



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/10241/2019 (V)

**THE IMMIGRATION ACTS**

Heard at Field House, London  
On Tuesday 3 November 2020  
via Skype for Business

Decision & Reasons Promulgated  
On 08 December 2020

Before

UPPER TRIBUNAL JUDGE SMITH

Between

MOHAMMAD [U]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Z Malik, Counsel instructed by City Heights solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**BACKGROUND**

1. By a decision promulgated on 13 March 2020, made following an oral face-to-face hearing, I found an error of law in the decision of Designated First-tier Tribunal Judge Manuell itself promulgated on 8 August 2019 allowing the Appellant's appeal. My error of law decision is appended to this decision for

ease of reference. I set aside Judge Manuell's decision and gave directions for the re-hearing of the appeal in this Tribunal.

2. In accordance with my directions, the Respondent filed and served a letter dated 6 April 2020 ("the Respondent's letter") setting out her position as to the Appellant's immigration status. I will deal with that when I come to the evidence. The Respondent's letter crossed with a Note and Directions dated 3 April 2020 but not issued until 24 April 2020 when I directed a case management review due to a delay in the filing of the Respondent's position statement.
3. However, following the Respondent's letter, I issued a further Note and Directions dated 6 May 2020, directing the Appellant to respond to the Respondent's letter and to file any further evidence in relation to the claim that was made at the error of law hearing that he was unable to return to Bangladesh due to a fear of what would await him there ("the new claim"). I also directed the Respondent to indicate whether she considered the new claim to amount to a "new matter" and, if so, whether she consented to me considering it. As I will come to, having reconsidered the legal position in advance of the hearing on 3 November, I formed the view that I was precluded in any event from considering the new claim except on a more limited basis due to a lack of jurisdiction.
4. On 28 April 2020 and 2 June 2020, the Appellant's then solicitors, Gulbenkian Andonian, wrote to the Tribunal to indicate that they had lost contact with the Appellant and asking for an extension of time to comply with the directions. In my decision dated 16 June 2020, I refused that extension and directed a resumed hearing via Skype for Business not before 31 August 2020.
5. On 8 October 2020, the Appellant, now represented by a different set of solicitors, City Heights, filed his supplementary evidence. Although that was significantly out of time, no objection was taken by the Respondent to its admission. Ms Everett did not have that evidence before her at the start of the hearing although accepted it had been served electronically on the Respondent. She was able to obtain a further electronic copy from the Appellant's solicitors during a short adjournment that I permitted at the start of the hearing and indicated that she was ready to proceed even though she had not been able to read all the evidence in detail.
6. I had before me the bundle which was filed for the First-tier Tribunal. I refer to that below as [AB/xx]. The Appellant also filed a bundle of further evidence at the time of the error of law hearing to which I refer below as [ABS/xx]. I also had a substantial bundle of new evidence filed for this hearing as above to which I refer below as [AB2/xx]. I heard oral evidence from the Appellant and his friend, Mr [AH]. Although the Appellant's solicitor asked for an interpreter for Mr [AH] and one was booked, the interpreter did not join the hearing. Mr [AH] confirmed however that he was able to understand and communicate

sufficiently in English to give his evidence and I observed no difficulty in his understanding of the questions or giving of answers.

7. The resumed hearing was heard via Skype for Business. It proceeded without technical difficulties. Neither party objected to the forum of the hearing or raised any issues in relation to its conduct.
8. At the outset of the hearing, I indicated to Mr Malik that I had formed the view that I did not have jurisdiction to consider the Appellant's new claim as a protection claim. I explain my reasoning below. I also pointed out to Mr Malik that the claim which the Appellant was now advancing was entirely new and that I would be making credibility findings, so far as I could consider the new claim, for the first time. As such, although I obviously had not formed a view about the credibility of the evidence at that stage, if my findings were adverse, the Appellant's only route of appeal would require him to satisfy the Court of Appeal that any onward appeal meets the second appeals test. Further, since I could not consider the claim as a protection claim, if the Appellant wished to claim asylum at a later stage, he would also be fixed with my credibility findings about the new claim.
9. I permitted Mr Malik a short adjournment to take instructions whether the Appellant wished to consider his position and wanted to seek a remittal of the appeal to the First-tier Tribunal or to withdraw it in favour of an asylum claim. Having taken instructions, Mr Malik informed me that the Appellant wished to proceed with the hearing before me.

### **THE NEW CLAIM: JURISDICTION**

10. The Appellant now claims to be at risk on return, mainly due to his sexuality. He claims that he identifies as homosexual. In brief summary, he says that Facebook posts of him attending the Gay Pride parade in Brighton in 2015 went viral and that his family in Bangladesh is now aware of his sexuality and has disowned him. He also says that he has received threats from persons or groups in Bangladesh as a result of the posts. He also claims to be at risk due to his activities with the Bangladesh Nationalist Party ("BNP").
11. Those claims are on any view protection claims. A protection claim is defined by Section 82 Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") as "a claim made by a person ('P') that removal of P from the United Kingdom (i) would breach the United Kingdom's obligations under the Refugee Convention, or (ii) would breach the United Kingdom's obligations in relation to persons eligible for a grant of humanitarian protection".
12. There are two reasons why I consider that I lack jurisdiction to consider what is clearly a protection claim as such. The first is that Section 82 of the 2002 Act gives a right of appeal if there is a refusal of a protection claim by the Respondent. A refusal of a protection claim is defined at Section 82(2)(b) as follows:

“P’s protection claim is refused if the Secretary of State makes one or more of the following decisions –

- (i) that removal of P from the United Kingdom would not breach the United Kingdom’s obligations under the Refugee Convention;
- (ii) that removal of P from the United Kingdom would not breach the United Kingdom’s obligations in relation to persons eligible for a grant of humanitarian protection.”

There is no refusal of a protection claim in this case and therefore no decision against which the Appellant may currently appeal.

13. Second, Section 84 of the 2002 Act sets out the grounds which may be relied upon by an appellant. Section 84(1) allows an appellant to appeal against the refusal of a protection claim on Refugee Convention, humanitarian protection or human rights grounds. However, Section 84(2) provides that “[a]n appeal under Section 82(1)(b) (refusal of human rights claim) must be brought on the ground that the decision is unlawful under section 6 of the Human Rights Act 1998”. Accordingly, the Appellant cannot argue in this appeal that he is at risk on return as that would amount to a claim that removal would breach the Refugee Convention which is not a ground available to him in an appeal against the refusal of a human rights claim. I add that he has never raised such a ground in this appeal.
14. Mr Malik drew my attention to the Tribunal’s decision in Birch (Precariousness and mistake; new matters) [2020] UKUT 00086 (IAC) where the Tribunal held that “[t]he prohibition on considering new matters in s85 of the 2002 Act does not apply to proceedings in the Upper Tribunal”. That would be relevant if the only objection to my considering the claim was that set out in my error of law decision, namely that the Secretary of State’s consent would be required in order to consider it. That is however a very different point to the fundamental jurisdictional objection which I set out above.
15. Having considered my preliminary conclusions, Mr Malik indicated that he did not wish to seek to persuade me that my interpretation was incorrect and that he would argue the Appellant’s new claim only on the basis that to remove him to Bangladesh as a “gay” man would be a breach of his Article 8 ECHR rights and lead to a finding that there are “very significant obstacles” to his integration in Bangladesh.
16. I therefore turn to summarise the issues before me and the legal framework which applies

### **THE ISSUES AND LEGAL FRAMEWORK**

17. I begin with the length of the Appellant’s residence in the UK. Before Judge Manuell, the Appellant claimed that he had been in the UK lawfully for ten years and was therefore entitled to succeed under paragraph 276B of the

Immigration Rules (“the Rules”). I will come on in due course to the evidence regarding the Appellant’s immigration history.

18. The Court of Appeal has recently considered the legal position regarding lawfulness of stay where there is an application for leave to remain made out of time in the case of Hoque and others v Secretary of State for the Home Department [2020] EWCA Civ 1357 (“Hoque”). In those cases, the Court of Appeal drew a distinction between “open ended” or “current” overstaying on the one hand and “book-ended” or “previous” overstaying on the other when looking at the periods which fall to be disregarded when assessing the period of lawful residence. In the case of “book-ended” overstaying where there is a gap in lawful residence but leave is subsequently granted, that gap is to be regarded as part of the lawful residence for assessing whether the requirement for a continuous period of ten years is met whereas in the case of “open ended” overstaying, the period is not taken into account.
19. Mr Malik noted that the Court of Appeal’s judgment in Hoque was reached by a majority of two to one (as I accept). He also accepted that the majority judgment does not assist the Appellant but reserved his client’s position in case the issue goes further as it may well do or he wishes to argue the point in any further appeal. I was informed that the Court of Appeal in the Hoque case is considering granting permission to appeal to the Supreme Court given the conflicting views expressed in that judgment.
20. In relation to the Appellant’s claim within the Rules, therefore, it is accepted that he cannot meet the long residence requirement in paragraph 276B. He cannot meet any of the other residence requirements in paragraph 276ADE. His case within the Rules is therefore firmly pinned to paragraph 276ADE(1)(vi) and whether there are “very significant obstacles” to his integration in Bangladesh.
21. It is to this issue that the Appellant’s new claim is relevant. Although I am unable to consider the new claim as a protection claim, I accept that whether the Appellant is in fact a gay man is relevant to his ability to integrate in his home country. Indeed, Ms Everett conceded that, if I were to find that the Appellant’s new claim as to his sexuality to be credible, he would satisfy paragraph 276ADE(1)(vi) of the Rules. It would then be a matter for the Respondent what period of leave to grant given that the Appellant has never claimed asylum on account of his sexuality.
22. The Appellant does not claim to have a partner or child in the UK. He does not make any claim based on a family life here (although he does have family members in the UK with whom he claims to have a strong relationship). His claim is based solely on his private life. If the Appellant does not succeed under the Rules, I still need to consider whether he is able to succeed outside the Rules. When doing so, the crucial issue is whether the decision to refuse the Appellant leave to remain is proportionate. To that end, I should balance the

interference with the Appellant's private life against the public interest in his removal.

23. When considering the public interest which applies, I am bound to have regard to the factors in Section 117B of the 2002 Act ("Section 117B") which are as follows so far as relevant:

**"117B Article 8: public interest considerations applicable in all cases**

- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –
  - (a) are less of a burden on taxpayers, and
  - (b) are better able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –
  - (a) are not a burden on taxpayers, and
  - (b) are better able to integrate into society.
- (4) Little weight should be given to –
  - (a) a private life, or
  - (b) ...,that is established by a person at a time when the person is in the United Kingdom unlawfully.
- (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
- (6) ..."

## **CONSIDERATION OF THE EVIDENCE**

### **Appellant's Immigration History**

24. The Appellant arrived in the UK as a student on 18 April 2008 with leave to remain to 2 October 2011. His leave was extended in this category to 11 April 2014 and again to 16 August 2015.
25. On 7 August 2015, the Appellant applied for further leave as a Tier 2 General Migrant. His application was refused on 14 October 2015 and his application for administrative review was rejected on 16 November 2015. The decision letters in that regard are at [AB/37] to [AB/49].
26. The foregoing chronology is accepted on both sides. However, thereafter the history is disputed.

