' in the UK who will be able to assist her in the reintegration initially as the uncle and [BK] have been assisting her financially in the UK.
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> 35. I accept that the Appellant has PTSD and is receiving limited treatment in the UK. The Appellant has not shown, the burden being on her, that she would not be able to access treatment in India. The Appellant's Counsel in her closing submission has accepted that the Appellant was not relying on her mental health (PTSD) as it did not reach the level of Article 3 case law.

36. The Appellant claims she is in fear of her first ex-husband locating her but her fear is subjective. There is no evidence to show that he has attempted to locate her in the intervening period.

37. For all these reasons I conclude that the Appellant has failed to show that there are very significant obstacles to her returning to India.

38. The Appellant has sought to argue that there are compelling reasons for her appeal to be considered outside the Immigration Rules and in particular her mental health. I have dealt with these issues above.

39. Having regard to S.117B of the 2002 Act, I find that the Appellant falls far short of demonstrating that her circumstances are exceptional/and or compelling such that would cause me to consider the matter outside of the Immigration Rules, namely under Article 8.

40. I note from the Appellant's immigration history that rather than returning to India at the end of her dependant leave in 2012, she continued to stay in the UK unlawfully and entered into a further relationship. She now wishes to rely on that abusive relationship in support of her remaining in the UK, one that she would never have started had she chosen to behave correctly by leaving the UK. That kind of behaviour can rarely, if at all, relate to a finding that these circumstances are compelling and/or exceptional. For the same reasons the Appellant's private life does not attract a right to remain under the Immigration Rules and cannot be said to be exceptional and/or compelling in the circumstances.

41. The Appellant's immigration status has always been precarious and her private life was established when his [sic] status was precarious.

42. In conclusion, I accept that the Appellant's return to India will entail hardships. However, taking everything into account, I am confident that her reintegration will be achieved and will not, in the language of the Rule, give rise to very significant obstacles."

The Grounds of Appeal

9. The thrust of the written grounds is that as a victim of domestic violence, as the Appellant was found to be by the judge, the conclusions in respect of Article 8 were not open to the judge. Mr Rai argued that the judge failed to have regard to the Appellant's mental health when considering Article 8. She did not consider what was said in the psychiatric evidence or by the counsellor, Kinnari Kansara (subcontracted by Southall Black Sisters to provide counselling to the Appellant). She did not consider the letter of 28 February 2012 from Southall Black Sisters to Gills Immigration Law. The judge considered immaterial matters, namely that she would not have entered the second abusive relationship had she left the UK before the expiry of her leave.

10. Mr Rai argued that the error goes to the heart of the determination with reference to GS (India) & Ors v The Secretary of State for the Home Department [2015] EWCA Civ 40. He confirmed that no further evidence had been submitted by the Appellant. He submitted that if one looks at the psychiatric report it shows that the Appellant, who has been married twice, is a highly vulnerable person and that she has an untreated depressive disorder.

11. Ms Pettersen relied on the Rule 24 response.

The Evidence Before the FtT

12. The Appellant's own evidence at [43] of her witness statement of 6 March 2017 is as follows:

> "43. Thereafter I contact [sic] Southall Black Sisters for assistance. They assisted me and I started to receive counselling. I also contacted my GP and at last was able to openly tell them what I had been through. I was getting suicidal thoughts and just wanted to end my life. I had two failed marriages and no family to turn to for help. [BK] was with me all the way through. She went to the police station and the doctor's with me. At this point [BK] took me in. I have been living with her since."

13. The Appellant further stated that if she returns to India she has no-one there to depend upon and that "I may go back into depression". Her evidence is that she has been able to "overcome myself" with the help and support that she has received here.

14. BK's evidence is contained in her unsigned witness statement of 6 March 2017 and she stated that she is aware that the Appellant is receiving help from Southall Black Sisters and NHS Mental Health and that she was suffering from depression and that it is very evident that she needed help. She stated that there have been many occasions when the Appellant has started crying and told her that she wishes to end her life.