27. The Respondent says that the Appellant's leave to remain ended on 16 November 2015 when his Tier 2 application was finally refused. The Appellant says that what happened next means that his leave was effectively reinstated.
28. The Appellant claimed to be the victim of a fraud perpetrated by his intended sponsor. He reported the matter to Sussex Police and Action Fraud and along with other victims to the Metropolitan Police ([4] of his statement at [AB/2]). He says that as a result of this and a judicial review challenge to the Tier 2 refusal, in which he achieved partial success, his leave did not end. I do not have evidence in relation to the judicial review which is said by the Respondent in the decision letter under appeal to have been refused on 6 June 2016.
29. The answer to the evidential dispute in relation to the Appellant's immigration history lies in the letter from the Respondent dated 18 May 2016 at [AB/50-52] which withdrew the reason for refusal of the Tier 2 application under paragraph 320(7B) of the Rules. That rule would have automatically prevented the Appellant's re-entry in the future. That may well be an indication that the Respondent accepted that the Appellant did not deliberately deceive her in relation to the Tier 2 application (as I will come to). However, the Respondent otherwise maintained the refusal as she was bound to do, given the lack of a genuine sponsor. There is no indication or evidence that the refusal of the Tier 2 application was quashed as a result of the judicial review.
30. The Appellant then made an application for further leave outside the Rules on 30 June 2016. That led to the letter dated 20 October 2016 at [AB/55] on which the Appellant places reliance as showing that he continued to have leave. That reads as follows:
- "1. On 18 May 2016 we sent you a letter which withdrew the finding of deception which was contained in the original decision letter issued in respect of your application for leave to remain in the UK as a Tier 2 (General) migrant.
2. This letter is supplemental to, and should be read alongside, the original decision of 14 October 2015 and the previous supplementary letter.
- 3. In view of the circumstances of your case, any application for leave to remain that you make in the UK within 28 days of the date you receive this letter will be treated as if it had been made within 28 days of the expiry of your last grant of leave and will not be refused on the basis that you are an overstayer.**
4. If you leave the UK and then make an application for entry clearance, for the purposes of paragraph 320(7B) of the Immigration Rules, the start date of any period of overstaying will be calculated from the date you received this letter."
- [emphasis added]
31. The effect of that letter is, as submitted in the Respondent's letter dated 6 April 2020, that "the Respondent...agreed to treat the subsequent out-of-time application dated 30 June 2016 for LTR on compassionate grounds of 30 June 2016 (which was subsequently varied to ILR) as 'in-time'". As also indicated in

that letter, the Respondent “does not have the power to extend periods of leave conferred by statute under s3C of Immigration Act 1971”.

32. If the Appellant had subsequently been granted leave, his period of overstaying, following the majority judgment in Hoque, would have fallen to be disregarded when calculating the continuous period of lawful residence. However, the Appellant was never subsequently granted leave.
33. The Appellant next made an application to vary his 30 June application to one for indefinite leave to remain. That was acknowledged by the Home Office on 16 December 2016 ([AB/56]). At that time, on any view, the Appellant had not accrued ten years’ lawful leave as he did not arrive in the UK until April 2008. The application was refused on 28 June 2017 ([AB/61-68]). The human rights claim was certified under section 94 of the 2002 Act. That refusal is the basis on which the Respondent indicated in the decision under appeal that the Appellant’s leave ended on 29 June 2017. As I have already noted, the Respondent has changed her position. However, even if that had been the end date for the Appellant’s leave to remain, he would not have completed a ten years’ period of lawful residence by that date.
34. The Appellant then submitted a further application based on his private life in July 2017 and varied that on 8 November 2017 (again prior to the completion of ten years’ residence) to one for indefinite leave to remain. That was therefore the application refused by the decision under appeal.
35. As I have indicated above, I agree with the Respondent’s revised position and I find that the Appellant’s leave ended on 16 November 2015, some seven and a half years after he arrived. Even if I am wrong about that, his leave ended on 29 June 2017 and therefore prior to him completing a period of ten years’ lawful residence.

### **Appellant’s Private life in the UK**

36. I leave aside for the moment the new claim based on the Appellant’s sexuality and focus on the evidence which was before Judge Manuell as contained in the first bundle and the further evidence which the Appellant produced thereafter and prior to the error of law hearing before me as contained in the supplementary bundle.

### **The Appellant’s Evidence and Documentary Evidence**

37. The Appellant’s first statement dated 17 July 2019 at [AB/1-4] focusses in large part on his immigration history which I have dealt with above. The following is the only evidence as to his private life:

“8. The Home Office also refused my application as they believe I have not established a private life here in the UK. However, I submit that I have a host of relatives including cousins and friends in the UK whom I have created strong relationships with. I have registered as a blood donor (Donor ID: P2100229A) in



the UK and I am a volunteer with The Red Cross organisation, where I have volunteered for 10 months. I am also part of my local cricket club and take part in the games frequently. I have been offered a job with the British Army however due to my leave I am unable to join the army. Once I am granted my visa, I will be able to join and serve the British Military Force. Please find attached letter from The British Army. **Subsequently, the Member of Parliament Mr Peter Kyle has also expressed his support for me in making my appeal in hope to acquire indefinite leave to remain."**

[emphasis in the original]

38. The Appellant submitted as proof of identity the photo page of his Bangladeshi passport which shows that it was issued in Dhaka on 8 October 2014. It is not clear whether the Appellant travelled to Bangladesh to renew his passport; he had leave to remain at the relevant time and could readily have done so. He has not produced the other pages of his passport which would show his travel in and out of the UK.
39. The Appellant has studied in the UK and has achieved a Second Class Honours (1<sup>st</sup> Division) degree awarded by the University of Central Lancashire in Business Administration in December 2013 ([AB/93]). It appears from the document at [AB/95] that the Appellant studied at the London School of Business and Finance. The Appellant also achieved a Master of Business Administration in Banking and Finance awarded by the University of Trinity St David (London Campus) in the academic years 2013/14 to 2014/15 ([AB/94]). Those documents indicate that the Appellant was studying in London until 2015. The Appellant has passed his Life in the UK test ([AB/97]).
40. When the Appellant applied for Tier 2 leave, he produced a certificate of sponsorship ("CAS") which the Respondent found to be false. That it was false is not disputed by the Appellant who says that he was the victim of fraud. The letters at [AB/78-79] and [AB/104-105] bear out his case that he reported the fraud in 2016. The correspondence with the Respondent to which I have referred above shows that the allegation of deception and reliance on paragraph 320(7B) was withdrawn. When I asked Mr Malik whether that necessarily indicated that the Respondent accepted that the Appellant was a victim of the fraud and had not knowingly obtained a false CAS, he pointed out that the Respondent had not taken any point on suitability in the decision under appeal. I accept that this indicates that the Respondent does not now say that the Appellant was involved in the deception.
41. The documents at [AB/106-125] show that, following the refusal of his Tier 2 application, and his subsequent application in June 2016, from July 2016 to November 2016, the Appellant was seeking another course of study or sponsor for employment. He was evidently unable to find another such course or employer.

42. A letter at [AB/84] confirms that the Appellant made an application to join the British Army and that the Army was in a position, in April 2018, to offer him employment on a conditional basis but could not do so unless he had a visa.
43. Following that offer, the Appellant made a written plea to the Home Office on 18 May 2018 (“the May 2018 letter”) to be given leave so that he could join the army ([AB/85]). As well as setting out his immigration history including that he had been defrauded by his supposed sponsor, the Appellant said this (which is now relied upon in relation to the new claim):

“Moreover I do really love UK more than anything else. I do love United Kingdom’s people and their kindness, people here call me ‘love and darling’ love Britain because you are literally the most polite nation ever I met I don’t find any differences between British people and sense of humour, I can be whoever I want to be here, love Britain’s people accent, cultures, the way of life, foods, the history. Since I born, I am fan of the literature William Shakespeare, David Beckham, The Queen and Royal Family. I am very much proud because I am living in here. I love very much Brighton & Hove city because it’s simply beautiful. This is an excellent city by the sea I have ever seen. I love very much The Seagulls, Brighton’s nightlife, The Park, Brighton’s Festival, The beach sunset, the pier, the land just beautiful! It feels like I am on holiday. It is very healthy to live here and people here are very friendly. I called Brighton the city of full of life. I cannot imagine a day without Brighton. **My favourite time is in Brighton gay pride season in August every year. I never missed it. I think few years ago, me and my friend were enjoying in gay pride. One of my friends he put those pictures in social media and it’s gone to viral. After that I got a death threat by email from an Islamist terrorist group called Harkatul Jihad from Bangladesh (please see attached that e mail). Since that time I am really scared to go back home. I am also scared to go back home as our opposition party is in power in Bangladesh. Because I was involved in politics back home.**”

[my emphasis]

44. The e-mail said to be attached to that letter does not appear in the bundle. Neither is any evidence produced of the Facebook posts. I will deal with this evidence in more detail when I come on to look at the new claim.
45. Peter Kyle MP (for Hove and Portslade) has supported the Appellant in his quest for further leave. The MP’s letter at [AB/81-82] dated 4 July 2019 sets out the Appellant’s difficulties and finishes with an expression of support for the Appellant’s appeal. His earlier letter confirms the Appellant’s volunteering and services as a blood donor as well as the application to join the army and finishes with the following sentence:
- “It seems to me that Mr [U] is working hard to contribute to his community and I support him in his application to make his residency permanent.”
46. There is also a supportive letter from the British Red Cross at [AB/80] and evidence at [AB/88-92] that the Appellant is a blood donor. The documents at [AB/134-143] show that the Appellant occasionally plays cricket for Brighton and Hove Cricket club.

47. The focus of the Appellant's second witness statement dated 2 March 2020 ([ABS/1-2]) is his private life. That statement is expressly stated to be in response to the Respondent's rejection of his case. The Appellant there says that he "further [relies] on the following relationships that [he has] formed" ([3] of the statement). As such, one would expect it to contain the fullest possible details about his private life and relationships formed by that time (March 2020). In that statement, the Appellant says the following:

“4. My friends and uncle have detailed in depth their relationship with me and our interactions.

5. I am a fan of cricket, I enjoy watching test matches and watching the English team play, it makes me feel at home and distracts me from my current situation.

6. I am often out with my friends, they are the support in my life. My uncle helps me substantively financially, he is closer than just an uncle and I owe him so much more than I could ever repay.

7. I am very close with the friends I have in the UK. I celebrate Eid and Ramadan in the UK and regularly attend prayers.

8. In order to keep going I do volunteer from the Red Cross. I believe it is a good cause and as I am unable to work I just want to help those that need help. I also give blood on a regular basis.

9. I help my friends out on a regular occasion, I love helping my friends out and watching the children grow.

10. I have applied before to join the army, this is still my wish. I have only ever wanted to be a positive person in society and fully embrace British culture. I have always tried to do the right thing. I struggle on a daily basis since my immigration issues, but I still love this country and the family and friends I have made in it.

11. I provide this statement in order to answer more questions and help the Tribunal make a decision in this matter.”

#### Evidence from the Appellant's Friends and Relatives

48. The initial evidence from such sources appears in the form of letters at [AB/18-27]. Those letters are written by Mr Ashok [T], Mr Ershadul [A], Mr Can [B], Mrs Roma [L] and Mr Cenk [D]. Mr [A] and Mrs [L] are the Appellant's uncle and aunt. Both were born in Bangladesh and now live in London. Mr [T] lives in Brighton and met the Appellant in about 2012. Mr [B] lives in London but met the Appellant when Mr [B] was studying at the University of Sussex. Mr [D] is a former employer.
49. Of those persons, two provided witness statements as part of the Appellant's supplementary evidence (Mr [A] and Mr [D] - [ABS/7-10 & 15-16]). The Appellant also produced statements at that time from Mr Zahid [H] and Md [R] (ABS/3-6 & 11-14)). The supplementary evidence was filed shortly before the error of law hearing in March 2020. One of the grounds relied upon by the Respondent was an error in relation to the assessment that there were "very

significant obstacles” to the Appellant’s integration in Bangladesh. I assume therefore that the evidence was intended to support the Appellant’s case both as to his private life and that he could succeed also under paragraph 276ADE(1)(vi) of the Rules.

50. Of those who provided statements for the First-tier Tribunal hearing, only Mr [D] gave oral evidence before Judge Manuell. None of those persons who provided evidence for the First-tier Tribunal hearing or at the error of law stage provided additional statements for the resumed hearing before me and none was called to give evidence for the Appellant. I therefore deal with this evidence based on the letters and statements in the initial and supplementary bundles.
51. Mr [T] confirms in his letter dated 7 July 2019 (AB/18] that he met the Appellant at a party “over 7 years ago”. He describes him as “caring, hardworking and thoughtful” and “honest, peaceful and conscientious”. He provides no detail about the relationship between himself and the Appellant nor how often he meets with the Appellant or socialises with him. They both live in Brighton.
52. Mr [B] says in his letter dated 11 July 2019 ([AB/22]) that the Appellant “is one of [his] very close friends”. He says that he has “known him for a very long time and very well”. He describes him as law abiding and “community minded” as well as hard working. Again, he provides no detail about their relationship nor the level and extent of their continuing contact.
53. Mr [A] and Mrs [L] provided letters which are at [AB/20] and [AB/24] respectively. Both attest to their family relationship and the Appellant’s good character. Mr [A] also provided a witness statement dated 28 February 2020 (ABS/15-16] which contains more detail as follows:
  - “2. I am the Paternal Uncle of Mohammad and he is my family in the UK. I have known Mohammad since he was very young. I have watched him grow from a child, and I am so sad to see him in his current circumstances.
  3. Mohammad is with me and my family in the UK pretty much every weekend. We are together for Eid gatherings, birthday parties and wedding celebrations.
  4. I am the main financial support of Mohammad in regards to his survival in the UK, I provide him with anything and everything that he needs to survive financially in the UK. He is my family and one of my own.
  5. Mohammad has only ever been a kind loving person, he has made many friends in the UK. He is kind and generous, as a personality he is wonderful and warm.
  6. I believe that he has grown closer as family member than just a nephew, he is my close family and I treat him like I would a son.
  7. I provide this statement in order to answer more questions and help the Tribunal make a decision in Mohammad’s matter.”

54. Mr [D] is a former employer but also a friend of the Appellant who lives and works in Brighton. In his statement dated 28 February 2020 ([ABS/7-8], he describes the Appellant's character as an employee. The Appellant worked for him from June to August 2015 as an assistant manager. In terms of their friendship, he goes on as follows:

"4. Mohammad became a very good friend, we have always met for coffee, go to the beach in Brighton in summer, have BBQs together and go for bowling whenever there is free time.

5. As Mohammad is struggling to survive in the UK, I help him financially, I give him money when he needs it as I hate seeing him this way. I would say that he is a very good friend of mine, and I will always help him on his bad days. He is loyal, kind and respectful as a person. Mohammad has a great sense of humour and would be a model citizen in the UK. If he has the right to work, he will be working with me immediately.

6. I provide this statement in order to answer more questions and help the Tribunal made a decision in Mohammad's matter."

55. Mr [H] is originally from Bangladesh. In his statement dated 28 February 2020 (at [ABS/3-4], he says that he met the Appellant about ten years previously, in 2011, at a Bengali festival. In relation to their friendship, he says the following:

"4. We see each other on a weekly basis and have many friends in common. We celebrate holidays together, religious festivals and nearly every week.

5. Mohammad is struggling financially, I help him out when I can, I will always do so as he is a wonderful person and a very close friend.

6. I honestly feel that Mohammad has been so strong in coping with his current issue and has continued to be a kind, caring and honest man.

7. I provide this statement in order to help the Tribunal make a decision in Mohammad's matter."

56. The final witness statement in the supplementary bundle comes from Md [R]. That statement is at [ABS/11-12] and is also dated 28 February 2020. Mr [R] is of Bangladeshi origin although now a British citizen. He says the following about his relationship with the Appellant:

"I am a long term friend of Mohammed and have known him for the last twenty years. We lived in the same hometown in Bangladesh. We have been close friends since childhood.

Mohammed entered the UK in April 2008 and I entered the UK to study in June 2008. We have always been close and studied at the same school when I studied my ACCA exams.

Mohammed is a brother to me, we have been close since we were children, he knows my family very well, he gets on very well with my wife and my two children. He stays with me often and we go out a lot as a family. We spend a lot of time together and he is actually a very good cook.

Mohammed has always been a good and kind person. I hate seeing him this way and struggling to stay in the UK when he has always done his very best to be positive as a person and a good person in British society.

I provide this statement in order to help the Tribunal make a decision in Mohammed's matter."

57. The supplementary bundle also contains five further letters of support. The first ([ABS/17]) is from a friend living in Brighton who has known the Appellant since 2012 (Mr Sadi) who says that "[a]s good friends [they] are always up to see each other" and that they discuss their lives and careers. He describes the Appellant as "kind to everyone, honest and peaceful". Mr Sadi is originally from Bangladesh and now a British citizen.
58. Mr Kibria is also a good friend who has known the Appellant for more than eight years. He says in his letter ([ABS/21]) that they "always meet up for coffee, dinner or any social events and any festival". They are in "regular" contact. He describes the Appellant as an "honourable individual and a good human being".
59. Mr Capucci is an Italian citizen who met the Appellant at a birthday party in Brighton five years previously. His letter at [ABS/23] is dated 2 March 2020. He lives in Brighton and says that he and the Appellant "always meet up for dinner, tea or coffees". He says that he joins the Appellant for Bengali festivals and they arrange barbecues on Brighton beach.
60. Mrs Sultana is originally from Bangladesh and now a British citizen. She lives with her husband in Reigate and says that the Appellant is her husband's best friend and often visits their home. She describes the Appellant in her letter (ABS/25) as "a very nice and honest person" who is law abiding and "will be a great citizen of British society".
61. The final letter at [ABS/19] comes from the Appellant's grandmother, also of course from Bangladesh but now a British citizen. She lives, it appears, with the Appellant's uncle and aunt in London. She says the following:

"I consistently think he is a part of my family. We don't celebrate any party or any special day without him. He is regularly with us. Whenever I cook something nice or especially Bengali food I always call him to come and join us. Se we can enjoy together. He used to live with us. Still he comes especially in the weekend and stay with us. [Mohammad] is a person of good moral character, polite, good manners, integrity, goodwill towards others and he has retained all those beliefs.

In his personal life as per I know, [Mohammad] has established his private life in the UK. He has many friends in the UK, among whom he is quite well respected and liked. He never has a bad word to say about anyone."
62. The picture painted from those statements in terms of the factors relevant to my consideration is that the Appellant is well-integrated into British society although tends to socialise with those from the Bangladeshi diaspora. The

evidence also suggests that the Appellant is very family focussed and sees his relatives from Bangladesh who are settled here on a regular basis. So far as friends are concerned, the letters and indeed the Appellant's own evidence at these stages indicate that the Appellant is a very sociable and outgoing person.

### The New Claim

63. As indicated previously, the Appellant's new claim is based on his sexuality and his political activities. As I have already concluded, I have no jurisdiction to determine a claim that the Appellant is at risk on return to Bangladesh. As such, the Appellant's activities for the BNP (if such are credible) is of limited relevance in this appeal although I will deal briefly with that evidence.
64. The new claim based on the Appellant's sexuality is of a different nature. It is relevant to the potential for his integration in Bangladesh. As I have already noted, Ms Everett conceded that, if I found as a fact that the Appellant is a gay man, I should also accept that there would be very significant obstacles to integration in Bangladesh.

### Medical Evidence

65. In his evidence for this hearing, the Appellant has produced a report from Ms Mai Atas-Kelly (BSc Hons, M.A, Post MA Dip, Post MA Dip CB, CPsyhol., registered CBT specialist) dated 10 August 2020. Ms Atas-Kelly is a consultant clinical psychologist. She provides a CV setting out her experience and includes a statement recognising her duty to the Tribunal and the need for impartiality. I am satisfied that I am able to give appropriate weight to her views, based on her experience. The level of weight which I can give to the report however depends on a critical evaluation of her evidence.
66. Ms Atas-Kelly assessed the Appellant based on one remote video call on 21 July 2020. There is nothing to suggest that she has treated the Appellant for his mental health problems. The "online interview" was conducted over 95 minutes and supplemented by psychological testing. It was based on "an extensive exploration of historical and precipitating factors, perpetuating factors, the client's presenting symptoms and difficulties (including non-verbal communication and presentation) and [her] knowledge and experience working with individuals presenting with similar psychological presentations". Ms Atas-Kelly herself observes that "due to the nature of the interview, expressions and emotional nuances may be more difficult to read and interpret".
67. As appears from the foregoing, and the content of the report, Ms Atas-Kelly has relied heavily if not entirely on what she was told by the Appellant. That includes the narrative of the symptoms which Ms Atas-Kelly has used to score the Appellant in testing (see [5.3] of the report). Ms Atas-Kelly does not record that she was provided with any documents in relation to the Appellant's immigration case or any medical history and I assume therefore that none were supplied. Her instructions were apparently contained only in an e-mail from

the Appellant's solicitors. As such, she will be unaware for example that the Appellant's new claim to be at risk and under threat due to his sexuality is a very recent one which he has not mentioned previously (save what is said in the May 2018 letter). Nor will she have been aware of the evidence of the Appellant and his witnesses as to his demeanour at other times and his pastimes and activities.

68. Ms Atas-Kelly records that the Appellant reports that "his difficulties have led to a myriad of psychological difficulties, which are predominantly centred on depression and anxiety". The Appellant told Ms Atas-Kelly that he was, at the time of their interview, taking anti-depressants and sleeping pills. He said that he used to take medication prescribed by a doctor in Bangladesh but was now (in July 2020) prescribed medication by his GP in the UK. He said that his GP had already, by this date, prescribed him medication and referred him to a psychologist ([5.3] of the report) but there is no other supporting evidence to show that he was prescribed medication prior to August 2020 or that he has seen a treating psychologist then or since.
69. Under the heading of "Background History", the Appellant told Ms Atas-Kelly that he experienced problems in Bangladesh in 2006-7 due to his political affiliations. This is not mentioned in his statement written less than a month after this interview. He also said that he recognised his sexuality whilst in Bangladesh, aged 14 years, when he was attracted to a school classmate but kept it private. This is not dealt with in his witness statement. In terms of the threats after the Facebook posts, he said that he "received homophobic threats and comments by the Muslim extremists and fundamentalists in Bangladesh", that "his mother stopped communicating with him and he is currently estranged from his family". The Appellant said that he had not had any romantic relationships but "he dated a few men he met at gay pride and clubs in the UK". He had not entered into any "serious relationship".
70. Ms Atas-Kelly observed that the Appellant cried during the interview and she also said that he seemed "neglected in some aspects of self-care". She said that he "appeared objectively worried and hopeless" and at times suffered some disturbed memory.
71. Ms Atas-Kelly has helpfully included the results of her psychological testing and measurement. She refers to the Appellant saying that he experiences low mood, spends "the majority of his time at home in his room ruminating about his problems", is of "low energy and low motivation" and has lost weight. He says that "insomnia was one of the prominent symptoms" and that he is lethargic as a result. Although he reported suicidal ideations and said he had self-harmed, he denied any active plans. The incident of self-harm reported to Ms Atas-Kelly is not mentioned in the Appellant's witness statement. He also said that "there is a marked decrease in his desire to spend time engaging in activities".



72. As to the development of his symptoms, the Appellant attributes the onset of his mental health problems to the refusal of his Tier 2 application, that is to say in October/November 2015. He says that the problems “were further compounded” when his sexuality was revealed, and his family disowned him (apparently in around January 2016). Ms Atas-Kelly reports that the Appellant thereafter said that “he gradually lost a sense of purpose and direction in life, which contributed to self-deprecation and perceiving himself as a failure”.
73. In terms of his “current life and health conditions”, the Appellant reported that “he feels lonely in too many people or friends, can’t do anything attentively, likes to spend time on his own, likes to spend time in dark and don’t like to turn light on, sometimes cries for no reason, can’t tolerate any good things or bad of other people, don’t like to get in touch with other people, scared always if anyone asks him about his life and immigration history, always feels like he is fighting against himself, his mind always saying hm to stay away from crowd, unconscious mind saying to do suicide”.
74. Based on the brief interview and her assessment based on the Appellant’s self-report and testing, Ms Atas-Kelly (tentatively) diagnoses a “Major Depressive Disorder with anxious distress, Severe”. She says that the Appellant “is presenting with psychological symptoms that are strongly suggestive of a psychological disorder”. She also says that the Appellant is at moderate risk of suicide although has no active plan or intent. Although he claims to have self-harmed in the past and had suicidal thoughts, there has been no actual attempt. She notes his claim that he would attempt to end his life if returned to Bangladesh.
75. Ms Atas-Kelly attributes the Appellant’s problems to “long-term unemployment, discrimination and threats targeted at him because of his sexual orientation, and immigration problems.”
76. As to treatment, Ms Atas-Kelly says that the Appellant is unlikely to recover without specialist treatment. Although she notes that the Appellant is receiving medication, she advocates more specialist intervention. She opines that his condition is likely to “inevitably worsen should [he] be pressured to travel to Bangladesh”. She advises against removal until his symptoms improve.
77. Ms Atas-Kelly does not consider whether the Appellant could be feigning his symptoms and presentation.
78. The Appellant’s bundle also contains GP prescriptions for various medication, dating back to the beginning of August 2020.