15. From the evidence before the judge, I have attempted to present a coherent account of events. An advocate from Southall Black Sisters met the Appellant on 22 May 2015 and carried out a detailed risk and needs assessment. She scored 14 on the CAADA DASH, which confirmed that she was at high risk of violence and harm. When they first met the Appellant, she was visibly distraught when recounting experiences and she was tearful. She was referred to the organisation's weekly in house support group, counselling services and English language classes. She attended in house counselling and the initial assessment of counselling needs on 17 September 2015, which showed that she was undergoing a very high level of psychological stress. It is concluded in that letter that her account of domestic violence is consistent with the experiences of

many South Asian women in the UK who experience abuse from their husbands and who have an insecure immigration status, rendering her vulnerable and completely at the mercy of her husband.

15. There is a letter of 22 October 2015 from Kinnari Kansara (of Woman 2 Woman Counselling & Consultancy Services) to the Appellant's GP. An initial assessment was undertaken on 17 September 2015 using a CORE-10 psychological wellbeing questionnaire and the Appellant scored 38 out of 40, indicating a very high level of psychological distress. She experienced extreme violence from her ex-husband from the day she married him on 27 February 2015. The conclusion is that Ms Kansara believed that the Appellant was suffering from posttraumatic stress syndrome and she was offered a total of sixteen sessions.

16. There is a letter from Ms Kansara of 28 January 2016 addressed to the Appellant's GP, Dr Singh. The Appellant's last session with her was on 28 January 2016. She felt the need to undertake a self-harm risk assessment. The Appellant told her that her personal circumstances were very difficult and she was living "on a day-to-day basis, feeling traumatised by this situation". [MK] CORE score at the end of the therapy was 38/40, which indicated a "very high and constant level of stress". Ms Kansara was concerned about the cumulative effects of the self-medication that the Appellant is taking and the self-harm issue. The Appellant told her that she does not care if she lives or dies and there was reference to an accidental overdose. The Appellant was worried about the counselling coming to an end. Ms Kansara recommended mental health support and ongoing counselling. The self-harm risk assessment referred to a previous accidental overdose.

17. There is a letter from Annabel Edwards, a psychological wellbeing practitioner working on behalf of West London Mental Health NHS Trust, of 13 December 2016 to the Appellant's GP, Dr G Singh. Ms Edwards confirmed that the Appellant attended an initial screening appointment on 13 December 2016. She stated that the Home Office rejected the Appellant's application and the Appellant felt depressed and hopeless. She cannot return to India as both her parents and brother are dead and she has nowhere to stay and that life would be very difficult for her as a single woman. The Appellant was taking antidepressants and has no appetite. She thinks about ending her life every day and felt hopeless about her immigration situation. Two months prior to this she tried to strangle herself with her scarf but her friend stopped her. She said that "It feels better to die than to live". She thought about ending her life, but she did not disclose any specific plans. She stated that she thought about cutting her wrists with a knife. Because of "suicidal thoughts" she was referred to SPA (my understanding is the acronym stands for Single Point of Access and it provides a 24-hour help line and other services for patients). There was no evidence from the Appellant about this or evidence of SPA involvement before the judge.

18. There was a letter from the Appellant's GP to the Appellant's solicitors, Gills Immigration Law, of 14 February 2017 and it states as follows:

> "I have gone through your questionnaire and have gone through record after that. For detailed reply I have attached all her record which lists all her problems and how were these treated. She has been on depression medication and I have attached copy of her prescription issued by WLMH team with this. She reports waxing and waning of her symptoms. Under such circumstances it is very difficult to say that how long it will take for her cure."

19. There is a letter from Southall Black Sisters to Gills Immigration Law of 28 February 2017 reporting that on 12 May 2015 they received a call from the Appellant for advice. She described the domestic violence that she accepted throughout her two marriages and according to the author of the letter it was clear that she was frightened and vulnerable.