#### The Appellant’s Evidence

79. The Appellant’s most recent witness statement is dated 18 August 2020 and is at [AB2/3-7]. That is mainly concerned with the Appellant’s claimed sexuality, mental health problems, and political affiliations.

80. Dealing first with the Appellant's sexuality, he says that he did not disclose that in Bangladesh but, since being in the UK, he has enjoyed his freedom to live "being around with many LGBT people". He says he has "maintain[ed] casual partnership with many gay people" but provides no details of any of those relationships.
81. The Appellant repeats his account of the release of social media posts following the Gay Pride march in 2015. It was Mr [AH] (his witness at this hearing) who posted the pictures. The Appellant says that after this he "received threats from unknown individuals". He also says that his family members and other relatives in Bangladesh "prohibited me not to contact with them and do not want to keep relationship with me".
82. The remainder of that part of the statement concerns the treatment he might face if returned to Bangladesh as a gay man. As a result of Ms Everett's concession, I do not need to deal with this evidence.
83. The Appellant attributes his mental health problems to his "current fear of persecution and uncertain Immigration Status". He says that he has "access to a strong support system in the UK in the shape of [his] homosexual friends as well as an extensive network of friends in the British LGBT community". He says that he is "currently undergoing treatment" for his problems but does not expand.
84. The Appellant touches upon his political affiliations. There was no focus on this aspect of his evidence. He does not claim in his statement to have experienced any problems in the past based on these affiliations. As I have already noted, his evidence in this regard differs from his report to Ms Atas-Kelly that "the opposition threatened and attempted to harm him in 2006-2007 due to his political affiliations although the attempts made were unsuccessful". He has not of course claimed asylum based on any such risks. In terms of the Appellant's association with the BNP he says that he joined the party in Bangladesh in 2002, was elected as sports secretary whilst at college in 2004-2006 and joint secretary in 2006-2008. He does not claim to have had any involvement with the BNP since coming to the UK in 2008.
85. The Appellant finally summarises his private life claim as previously stated in the following terms:

"26. The Home Office also refused my application as they believe I have not established a private life here in the UK. However, I submit that I have a host of relatives including cousins and friends in the UK whom I have created strong relationships with. I have registered as a blood donor... in the UK and I am a volunteer with The Red Cross organisation where I have volunteered for 10 months. I am also part of my local cricket club and take part in the games frequently. I have been offered a job with the British Army however due to my leave I am unable to join the army. Once I am granted my visa, I will be able to join and serve the British Military Force... Subsequently, the Member of

Parliament Mr Peter Kyle has also expressed his support for me in making my appeal in hope to acquire indefinite leave to remain."

86. In his oral evidence, the Appellant confirmed that his witnesses in the First-tier Tribunal appeal knew of his sexuality as did those who provided statements at the time of his error of law hearing. He confirmed that this included his uncle. The Appellant said however that his uncle took a different view of the Appellant's sexuality from that of the rest of his family because his uncle knew it was "normal". He said that none of his witnesses had mentioned his sexuality because it had not "come up".
87. In relation to his mental health, the Appellant said he started having problems after he became the victim of fraud. He was unable to sleep and suffered nightmares. He became unable to take it anymore and spoke to a friend whose brother was a doctor and he was prescribed sleeping tablets. He confirmed however that he had only sought out treatment in the UK from March when the pandemic began. Before that he relied on friends coming from Bangladesh to bring his medication. He said that those were close friends and not family.
88. The Appellant asserted that he attended the Gay Pride march in all years from 2014, since he has lived in Brighton but that he met Mr [AH] there only in 2014 and 2015 and not after that. He said however that he continues to see Mr [AH] regularly when he visits London. He says that would be about once per month. They speak however once per week.
89. The Appellant was asked a number of questions about his failure to claim asylum based on his sexuality. He confirmed that Mr [AH] is a Bangladeshi national and that Mr [AH] had claimed asylum and got leave by that route in 2018. However, he then said that Mr [AH] had not told him "fully" what application he had made in order to get leave; just that he had an application pending. He claimed that it was not until the March 2020 hearing when the issue of the Appellant's sexuality was first raised that he had spoken to Mr [AH] and Mr [AH] had said that he could help.
90. The Appellant said that he and Mr [AH] had spoken about the plight of gay men in Bangladesh, that they were good friends and spoke often. He said however that Mr [AH] had not told him that he had been granted asylum based on his sexuality. The Appellant confirmed that he was not asked to give evidence in Mr [AH]'s appeal. The Appellant also confirmed that Mr [AH] had known that the Appellant did not have leave and also knew that the Appellant claimed to have been threatened following the Facebook posts (which posts were put on social media by Mr [AH]). The Appellant insisted though that it was not until March 2020 that he had found out about the basis of Mr [AH]'s claim when the issue had arisen in his own appeal.
91. In addition to confirming that his friends and family who had previously given evidence or provided letters of support knew of his sexuality, the Appellant also said that his previous solicitors had known but that they said there was no

need to revise his statement to take this claim into account. I note that the Appellant has been represented by no less than five legal representatives since June 2016 when he first made an application to remain based on his human rights or other compassionate factors. The 30 June 2016 application was made by SEB solicitors who also represented him in November 2017 when he sought to vary his human rights application to one for indefinite leave to remain which led to the decision under appeal. When he made the human rights application which he subsequently varied in November 2017, in July 2017, the Appellant was represented by Kingdom solicitors who also lodged the appeal on his behalf in June 2019 and conducted the First-tier Tribunal hearing of the appeal. Kingdom solicitors also lodged the supplementary bundle. However, thereafter, the Appellant changed solicitors (to Reiss solicitors). It appears that, after the error of law hearing, the Appellant once again changed solicitors to Gulbenkian Andonian solicitors. However, they informed the Tribunal that they were unable to make contact with the Appellant. The Appellant thereafter changed solicitors to City Heights solicitors who, it appears, had successfully represented Mr [AH] in his appeal.

#### Evidence of [AH]

92. Mr [AH]'s statement is dated 24 August 2020 and appears at [AB2/8-9]. He also gave oral evidence via Skype for Business before me.
93. Mr [AH] confirms in his statement that he met the Appellant first at Gay Pride in Brighton in 2014 and they met again in 2015. He says that they "took many close pictures for us and many others together there". He also confirmed that he had posted and shared the photographs on his Facebook page. He had removed the posts at the Appellant's request. The remainder of Mr [AH]'s statement is largely concerned with treatment of gay men in Bangladesh. There is no confirmation of his own sexuality beyond mere assertion nor any particulars provided about his own claim for asylum.
94. In his oral evidence, Mr [AH] confirmed that he had claimed asylum, he said in 2018 and was granted asylum in November 2018. He confirmed that he had been granted asylum following an appeal and said that the asylum claim was based on his sexuality, but he has provided no evidence that this is so. This is not dealt with in his witness statement.
95. Mr [AH] accepted that if the Appellant had said that he was returning to Bangladesh when he had no leave, he would have been worried about his safety as a gay man. However, and notwithstanding that the Appellant had no leave to remain in 2018, when Mr [AH] said he claimed asylum, he said he never talked about his own asylum claim with the Appellant nor asked whether the Appellant intended to claim asylum based on his sexuality. He said he had told the Appellant when he won his own case but not on what ground because the Appellant at the time had a case of his own pending.

96. When asked why he would not have disclosed the reason for the grant of asylum given that he and the Appellant were said to be close friends, Mr [AH] said that it was a personal circumstance and he also had mental depression so he did not share that information.
97. Mr [AH] said that he and the Appellant met about once per month or once every one to two months but then said that they talked or met once per month. He was last in Brighton in summer 2019. Notwithstanding that Mr [AH] confirmed that he and the Appellant were good friends, he said that he had not been asked to give a statement in the Appellant's first hearing at the First-tier Tribunal. He said that the Appellant had not told him about the hearing.

### Other Evidence

98. The Appellant's bundle of evidence for the hearing before me also contains a statement from Mr Muhammad Omar Gani who is said to have been "Co-operative Secretary London Mohanagar BNP" since 2016. He says that he was President of Jaityatabadi Chattradal (JCD) Chittagong City College in 2000-2002 and knew the Appellant at the time as the Appellant was involved with JCD at another college in the same city. His evidence about the Appellant's appointments for the BNP in the period 2004-2008 is consistent with the Appellant's own evidence. He then goes into a detailed explanation of the Appellant's involvement with the BNP since 2008 when he came to the UK.
99. The Appellant has not produced any evidence of the Facebook posts said to have caused him problems in 2015. I accept that Mr [AH] says he deleted them from his account and that may explain this omission. However, neither has the Appellant produced any evidence of the threat or threats he is said to have received by e-mail. There are no photographs of the Appellant at any Gay Pride event. The only evidence that the Appellant has ever attended Gay Pride apart from his say so and that of Mr [AH] is a ticket and e mail confirmation dated 29 July 2019, presumably the last time that the event was held in Brighton due to this year's pandemic.
100. The Appellant has produced some newspaper articles said to show that he and some friends attended a Gay Liberation Front event on 27 June 2020. This event is not dealt with in the Appellant's evidence. The attendance of the Appellant and his friends at this event is perhaps somewhat surprising given that the first of the photographs at [AB2/53] which appears in an internet article describes it as "[t]welve of the last surviving activists from the London Gay Liberation Front (GLF), 1970-74, some in their 70s and 80s, marched in London on Saturday, June 27 to celebrate the 50<sup>th</sup> anniversary of GLF and to reclaim Pride with political demands". It does not explain why there would be three young men in the background of the photograph in the newspaper article holding a "Gay Liberation Front 50 years out" banner who appear to be entirely divorced from the remainder of the photograph.

101. It is not said that this event was a wider march although I do accept that the veterans are said to have been supported by forty others. It is suggested that the Appellant is one of those shown in the front row of one of the other photographs (at [AB2/55]). The quality of the photograph makes it difficult to ascertain if that is indeed the Appellant.
102. The Appellant has also produced other photographs at [AB2/126-137] indicating that the Appellant was in London and possibly attended the march. There is for example a photograph of the Appellant wearing a "Pride in London Lockdown" at [AB2/137]. He appears to be standing with what may be one of the veteran marchers.
103. The Appellant has also included a membership card for the Royal Vauxhall Tavern which is said to be a cabaret club. He has also provided a number of photographs said to be of him with various "gay friends" (according to the annotations on some) which show two or more males having drinks or a meal together. He has also produced screen shots said to be of a "virtual meeting with say it loud club's members about managing anxiety".
104. I do not need to deal with the remaining background evidence about the plight of gay men in Bangladesh given Ms Everett's concession that the Appellant would be at risk on return as an openly gay man who would not wish to behave discreetly on return if I accept the credibility of his new claim based on his sexuality.