20. Dr Dhar, a consultant forensic psychiatrist, interviewed the Appellant on 28 February 2017 and his report is dated 8 March 2017. Dr Dhar stated at paragraph 4.2 that there has been a significant deterioration in the Appellant's mental health since separation from her husband in 2012. Dr Dhar comments at 4.3 that she has been going to her GP on a regular basis and been prescribed antidepressants but she could not give any more details. She has also been referred to the local psychological services that operates out of primary care and was found to have severe symptoms and so was referred to secondary care services and that she has been seen by a consultant psychiatrist and prescribed high doses of medication. She could not give Dr Dhar any further information. She described to Dr Dhar a total sense of hopelessness and said that she would rather die than return to India. Dr Dhar confirmed that the Appellant has been depressed for at least three years but that is recently getting worse. She has physical symptoms. An increase in antidepressants did not help.

21. Dr Dhar's opinion and recommendations are recorded at section 6 of the report and can be summarised. The Appellant suffers from depressive disorder which is to a severe level. She appears dejected, pessimistic in outlook and with low self-worth and is currently a suicide risk. She has tried to harm herself recently and has ongoing thoughts of cutting herself. In his view it is particularly important that the domestic violence is considered because her first husband was deported to India and he believed that she was behind the decision to deport him. He may become threatening towards her parents, who are now deceased. Dr Dhar stated that there is a need for the Appellant to continue to receive treatment and support whilst here and that he understood that she has been referred to secondary care services/specialist services as the local psychological services felt that the symptoms were too severe. In Dr Dhar's view she has untreated PTSD connected to domestic abuse.

22. It is unlikely, should she be returned, that she would receive any kind of psychological support in India and her symptoms are most likely to deteriorate as she has no resources that she can rely upon to maintain a healthy existence there. Having been married twice and suffering victimisation from these marriages she will be highly vulnerable and exploitable on return to India. There is a genuine link between these risks and her current mental state and that she fears that her life would be at risk should she be returned without any support in place. The Appellant needs ongoing treatment and psychological support at the very least to make her feel more confident and positive about the future. It is unlikely she would be able to access any type of support in India even if it were available to her.

The Law

23. The Strasbourg court in Bensaid v UK [2001] 33 EHRR 205 at paragraph 47 stated as follows:

> "'Private life' is a broad term not susceptible to exhaustive definition. The court has already held that elements such as gender identification, name and sexual orientation and sexual life are important elements of the personal sphere protected by Article 8. ... Mental health must also be regarded as a crucial part of private life associated with the aspect of moral integrity. Article 8 protects a right to identity and personal development, and the right to establish and develop relationships with other human beings and the outside world. The preservation of mental stability is in that context an indispensable precondition to effective enjoyment of the right to respect for private life."

24. Paragraph 61 in Pretty v UK [2002] 35 EHRR 1 states:

> "As the court has had previous occasion to remark, the concept of 'private life' is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person. It can sometimes embrace aspects of an individual's physical and social identity. Elements such as, for example, gender identification, name and sexual orientation and sexual life fall within the personal sphere protected by Article 8. Article 8 also protects a right to personal development, and the right to establish and develop relationships with other human beings and the outside world. Although no previous case has established as such any right to self-determination as being contained in Article 8 of the Convention, the court considers that the notion of personal autonomy is an important principle underlying the interpretation of its guarantees."

25. At 65 the court stated:

> "The very essence of the Convention is respect for human dignity and human freedom. Without in any way negating the principle of sanctity of life protected under the Convention, the court considers that it is under Article 8 that notions of the quality of life take on significance."

The core value protected by Article 8 is the quality of life, not its continuance.