### **FINDINGS OF FACT**

105. I have already dealt with my findings about the Appellant's immigration history. The issues concerning the strength of his private life in the UK are ones for assessment rather than factual findings. As Mr Malik accepted, therefore, the only issue on which factual findings are required are whether the Appellant's new claim based on his sexuality and political activities (so far as relevant to integration on return) is credible.
106. I begin with the May 2018 letter which is the first intimation of the new claim based on the Appellant's sexuality. I accept that the content of that letter is consistent with the Appellant's broad account that he received a threat or threats following the posting on Facebook of some photographs of him attending Gay Pride in 2015. I also accept that the Appellant's evidence about the posting of such photographs and that the Appellant said that he had been threatened as a result is consistent with Mr [AH]'s evidence.
107. However, I do not consider that the account given in the May 2018 letter is entirely consistent with the new claim for two reasons. First, the Appellant does not say in the May 2018 letter that he attended the Gay Pride march because he identified as homosexual. Consistently with the remainder of what is said in the May 2018 letters, he says only that Gay Pride is part of the Brighton social life which he enjoys. Of course, in cases such as this that might

be attributable to an unwillingness to disclose his sexuality. However, that is not this case. The Appellant confirmed that his friends and family were aware of his sexuality so he would have had no reason to hide that in the May 2018 letter. On a plain reading of the May 2018 letter, the Appellant suggests only that it was his attendance at the Gay Pride event (and therefore perceived sexuality) which had led to threats from one, single, identified source (an Islamic group).

108. Second, the Appellant's account as to the threats he received as a result of the Facebook posts has varied over time. In the May 2018 letter, he says that the threat came from a particular Islamist terrorist group. He refers only to one e-mail threat (which was not attached to the letter in the evidence). The Appellant told Ms Atas-Kelly that he received "homophobic threats and comments" (plural). In his witness statement for this hearing (dated less than a month after his interview with Ms Atas-Kelly), he said that the threats came from "unknown individuals". He has also expanded upon his assertion that the threats arose only from the Facebook posts in 2015 to a claim that there were Facebook posts of him "attending various LGBT events". None of these threats appear in the documentary evidence as one might expect them to if made via social media or e-mail.
109. The Appellant has also elaborated on his account of threats by suggesting that his family in Bangladesh has disowned him. That was not mentioned at all in the May 2018 letter.
110. I accept that Ms Atas-Kelly's report provides some support for the Appellant's claim based on his sexuality. However, as would be expected, that report is based on what the psychologist has been told by the Appellant about his background, the reasons for his symptoms and even the symptoms themselves.
111. I have already pointed out Ms Atas-Kelly's own comment about the limitations of an interview conducted remotely. She has only seen the Appellant once via this medium. She did not apparently have any of the medical history confirmed by the Appellant's records nor any of the evidence from the appeal.
112. This brings me on to my main concern about the content of the report and the weight I can give it in consequence. Ms Atas-Kelly paints a picture in her report, based on the Appellant's say-so, of a gentleman who lacks self-worth, is inactive, has few friends and spends most of his time alone at home, "ruminating about his problems". I scarcely need to draw attention to the significant difference between what is said in the report and what is said in the witness statements including the Appellant's own statement for this hearing where he speaks of his continuing strong social relationships with his friends and relatives, frequent activities for his cricket club, and voluntary work for the Red Cross. The Appellant told Ms Atas-Kelly that his symptoms emerged in late 2015 and yet the statements and letters of support for the First-tier Tribunal

hearing, at the error of law stage and even now do not support the picture painted by the Appellant of his mental state to Ms Atas-Kelly.

113. The Appellant did not mention any mental health problems or difficulties sleeping in his previous evidence. In spite of mentioning, for example, the Appellant's financial struggles, the testimony of his witnesses as to his character and behaviour do not support an account of depression or other mental health problems such as the Appellant has portrayed to Ms Atas-Kelly.
114. The Appellant says that he sought help from his GP in the UK only after the start of the pandemic as, before then, he obtained medication from Bangladesh. I was not entirely clear whether that was medication prescribed by a GP in Bangladesh remotely or whether it was ordered via the internet and brought from Bangladesh by friends. However that occurred, though, there is no documentary or witness evidence from those friends showing that the Appellant sought help or medication or was prescribed any prior to the prescriptions from a GP in the UK and letters from the NHS, which prescriptions and letters date back only to August 2020, around the time the Appellant obtained the psychologist's report and indeed after his interview with Ms Atas-Kelly. The incident of self-harm which the Appellant reported to Ms Atas-Kelly is not mentioned in any of his witness statements and is not supported by any other independent evidence.
115. For those reasons, whilst I accept that Ms Atas-Kelly has the appropriate qualifications to provide the report which she does and I do not question her objectivity, I can give her report little weight in support of the Appellant's new claim. She relied largely if not entirely on what she was told by the Appellant including as to his symptoms. She did not consider whether the Appellant might be feigning his symptoms. The self-reporting is not borne out by and is inconsistent with the other evidence as to his behaviour and demeanour (and the Appellant's reporting is also inconsistent on other aspects of the Appellant's case).
116. Even if I accept that the Appellant has some mental health problems (which I do not), Ms Atas-Kelly can only rely on what she is told by the Appellant as to the causes of those problems. The Appellant himself has indicated that part of his problems, indeed in the early stages of his evidence the only problems, revolved around his immigration status and inability to remain in the UK. Ms Atas-Kelly was not apparently informed, for example, that the Appellant has not claimed asylum in relation to the problems which he claims to have attributable to his sexuality. She was not therefore able to assess what difference that might have made to her acceptance of the Appellant's account.
117. Turning then to the other evidence produced in support of the Appellant's sexuality, I accept as credible that the Appellant and Mr [AH] are friends. Although they gave slightly different accounts as to the extent of their



relationship currently, I accept that they do continue to maintain contact as friends.

118. I am also prepared to accept that they met at Gay Pride in Brighton in 2014 and 2015. Their evidence in this regard was consistent although could of course have been rehearsed. However, this and the account of the Facebook posts following the 2015 event is consistent with the May 2018 letter. I accept therefore that there were posts on Facebook of the Appellant in attendance at Gay Pride in 2015. That was however some five years ago. Even if I accept that the Appellant continues to attend that event, that does not mean that he is gay. As I have already indicated, the Appellant did not actually go so far as to say that he was a gay man in the May 2018 letter. The only evidence of the Appellant's attendance at Gay Pride, in any event, is a ticket receipt for the 2019 event. It is notable that the only evidence of attendance at an event in support of gay rights comes after the March 2020 hearing (with which I deal below).
119. I also do not accept as credible that the Appellant has received threats as a result of the Facebook posts. If he has, those were limited to the one incident reported in the May 2018 letter; in other words in August 2015 or possibly January 2016 (on one version of his evidence) he received threats by e-mail from one single source based on his perceived sexuality arising from Facebook posts of his attendance at one Gay Pride event.
120. Nor do I accept as credible that the Appellant's family in Bangladesh has disowned him following the Facebook posts. The Appellant's uncle, aunt and grandmother living in the UK have provided statements or letters in support in this appeal and none has mentioned any family rift as I would have expected, particularly given the picture they paint of a young man committed to his family.
121. This brings me on to the second problem with the Appellant's new claim when compared with the earlier evidence. He said that all of his friends and family were aware of his sexuality. It is notable that, in relation to his new claim, he has not relied on any of the same witnesses as previously. For that reason, none has produced a statement affirming that they were aware of the Appellant's sexuality and had simply neglected to mention it for whatever reason. Several of the Appellant's previous witnesses are of Bangladeshi origin and would therefore, presumably, be aware of the problems faced by LGBT individuals in Bangladesh and yet none thought to mention this as a difficulty for the Appellant on return. I do not find it credible that none of them would think to mention it in their letters or statements.
122. Turning then to the evidence which the Appellant produced for this hearing, I found Mr [AH] an unimpressive witness. His statement does not even deal with the basis on which he was granted asylum. His asylum claim was allowed on appeal and yet no copy of his appeal decision is produced. I therefore have no documentary evidence in support of his assertions (not covered in his

witness statement) that he was indeed granted asylum based on his sexuality. For present purposes, I will accept that to be the case.

123. Even if it is the case that Mr [AH] succeeded in his claim based on his sexuality, due to the lack of evidence from him (for example, his appeal decision), I have not had the opportunity to consider how closely the Appellant's claim (insinuated for the first time in May 2018 at a time when Mr [AH] was apparently claiming asylum) mirrors that of Mr [AH] and whether there are any inconsistencies in their accounts if this incident was part of Mr [AH]'s case. In spite of the Appellant now saying that he was a close friend of Mr [AH] and of the same sexuality, he was not called to give evidence in Mr [AH]'s appeal. Mr [AH] was not asked to give evidence or even give a statement or write a letter of support in the Appellant's appeal until now.
124. Also of importance to my assessment of credibility is the assertion by Mr [AH] and the Appellant that they had not discussed the reasons why Mr [AH] had claimed asylum nor whether it would be beneficial to the Appellant to do so. The Appellant's evidence in this regard was not entirely clear. He said at one point that Mr [AH] had told him about the basis of his own claim in 2018 but then said that he did not tell him "fully" and insisted thereafter that he did not know until after the March 2020 hearing that he could claim asylum. Mr [AH] gave an explanation for not telling the Appellant at the time which was wholly unpersuasive. I do not accept as credible that good friends who share nationality and are said to share a common sexuality would not discuss such things as their claims to remain based on that sexuality, particularly where it is Mr [AH]'s case as the Appellant's that both would be at risk on return to Bangladesh.
125. Nor do I accept the Appellant's evidence that he has not included details of his new claim previously nor claimed asylum due to the legal advice he has received. If he is to be believed, five different firms of solicitors have failed to include in evidence or covering letters for applications details of a central facet of his private life in a claim to remain in the UK based on that private life. That is simply not credible. I reiterate that this is not a case where the Appellant says that he has been concealing his sexuality till now.
126. Even now, when the Appellant has known since, at the latest March 2020 of the option of claiming asylum based on his sexuality, he has chosen not to do so. Even at the hearing before me, when given the option to withdraw the appeal in order to claim asylum, he has declined to do so. That is seriously damaging to his credibility as it suggests to me that he does not wish to be interviewed in relation to the claim.
127. The Appellant has provided some photographs and other documentary evidence said to support his claimed sexuality. I can give that evidence little weight for the following reasons.

128. I have concerns that the photograph at [AB2/53] has been manipulated as the presence of the three young men in the background of that photograph appears entirely out of place with the rest of the photograph which is clearly intended to show the veteran element of the march. The quality of the photograph at [AB2/55] makes it difficult to ascertain if the person indicated is indeed the Appellant. Even if it is the case that the Appellant was present at the march (which may be so given the other photographs), that does not mean that all those who attended the march are homosexual rather than simply supportive of the cause or there to enjoy the atmosphere (as at Gay Pride).
129. I am prepared to accept that the bars shown in the photographs at [AB2/62-118] are establishments frequented by gay men and that the Appellant is a member of the Vauxhall Tavern ([AB2/57] - although that membership card appears to have been issued only in July 2020 assuming it is for one year). However, the photographs show only that a man who appears to be the Appellant is having drinks and meals with various other men between June 2017 and February 2020. Some of the photographs are annotated as showing the Appellant having drinks or meals with those who he describes as "gay friends". I do not understand why the Appellant would find it necessary to refer to friends as "gay friends" as if that differentiated them from other friends but it may be that this is simply the way in which he has annotated the evidence in order to identify what he sees as the value of such photographs. Leaving that aside, there is little evidential value. Socialising with "gay friends" does not lead to any evidential inference that a person is gay.
130. Similarly, the screen shots taken from a "virtual meeting with say it loud club's members about managing anxiety" are valueless, particularly since there is no other supporting evidence of the Appellant's involvement with such groups.
131. That brings me on to my final reason for rejecting the Appellant's claim based on his sexuality and that is the complete absence of any detail about how and when he became aware of his sexuality, his relationships or any evidence from those with whom he has had such relationships or maintains friendships. I have already pointed out that the Appellant does not mention in his witness statement, his attraction to a classmate which he discloses to Ms Atas-Kelly. I accept that the Appellant says that he has not had any serious relationships. However, he does claim to have had some casual relationships and yet provides no particulars such as names, dates or lengths of such relationships. In any event, with the exception of Mr [AH] who claims himself to be gay with limited evidence that this is so, the Appellant has provided no supporting evidence from others within his "extensive network of friends in the British LGBT community".
132. For those reasons, I do not accept as credible the Appellant's claim that he identifies as homosexual. I am dealing with the new claim at this stage only as part of a human rights claim due to on the Appellant's own decision not to claim asylum. The standard of proof which the Appellant has to meet is

therefore one of balance of probabilities. However, for the reasons I have given above, I would have reached the same conclusion even on the lower standard which applies in protection appeals.

133. As I have indicated previously, I do not need to deal with the Appellant's new claim based on his political activities for the BNP. However, since I have been given evidence in this regard, I deal with it to the extent of making a factual finding about it. As I have already noted, the Appellant's disclosure to Ms Atas-Kelly of threats and attempts to harm him in 2006-7 whilst in Bangladesh due to his political activities finds no mention in the Appellant's statement dealing with this aspect of his case ([21] to [25] of the statement at [AB2/5-6]). Whilst, as I have indicated, the Appellant and his witness, Mr Gani, have given consistent evidence as to the Appellant's participation with the party and appointments in the period 2002 to 2008, Mr Gani's statement goes further and says that the Appellant has been involved with the BNP since he came to the UK in 2008. His statement in this regard is very general (paragraphs [6] and [7] of his statement at [AB2/12]). However, there is no support for his account in this regard in the statement of the Appellant, either for this hearing or earlier statements or letters. In the May 2018 letter, the Appellant says only that he was involved "in politics back home"
134. Mr Gani was not called to give oral evidence to explain this inconsistency. I can place no weight on his evidence due to that inconsistency. Whilst the Appellant may have had some involvement with the BNP at college level in 2002 to 2008, therefore, before he came to the UK, I do not accept that he has been involved since. Nor has the Appellant (or for that matter Mr Gani) provided any evidence that the Appellant is being targeted now as a result of his historic participation in politics and the Appellant's account to Ms Atas-Kelly of threats and attempts in the past finds no mention in his statement for this hearing.

## **DISCUSSION AND CONCLUSIONS**

135. I therefore turn finally to draw together my factual findings and to assess the evidence as a whole.
136. It follows from my factual findings that I do not accept that there are very significant obstacles to the Appellant's integration in Bangladesh based on his sexuality as I do not accept as a fact that he is homosexual.
137. It follows that I do not accept that the Appellant has been disowned by his family. His account in that regard has not been internally consistent and has been an embellishment over time. The Appellant himself said in evidence that he continues to have friends in Bangladesh (in the context of his case that he has been receiving medication brought in by friends).
138. Even though I do not accept the Appellant's claim as to his mental state for the reasons I have given, he continues to have support available to him in Bangladesh even if he does have such problems. On his own case, he was

previously prescribed medication in Bangladesh which, on his own account, dealt with his mental health problems from late 2015 until March 2020. Even if I accepted that the Appellant has some mental health problems (which for the reasons I have given I do not), those problems do not present very significant obstacles to his integration in Bangladesh. He can be treated for any mental health difficulties there as he has been (as he claims - albeit remotely) in the period 2015 to 2020. In fact, he would have better access to that treatment if he were physically in Bangladesh as he would not be reliant on others to bring his medication.

139. The Appellant does not suggest that he is unable to speak his native language. He was educated to college level in Bangladesh. He continues to have friends there. According to the friends he has in the UK and his family here who are mostly of Bangladeshi origin, the Appellant continues to participate in Bangladeshi cultural events and to mark religious festivals.
140. There is no evidence before me that the Appellant would be unable to find employment in Bangladesh. He has qualifications from the UK and from Bangladesh which will no doubt assist him in finding work. He has not been working in the UK as he has not been permitted to do so since 2015 but there is no evidence that his qualifications will not assist him in spite of his lack of work experience. He has also carried out some voluntary work.
141. For all of those reasons, the Appellant cannot meet paragraph 276ADE(1)(vi) of the Rules. I have already reached a finding that the Appellant cannot meet paragraph 276B based on his length of lawful residence which is only of seven years duration (or nine years if I were to accept the Appellant's case which I have rejected).
142. I turn then to the Appellant's case outside the Rules. I accept in this regard that the Appellant has been in the UK for over twelve years. However, he had leave only for seven years (or at best on his own case, nine years). Whatever the position as to length of residence, the Appellant has overstayed for at least three years and, based on my finding, for just over five years. Even before that, his leave to remain was on a precarious basis, as a student. The precariousness of his position after his studies is self-evident from his immigration history.
143. The precarious or unlawful nature of his period of residence impacts on the weight I can give to his private life. Section 117B (4) and Section 117B (5) provide that I can give only limited weight. I accept that this does not mean that I give it no weight, however, and much depends on the strength of private life demonstrated by the evidence. The strength of the Appellant's private life has to be balanced against the public interest.
144. I do not repeat the evidence which I have set out about the Appellant's private life above. I take into account all of the evidence in the initial bundle and the

supplementary bundle and the relevant part of the Appellant's statement for this hearing.

145. There has been no challenge to the evidence that the Appellant has friends and relatives in the UK with whom he enjoys a close relationship. I accept that this demonstrates that he has integrated in the UK although of course his relatives and to some extent his friends are of Bangladeshi origin and it is clear that he also maintains his cultural and religious associations with his home country as I have already found.
146. I accept also that the Appellant has carried out voluntary work and has made some contribution to the community via, for example, blood donation and playing cricket for his local team. It may well be that the Appellant would have done more if he had been able. He wanted to work but, I accept, was prevented from doing so because he became the victim of fraud. He also wanted to join the British Army and has demonstrated that the Army would have progressed his application if he had a visa.
147. All of that is to the Appellant's credit. I accept also that the Appellant speaks English. He gave his evidence in English. He is not currently financially self-sufficient. For example, his evidence indicates that he had to "crowd fund" to pay his solicitors to continue this appeal. However, there is no evidence that he has depended on any public funds and he has given evidence that he would like to work (whether for the Army or otherwise) if he was able to do so. For those reasons, neither Section 117B (2) or Section 117B (3) weigh against the Appellant. Those are neutral factors.
148. At the heart of the proportionality balance which I have to conduct is Section 117B (1). The maintenance of effective immigration control is an important public interest. In this case, as I have found the Appellant cannot meet the Rules. In the case of his Tier 2 application, I accept that the Appellant was the victim of fraud. As Mr Malik pointed out, the Respondent must also accept that as she has not refused the current application on suitability grounds. However, that the Appellant cannot meet the Rules now remains an important consideration. He has not been able to find another sponsor either to continue his studies or to work in the UK. Whatever sympathy may attach to the Appellant as a result of the earlier fraud, that does not affect the public interest in this assessment.
149. I also weigh in the balance that the Appellant has been prepared to remain in the UK unlawfully for a number of years, seeking to extend his visa via various means, including, most recently, making a new claim based on his sexuality which I have found not to be credible. Whilst the Appellant's persistence in his aim to remain might be said to be admirable, it has led on my findings to a willingness to make a false claim so as to be permitted to remain at any cost.

150. Whilst I give the Appellant's private life some weight based on the evidence which he has provided as to his relationships with friends and family here and community engagement, balanced against the public interest in the maintenance of effective immigration control, I conclude that the removal of the Appellant is proportionate. Indeed, Mr Malik did not seek to persuade me otherwise as he accepted in submissions that if I found the Appellant's new claim as to his sexuality not to be credible, the Appellant would be unlikely to succeed overall.
151. For the foregoing reasons, the removal of the Appellant is not unlawful as contrary to section 6 Human Rights Act 1998. The Appellant's appeal therefore fails.

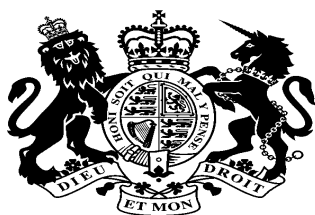
### **DECISION**

**The removal of the Appellant is not unlawful as contrary to section 6 Human Rights Act 1998. The Appellant's appeal is accordingly dismissed.**

Signed: *L K Smith*

Dated: 1 December 2020

APPENDIX: ERROR OF LAW DECISION



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/10241/2019

THE IMMIGRATION ACTS

Heard at Field House, London  
On Tuesday 10 March 2020

Determination Promulgated

...13 March 2020.....

Before

UPPER TRIBUNAL JUDGE SMITH

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MOHAMMAD [U]

Respondent

**Representation:**

For the Appellant: Mr S Whitwell, Senior Home Office Presenting Officer

For the Respondent: Mr A Chakmakjian, Counsel instructed by Reiss solicitors

DECISION AND REASONS

BACKGROUND

1. This is an appeal by the Secretary of State. For ease of reference, I refer to the parties as they were in the First-tier Tribunal. The Respondent appeals against the decision of Designated First-tier Tribunal Judge Manuell promulgated on 8 August 2019 ("the Decision") allowing the Appellant's appeal on human rights grounds (Article 8



ECHR). The Appellant is a national of Bangladesh aged 33 years. His human rights claim is based on his private life formed here and the obstacles he says he would face on return.

2. Before turning to the substance of the Decision and the Respondent's grounds, it is necessary to say something about the Appellant's immigration history. It is not disputed that he came here as a student on 18 April 2008 and that his leave was extended in that category to 16 August 2015. He made an application in time on 7 August 2015 to remain as a Tier 2 migrant, but that application was refused on 14 October 2015 and that refusal was maintained following administrative review on 16 November 2015. The Appellant judicially reviewed that decision but was refused permission to proceed on 6 June 2016.
3. It is at this point that there is some confusion as to the Appellant's status. A judicial review application does not extend leave. Accordingly, as Mr Whitwell submitted, it would appear that the Appellant's leave ended on 16 November 2015. Mr Chakmakjian submitted however that the Appellant's leave had been further extended by reason of a letter from the Respondent dated 20 October 2016 which followed the conclusion of the judicial review ([AB/55]). That reads as follows:
  - “1. On 18 May 2016 we sent you a letter which withdrew the finding of deception which was contained in the original decision letter issued in respect of your application for leave to remain in the UK as a Tier 2 (General) migrant.
  2. This letter is supplemental to, and should be read alongside, the original decision of 14 October 2015 and the previous supplementary letter.
  3. In view of the circumstances of your case, any application for leave to remain that you make in the UK within 28 days of the date you receive this letter will be treated as if it had been made within 28 days of the expiry of your last grant of leave and will not be refused on the basis you are an overstayer.
  4. If you leave the UK and then make an application for entry clearance, for the purposes of paragraph 320(7B) of the Immigration Rules, the start date of any overstaying will be calculated from the date you received this letter.”
4. Following the conclusion of the judicial review and before this letter, the Appellant made a further application on 30 June 2016 which was refused on 28 June 2017 and the human rights claim was certified as clearly unfounded. On any view, therefore, as Judge Manuell found to be the case, the Appellant's leave ended on that date. It is not however clear whether it had ended before then as the effect of the Respondent's letter is not entirely clear. It appears to have been assumed by the writer of the Respondent's decision under appeal that the effect was indeed to extend the period of leave. I am not clear how that can be done since leave can only be extended by grant or statute and the letter is not expressed as a grant of leave (unlike for example a “60 days letter” in cases of sponsor licence revocation). It is an indication that a further application would be treated as if leave continued until the date of receipt of the letter but that may not be the same as an actual grant of leave.