26. The Appellant does not rely on Article 3 health grounds but this does not necessarily entail failure under Article 8. I consider what the Court of Appeal stated in GS:

> "86. If the Article 3 claim fails (as I would hold it does here), Article 8 cannot prosper without some separate or additional factual element which brings the case within the Article 8 paradigm – the capacity to form and enjoy relationships – or a state of affairs having some affinity with the paradigm. That approach was, as it seems to me, applied by Moses LJ (with whom McFarlane LJ and the Master of the Rolls agreed) in MM (Zimbabwe) [2012] EWCA Civ 279 at paragraph 23:
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> > 'The only cases I can foresee where the absence of adequate medical treatment in the country to which a person is to be deported will be relevant to Article 8, is where it is an additional factor to be weighed in the balance, with other factors which by themselves engage Article 8. Suppose, in this case, the Appellant had established firm family ties in this country, then the availability of continuing medical treatment here, coupled with his dependence on the family here for support, together establish 'private life' under Article 8. That conclusion would not involve a comparison between medical facilities here and those in Zimbabwe. Such a finding would not offend the principle expressed above that the United Kingdom is under no Convention obligation to provide medical treatment here when it is not available in the country to which the Appellant is to be deported.'
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> 87. With great respect this seems to me to be entirely right. It means that a specific case has to be made under Article 8. It is to be noted that MM (Zimbabwe) also shows that the rigour of the D exception for the purpose of Article 3 in such cases as these applies with no less force when the claim is put under Article 8:
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> > '17. The essential principle is that the ECHR does not impose any obligation on the contracting states to provide those liable to deportation with medical treatment lacking in their 'home countries'. This principle applies even where the consequence will be that the deportee's life will be significantly shortened (see Lord Nicholls in N v Home Secretary [2005] 2 AC 296, 304 [15] and N v UK [2008] 47 EHRR 885 (paragraph 44)).
> >
> > 18. Although that principle was expressed in those cases in relation to Article 3, it is a principle which must apply to Article 8. It makes no sense to refuse to recognise a

> 'medical care' obligation in relation to Article 3, but to acknowledge it in relation to Article 8.'"

27. The court in *Kamara* [2016] EWCA Civ 813 considered very significant obstacles albeit in the context of deportation and stated;

> 14. In my view, the concept of a foreign criminal's "integration" into the country to which it is proposed that he be deported, as set out in section 117C(4)(c) and paragraph 399A, is a broad one. It is not confined to the mere ability to find a job or to sustain life while living in the other country. It is not appropriate to treat the statutory language as subject to some gloss and it will usually be sufficient for a court or tribunal simply to direct itself in the terms that Parliament has chosen to use. The idea of "integration" calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family.

Conclusions

28. The judge did not err. She considered the evidence of Dr Dhar and attached weight to it. At [35] of her decision she is concerned with Art 3, on which the Appellant did not rely. It is clear from a proper reading of the decision that the judge considered the Appellant's mental health in the context of Article 8 under the Rules and outside of the Rules. She was not assisted by the failure of the Appellant's representatives to set out a comprehensive and sequential account of treatment and medical opinion to date. I have attempted to piece together the evidence that was before the judge relating to this as no doubt the judge did.

29. The judge concluded that the Appellant had post-traumatic stress disorder, accepting the opinion of Dr Dhar. Having read Dr Dhar's report it is difficult to see how he came to such a conclusion independently. He seems to have adopted the conclusions of Ms Kansara (a counsellor) who believed the Appellant was suffering from Post traumatic stress syndrome (in 2015) and that she had (in 2016) felt the need for the Appellant to undertake a self-harm risk assessment. In my view, Dr Dhar also attached significance in forming his opinion on the evidence of Annabel Edwards (a psychological well-being practitioner) in 2016 who referred found that Appellant to have suicidal thoughts and had referred her to SPA. There is no evidence of independent tests undertaken by Dr Dhar. He also relied heavily on what he was told by the Appellant. In any event, the judge accepted the diagnosis and in the light of the unchallenged evidence of previous domestic abuse this is reasonable.

30. Dr Dhar stated that the Appellant was suicidal and the judge attached weight to this. However, it is unclear from his report how he arrived at this

conclusion independently from the opinions of other lesser qualified professionals. It is also unclear to me whether Dr Dhar was aware of the details of the previous attempt by the Appellant to take her life (on her account she had tried to strangle herself with a scarf and was prevented from doing so by a friend. There was no medical intervention). Before this the Appellant took an overdose, but scrutiny of the paperwork before me makes it clear that this was accidental. Dr Dhar does not attempt to explain his conclusions in detail or quantify the risk or attempt to explain how risk could be reduced. The judge was entitled to conclude that risk of suicide and the Appellant's poor mental health are in part as a result of her immigration status and a subjective fear on return from her first husband. The judge found that there would be no risk to the Appellant from either husband on return. There is no properly articulated challenge to this in the grounds. The challenge is a disagreement with the findings and an attempt to re-argue the point. She also found that there would be support for the Appellant in India having rejected her evidence to have no friends there. There is no cogent challenge to this finding. In any event, she found that those supporting her here could help her there.

31. From the evidence it appears that counselling sessions with Ms Kansara had come to an end in January 2016. Dr Dhar stated in his report that there was a need for the Appellant to receive treatment and support but there was no evidence of ongoing treatment. The most recent piece of medical evidence was that of 14 February 2017 from the Appellant's GP (see [18] above). It is unhelpful. Whilst it is clear from Annabel Edward's letter that the Appellant has been referred to SPA. There is no further evidence relating to ongoing treatment at the date of the decision before the First-tier Tribunal or at the time of the hearing before me. There was no evidence from the Appellant about ongoing treatment.

32. The Appellant did not rely on Article 3. There was no persuasive evidence before the First-tier Tribunal that treatment in India would not be available and accessible to her. There are bare assertions made by Dr Dhar. The Appellant has been here since 2011. She spent the first 27 years of her life in India.

33. The Appellant does not have a family life here capable of engaging the Convention. She has a relative here whom she refers to as "uncle" but he did not attend the hearing before the First-tier Tribunal to give evidence and he did not provide a witness statement. She has been here lawfully in 2011. She became an overstayer in 2013. She has remained in the UK without leave. As found by the judge she has posttraumatic stress disorder but there was no evidence before the judge of treatment at the time of the hearing in March 2017. The Appellant's own evidence in her witness statement is not that she was seeking treatment at the time or that she was unwell at the time of the hearing. Her evidence was that she would become unwell again should she return.

34. Whilst the judge accepted that return would entail hardship (see [42]). No doubt taking judicial notice of the stigma the Appellant may face in India as a divorced/separated single female and her vulnerabilities generally as a victim of domestic violence with mental health issues, she was entitled to conclude that there were no very significant obstacles to integration.

35. It was not argued that the Appellant meets the Rules for leave for victims of domestic violence. She does not for a number of reasons, the most obvious, that she did not come to the UK as a spouse of a person present and settled her, but as a dependent student and has no legitimate expectation that she could stay here independently of the relationship.

36. The judge did not end the assessment of Art 8 having determine the appeal under the Rules. She properly considered whether there were compelling circumstances to allow the appeal outside of the Rules. The Appellant's claim rested on private life. The judge considered all material matters, including the medical evidence. She did not mention the Appellant's mental health at [40], but a proper reading of the decision makes it clear that she understood that this was a material matter (see [38]) and mental health is a part of an individual's private life. She had already made findings about the medical evidence and the Appellant's mental health. There was no need for her to repeat them. The point is she factored the findings into the assessment of proportionality. She was entitled to conclude, particularly having proper regard to section 117B of the 2002 Act (there was no evidence that the Appellant was financially independent and as a matter of fact she is an overstayer) that the decision was proportionate. The judge did not consider immaterial matters at [40]. What the judge referred to is the Appellant's unlawful status and the applicability of section 117B (4) (b) of the 2002 Act. The assessment of Article 8 is lawful and sustainable.

Notice of Decision

There is no error of law in the decision of the FtT and the decision to dismiss the appeal is maintained.

Signed Joanna McWilliam Date February 1 2018

Upper Tribunal Judge McWilliam