5. However, in light of the assumption on which Judge Manuell's finding was based and since that finding was not expressly challenged by the Respondent in her grounds of appeal to this Tribunal, I say no more about it at this stage. It is relevant when I come to deal with directions below.
6. The hearing before me as before Judge Manuell therefore proceeded on the basis that the Appellant had been lawfully present in the UK for nine years and two months (albeit on a precarious basis).
7. Judge Manuell allowed the appeal on the basis that there were "significant obstacles" to reintegration in Bangladesh ([25] of the Decision) and in the alternative on the basis that removal would be disproportionate ([30]).
8. The Respondent challenges the Judge's findings on both counts. She does so on the basis that the Judge has failed to provide adequate reasons for his findings and/or that he has materially misdirected himself in law. The Respondent goes so far as to say that the Judge acted irrationally in allowing the appeal as he did. A point is also taken about the Judge's finding at [21] of the Decision that the Respondent's refusal based on paragraph 322(13) of the Immigration Rules ("the Rules") in relation to an outstanding litigation debt was "mistaken".
9. Permission to appeal was refused by First-tier Tribunal Judge O'Brien on 24 December 2019 in the following terms so far as relevant:
  2. The grounds assert that the Judge erred as follows. The Judge's finding that the Appellant faced very significant obstacles to reintegration into Bangladesh were inadequately reasoned and irrational.
  3. Whilst perhaps generous, the Judge reached an unarguably adequately reasoned and permissible conclusion on 276ADE. In any event, the Judge's assessment of proportionality in the alternative was unarguably sustainable.
  4. The grounds disclose no material arguable error of law."
10. Permission to appeal was granted by Upper Tribunal Judge Hanson on 24 January 2020. Although a lengthy decision, it bears setting out in full as it neatly summarises the basis for the Decision and encapsulates the difficulties with it. As such, Mr Whitwell relied on the reasons given by Judge Hanson in his submissions:

"... The respondent asserts, inter alia, the Judge erred in law in failing to provide adequate reasons for why the appellant would face significant obstacles on return to Bangladesh having spent his formative years in Bangladesh and having family members there with whom he is in regular contact and who has obtained qualifications and experience in the United Kingdom which will enable him to find employment on return to Bangladesh. The grounds argue the Judge fails to provide adequate reasons for the finding of very significant obstacles to reintegration which are said to be irrational. The grounds also assert the Judge has failed to identify what exceptional circumstances exist sufficient to make the decision disproportionate.

The Judge notes the appellant is a Citizen of Bangladesh aged 33 who entered the United Kingdom as a Tier 4 Student after which subsequent applications were

made for further leave but refused. An application for leave on Compassionate grounds relying on length of residence under paragraph 276B of the Rules was refused as the applicant had only accrued 9 years 2 months continual lawful residence up to 28 June 2017.

The Judge found the appellant reliable and truthful and accepted in full his evidence of his circumstances and the facts in the appeal. The Judge finds that the respondent's decision of 29 May 2018 mistaken and based upon a material misapprehension of the facts which the Judge finds is highly relevant to proportionality pursuant to article 8 ECHR as the applicant's application was considered on a false premise [21]. The Judge also refers to what he considers to be a material misapprehension of fact in subsequent paragraphs before setting out the 'balance sheet' approach from [27]. The Judge finds the reference to paragraph 322(13) is mistaken and that when balancing up the competing arguments together with section 117B the respondent had failed to establish that the decision is proportionate.

It is arguable the Judge erred in law in concluding the refusal on Suitability grounds pursuant to paragraph 322(13) in relation to a litigation debt was mistaken when at the date of the application a litigation debt was outstanding, even if it had been subsequently repaid by the appellant through his obtaining a loan.

The Judge noted the length of time the appellant had been in the United Kingdom and that he had remained lawfully albeit that his immigration status was precarious. The fact the appellant speaks English and is self-supporting is a neutral factor and whilst the Judge was not required to place no weight upon the private life established whilst the appellant's status is precarious, the Judge's conclusion the public interest in removing the appellant is small, possibly negligible, arguably devalues the important public interest in immigration control. As matters identified by the Judge did not arguably amount to exceptional circumstances or very significant obstacles to reintegration there is arguable merit in the respondent's submission that this aspect of the appeal has been inadequately reasoned. The Judge at [25] finds the appellant will face very significant obstacles but does not explain why this should be in light of the acceptance of his education and work experience coupled with time he spent in Bangladesh and family contact there.

The First-tier Tribunal Judge refusing permission described this as a generous decision. The difficulty at this stage is that the Judge's analysis of the Immigration Rules is infected by arguable legal error as set out in the respondent's grounds and the assessment of the merits of the appeal outside the Immigration Rules is arguably infected by legal error in failing to properly identify exceptional circumstances sufficient to override the public interest.

I find the alleged errors material as it is not clear that the same decision will be arrived at if the assessment of the appeal both within and outside the immigration rules is undertaken in accordance with relevant authorities."

11. The matter comes before me to determine whether the Decision contains a material error of law and, if it does, to re-make the decision or remit the appeal to the First-tier Tribunal to do so. At the end of the hearing, I indicated that I found there to be an error of law and that I would provide my reasons in writing which I now turn to do.

## DISCUSSION AND CONCLUSIONS

12. It is appropriate to deal with the Respondent's grounds under the separate headings within the Rules and outside them.

### PARAGRAPH 276ADE(1)(vi): VERY SIGNIFICANT OBSTACLES

13. The Judge set out his findings in this regard at [25] of the Decision as follows:
- "Turning to paragraph 276ADE(1)(vi), exactly how readily the Appellant could reintegrate into Bangladeshi society without facing significant obstacles (as the Respondent contends) is not clear cut on the facts of this appeal. The Appellant has spent some of the most important years of his life in the United Kingdom, reaching maturity. He has completed his higher education here successfully and was on the point of embarking on his career in the British Army, using those qualifications. He has become accustomed to a free, cosmopolitan society. He has never worked in Bangladesh. He has of course demonstrated determination and character in various ways, but the tribunal considers that he would not find it easy to reintegrate in terms of employment, given his age, long absence, lack of past experience of work in Bangladesh and his lack of useful personal connections which tend to count for much in developing societies. It would be an expensive setback and scant rewards for his efforts to date. It is perhaps finely balanced but the tribunal considers in sum that the Appellant would face significant obstacles which meet the high threshold applicable. The appeal would therefore succeed because the Immigration Rules are met."
14. There is a very obvious error in that passage which, although not clearly identified by the Respondent in the grounds or Judge Hanson, nonetheless in my view is sufficient in and of itself to render the finding unsustainable and that is the test applied. The Judge twice makes reference to "significant obstacles". That is not the test; the test is one of "very significant obstacles". That finding is not saved by the Judge's reference to the test earlier in the Decision (at [5]) when setting out the Respondent's reasons for refusal because he repeats the same error. Nor is it rescued by the reference to "high threshold applicable". There is a marked difference between a threshold of significant obstacles and one of very significant obstacles. One is clearly on its face of a higher magnitude than the other. I note also the Judge's reference to the Appellant not finding it easy to reintegrate but that is not the test. For that reason, I would have found an error of law in this finding for that reason alone.
15. I also accept Mr Whitwell's submission that much of what is said at [25] of the Decision is directed not at the obstacles to integration in Bangladesh but to the interference with the Appellant's life in the UK. It is not relevant for example that the Appellant has spent years in the UK studying and wanted to join the British army save to the extent that this might impact on his ability to find work in Bangladesh.
16. It is also difficult to reconcile some of what is there said with the facts of this case and the Judge's earlier recording of the evidence. For example, it is suggested that the Appellant has spent "some of the most important years of his life in the United

Kingdom, reaching maturity". Whilst I do not doubt that maturity does not start suddenly on a person's eighteenth birthday, that sentence implies a person who has grown up in a country. However, the Appellant was already aged twenty-two years when he came to the UK. He therefore spent his formative years and most of his life in Bangladesh. It is said that he has no "useful personal connections" in Bangladesh and yet the Appellant's own evidence indicates that he has family there.

17. That brings me on to Mr Chakmakjian's submission that the Judge's findings have to be read in the context of the evidence. He drew my attention first to paragraphs [9] to [15] of the Decision where the Judge summarises the Appellant's evidence. The only paragraph of moment on this issue is [13] which reads as follows:

"The Appellant was cross-examined and the tribunal has kept a full note. He named his family in Bangladesh. He had never worked in Bangladesh and felt it would be difficult to find a job there. Currently he was living with a friend in Brighton, rent free. His uncle in the United Kingdom gave him some help. The Appellant had never returned to Bangladesh and felt integrated in the United Kingdom. He gave examples of his social life and local connections."

18. The highest point of that evidence is that the Appellant is assimilated to UK culture and that he does not "feel" that he would find a job in Bangladesh because he has never worked there. However, there is no evidence recorded in support of any submission that work is hard to come by in Bangladesh, particularly for someone with some (albeit limited) work experience and education in the UK. It is for the Appellant to establish that there are very significant obstacles on the balance of probabilities.
19. Further, the Judge fails to consider the way in which the test was explained in Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813:

"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 life."

The Judge has not taken into account the facts that the Appellant grew up in Bangladesh and still has family there. He was educated there. There is no reason given by the Judge why on that analysis, the Appellant would face even significant obstacles let alone very significant ones.

20. Mr Chakmakjian also drew my attention to the underlying evidence of the Appellant contained in a witness statement dated 17 July 2019 ([AB/1-5]). However, that does not add to the summary given by the Judge. Most if not all is directed at his immigration history and life in the UK. Although I do not have regard to the Appellant's supplementary statement for these purposes, I note that this does not expand on any obstacles to integration in Bangladesh either.
21. The high point of Mr Chakmakjian's submission in this regard is the reference to a letter written by the Appellant on 18 May 2018 apparently in support of his application for leave asking to be given the opportunity to join the British army by the grant of leave. As such, most of the letter is directed once again at his immigration history save for the following paragraph:
- "... I cannot imagine a day without Brighton. My favourite time is in Brighton gay pride season in August every year. I never missed it. I think few years ago, me and my friend were enjoying in gay pride. One of my friends he put those pictures in social media and it's gone to viral. After that I got a death threat by email from an Islamist terrorist group called Harkatul Jihad from Bangladesh (please see attached that email) [this is not in the Appellant's bundle]. Since that time I am really scared to go back home. I am also scared to go back home as our opposition party is in power in Bangladesh. Because I was involved in politics back home."
22. Mr Chakmakjian said that the Respondent had not disputed that account and that it showed that there were very significant obstacles to the Appellant's return to Bangladesh. There are several difficulties with that submission. First, although it appears that the Respondent had this letter when making the decision under appeal, there is no reference to this aspect of the 18 May letter, no doubt because the passage cited is buried in a three-page letter directed at other matters. There is no acceptance, implicit or express, that there is any risk to the Appellant on return. Second, there is no reference to any of this in the Appellant's statement of additional grounds dated less than one month earlier. Third, it is not mentioned at all in the grounds of appeal against the Respondent's decision. Fourth, it is not mentioned in the Appellant's witness statement (nor in his supplementary statement). Fifth, and most importantly, it is not mentioned by the Judge as being a reason why he found there to be very significant obstacles to integration in Bangladesh and nor is it recorded as part of the summary of evidence.
23. For all of those reasons, I am satisfied that there is an error of law in the Judge's finding that the Appellant meets paragraph 276ADE(1)(vi) of the Rules. The Judge has materially misdirected himself in law as to the test which applies. On the evidence which the Judge took into account and the reasons he gave, his finding is either inadequately reasoned or is not one which he could reach on that evidence, in particular having taken into account factors which were largely or entirely irrelevant to his consideration of the relevant test.

ARTICLE 8 ECHR

24. That is though not the end of the matter as the Judge went on to consider in the alternative whether the Appellant should succeed outside the Rules on the basis that the Respondent's decision was disproportionate. That leaves out of account the finding that paragraph 276ADE(1)(vi) is met although, for reasons I will come to, my conclusion that this finding is erroneous in law is relevant to proportionality.
25. The Judge's findings in this regard are at [26] to [30] of the Decision as follows:
- "26. But even if the tribunal were considered too generous here, the tribunal would still allow this appeal on its wider analysis.
27. On a 'balance sheet' approach, the following are positives:
- (a) The nature and strength of the Appellant's private life (see above);
  - (b) The unusually high degree of the Appellant's integration into British society over the past 11 years;
  - (c) The Appellant has always been in the United Kingdom lawfully and remained in close contact with the Home Office. The only gap in leave is 5 days at most and insignificant is not *de minimis*. There are no immigration control issues;
  - (d) The Appellant is of good character and has made a contribution to society; and
  - (e) The Appellant speaks English and is self-supporting.
28. As for negatives, the only specific negative identified in the reasons for refusal letter, the paragraph 322(13) refusal, has been found mistaken by the tribunal.
29. Section 117B of the Nationality, Immigration Act 2002 requires attention. It is the case that the Appellant's private life has been established while the Appellant's immigration status has been precarious, however as already noted the Appellant has at all times complied with the law and the small overstay was inadvertent. He speaks English and has never been a burden on public funds. The public interest in removing this Appellant is the tribunal's estimation small, probably negligible.
30. Taking all of the Appellant's particular circumstances into account, the tribunal finds that his removal would serve no useful purpose, and indeed would deprive the United Kingdom of an usually [sic] strong integrated individual of good character. The proportionality balance under Article 8 ECHR favours allowing his appeal."
26. Although that passage contains errors of law irrespective of the underlying findings as I will come to, it is first appropriate to record the Judge's finding as to the paragraph 322(13) reference and also as to the Appellant's private life.
27. At [21] of the Decision, the Judge says the following:
- "The tribunal finds that the refusal of the Appellant's application as varied on 8 November 2017 on Suitability grounds by reference to paragraph 322(13) of the

Immigration Rules as mistaken. The relevant decision and choice of whether or not to exercise any discretion was based on a material misapprehension of fact. That is highly relevant to proportionality for Article 8 ECHR purposes, because the Appellant's application was considered on a false premise. There were also other material misapprehensions of fact, which will be considered below."

28. The litigation debt relates to the judicial review application. In fact, the litigation debt consists of two debts both relating to judicial reviews. The first is for £581 as contained in an order of 6 June 2016. The second is for £1231 as contained in an order dated 1 May 2017. So far as I can see, neither party has produced copies of those orders and so I cannot tell whether they relate to the same judicial review or a different one nor do I know the substance of what was decided by that judicial review which may have some relevance to the immigration history issue which I have identified above.
29. The Appellant's evidence in relation to the litigation debt is that he had, via his solicitors, asked the Home Office to waive payment. He says that those requests were made on 1 September 2016 and 21 August 2018 and that he received a response from the debt company on 22 August 2018 to say that they had referred back to the Home Office. He says in his statement dated 17 July 2019 that he has "now managed" to pay but does not say when that was done. I do not understand him to say that he had made payment prior to the Respondent's refusal letter. However, although the debts were therefore probably still outstanding at the date of that decision and to that extent the Respondent was entitled to say that they had not been paid, it was probably erroneous to say that the Appellant had "made no attempt to offer any recompense to the Home Office with regard to these awarded costs". Although it might be said that a request for a waiver does not indicate a willingness to pay, the Judge was entitled to note at [19] of the Decision that "the Appellant has never sought to avoid payment". That was relevant to discretion.
30. The Respondent says that the Judge erred in that regard because paragraph 322(13) relates to the date of decision not hearing. That is perhaps correct but the only issue for the Judge was whether the Respondent's decision breaches the Appellant's human rights as at date of hearing and the fact that he had paid the debt by then was relevant to proportionality. Any error in that regard, therefore, would not be material.
31. As to the Appellant's private life, I have read the evidence on which the Judge's assessment is based as set out in the Judge's summary of the evidence at [9] to [15] of the Decision. I have also read the Appellant's statement in this regard. I do not need to set out that evidence in full as the Judge has provided a summary of the factors which he considered to be relevant at [24] of the Decision as follows:

"The tribunal's only power is to determine whether the resulting interference with the Appellant's private life under Article 8 ECHR is proportionate and hence justified. The tribunal considers that the Appellant's private life in the United Kingdom is well developed. He has completed two degrees in the United Kingdom with creditable results. Those qualifications are of practical, vocational value. He is an active player member of his local cricket club. He is a blood



donor and a past volunteer for Red Cross. His last employer would reemploy him tomorrow if the Appellant had the right to work. The Appellant produced letters of support from a wide range of people, showing friendships and connections of substance. The Appellant passed the rigorous selection process to be offered conditional employment by the British Army. The Appellant passed the KoLL test several years ago. None of these important facts, all deserving of weight, received sufficient attention from the Respondent when deciding the Appellant's application. The tribunal so finds."

32. I begin by making the assumption that by the final sentence, the Judge was indicating that he considered that weight should be given to the Appellant's private life and not, as appears on one reading, that the Respondent had failed to give sufficient attention to those weighty factors. That is not of course relevant. This is not a review of the Respondent's decision. It is for the Judge to determine the weight to be given. However, I am satisfied that the Judge meant to say that he was giving those factors weight himself by reason of what he says in the first sentence.
33. I do not seek to downplay the factors which weigh in the Appellant's favour. He has integrated well into British society as the Judge's summary and his own evidence shows. I also accept that the weight to be given to private life depends on the strength of that private life as disclosed by the evidence. However, whilst the factors there taken into account are unobjectionable, it is far from clear to me why any of them whether taken severally or cumulatively are particularly weighty. They amount to having studied and obtained qualifications in the UK (as would be expected of someone here with leave as a student), having been a good worker (when permitted to work), having played cricket for a local cricket club, having been a blood donor and carried out voluntary work and to have made a lot of friends. It is difficult to see how that differs from very many cases of people who come to the UK to study or work.
34. Whilst it is no doubt admirable that the Appellant felt such a connection to the UK that he wished to join the British army, the reason that he was unable to do so, as I understand it, is because his immigration status was not regularised at the relevant time. Although I have no evidence about this, it is my understanding that a Commonwealth Citizen can join the British army (if it is accepting applications from those persons at the relevant time) and can do so even from abroad. However, as the letter from the Army at [AB/84] makes clear, the Appellant could not be offered employment as at the date of that letter (13 April 2018) because he no longer had leave to be in the UK.
35. That brings me on to the central difficulty with the Judge's analysis. The Judge has failed to factor in the Appellant's immigration status at all times whilst he has been in the UK. Whilst I accept that "little weight" for the purposes of Section 117B(4) and (5) Nationality, Immigration and Asylum Act 2002 ("Section 117B") does not mean no weight and that it is for the Judge to assess the appropriate weight, there needed to be some recognition that the Appellant's private life was formed whilst he was here on a precarious basis and for part of the time unlawfully.

36. Insofar as it might be said that the Judge has taken that into account when balancing the interference with the Appellant's private life against the public interest, that brings me back to the passage of the Decision which I set out at [25] above. The Judge there repeats that the nature and strength of the Appellant's private life is relevant as previously assessed. That is undoubtedly correct. It may even be that the Judge is entitled to say that integration is "unusually high" although as I have already recorded, it is difficult to see what is different in this case from many others and therefore what it is which characterises it as such.
37. However, there is an error in what is said at [27(c)] of the Decision. Leaving aside the point I made earlier about the correct classification of the Appellant's status at all relevant times and accepting that his leave may not have ended until June 2017, it cannot be said that the gap in leave is "5 days at most". At the date of the hearing, the Appellant had no leave for over two years. Whilst, as the Judge noted at [22] of the Decision, it had been thought before the Tribunal's decision in Ahmed v Secretary of State for the Home Department ([2019] UKUT 00010(IAC)) that the overlooking of a short gap in leave had the effect of rendering status lawful, that is now confirmed to be wrong in law. Accordingly, the Appellant's leave ended on any view when his claim was refused and certified in June 2017. The fact that he was later given a right of appeal in-country does not resurrect that leave.
38. Furthermore, there is no recognition that, even when he had leave, the Appellant's status was precarious and therefore deserving of "little weight" under Section 117B. As a student, the Appellant was expected to return to his home country following completion of his studies. Although the precarious nature of status is mentioned in the Judge's reference to Section 117B at [29] of the Decision, there is no indication that the Judge has understood that this status alone makes a difference to weight. The Judge points to the unlawfulness of stay being minimal and inadvertent but that is irrelevant to the effect of precarious status in and of itself. Further, I do not fully understand the reference to overstaying being "inadvertent" on the facts here; in any event the Judge leaves out of account the lack of leave for two years out of the eleven that the Appellant has spent here.
39. That then brings me on to the more obvious errors in the Judge's analysis. First, it is not right to say that "there are no immigration control issues". As I have already pointed out, as someone who had precarious status and who can no longer meet any of the Rules to permit him to remain, the maintenance of effective immigration control is clearly relevant. That is clearly stated to be in the public interest by Section 117B. There is no recognition of that factor.
40. Second, the Judge has weighed in the balance as a positive that the Appellant speaks English and is self-supporting ([27] of the Decision). The Respondent does not apparently dispute that this is an accurate statement of fact, but those factors can only be neutral (Rhuppiah v Secretary of State for the Home Department [2018] UKSC 58). In spite of Mr Chakmakjian's endeavours, he was unable to persuade me that the words "the following are positives" at the beginning of [27] of the Decision can mean other than that the Judge has accorded positive weight to those factors.

41. Finally, and returning to the point of the weight to be given to the public interest, in finding that this was “small, probably negligible” the Judge’s assessment flies in the face of case-law. As was said in the headnote of this Tribunal’s decision in KF and others (entry clearance, relatives of refugees) Syria [2019] UKUT 413 (IAC) “[a]s was made clear in Agyarko [2017] UKSC 11 the purpose of the Immigration Rules is to enable decision makers to understand and apply the appropriate weight to be given to the public interest. That the appellants in an application for entry clearance do not meet the Immigration Rules is an adverse factor” (and see [18(d)] of that decision from where that is taken). That guidance cross-refers to what is said in Agyarko and another v Secretary of State for the Home Department [2017] UKSC 11 (see in particular [51] to [57] of that judgment).
42. Whilst those decisions are in the context of entry clearance in the first and family life in the second, that does not affect the general point that the Rules demonstrate the Respondent’s view as to the public interest so that, if a person is unable to meet the Rules in order to enter or remain in the UK, that is a weighty consideration in the public interest. As was said in Agyarko:

“57. That approach is also appropriate when a Court or tribunal is considering whether a refusal of leave to remain is compatible with article 8 in the context of precarious family life. Ultimately, it has to decide whether the refusal is proportionate in the particular case before it, balancing the strength of the public interest in the removal of the person in question against the impact on private and family life. In doing so, it should give appropriate weight to the Secretary of State's policy, expressed in the Rules and the Instructions, that the public interest in immigration control can be outweighed, when considering an application for leave to remain brought by a person in the UK in breach of immigration laws, only where there are "insurmountable obstacles" or "exceptional circumstances" as defined. It must also consider all factors relevant to the specific case in question, including, where relevant, the matters discussed in paras 51-52 above. The critical issue will generally be whether, giving due weight to the strength of the public interest in the removal of the person in the case before it, the article 8 claim is sufficiently strong to outweigh it. In general, in cases concerned with precarious family life, a very strong or compelling claim is required to outweigh the public interest in immigration control.”

Although relating to family life, there is nothing there which indicates that any different test is to apply to private life. If anything, a family life claim is likely to be stronger as it often also involves the rights of a British citizen or settled person.

43. For all of those reasons, I am satisfied that the Judge’s conclusions in the Appellant’s favour as to proportionality of removal are also founded on legal error. The Judge has failed to accord appropriate weight to the public interest having regard to the nature of the Appellant’s immigration status and has failed adequately to explain what it is in this case that is “very strong or compelling” so as to outweigh that public interest. As also noted, the Judge has erred in giving positive weight to factors which, according to binding case law, are only neutral.

44. I therefore set the Decision aside. I do not preserve any of the findings for reasons which follow.

### NEXT STEPS

45. I indicated at the hearing that I proposed to retain the appeal for re-making in this Tribunal. Although, having set aside the Decision, this will involve some fact finding, that is not of such magnitude that the appeal needs to be remitted.
46. I might have been in a position to re-make the decision immediately at the hearing, having found an error of law. However, there were two reasons why I did not do so.
47. First, as I have identified, there is need for clarification as to the Respondent's position about the Appellant's immigration status between November 2015 and June 2017. As Mr Whitwell submitted and I accept, whilst the Appellant's status after June 2017 is as an overstayer on any view, the length and reasons for his overstaying may have some relevance to the proportionality assessment. Although the Respondent's grounds do make mention of the Appellant having no valid leave to remain after 2015, they do not grapple with the chronology in this case nor do they directly challenge the Judge's finding in this regard. I did not consider it fair for the Appellant to have to deal with this issue "on the hoof", particularly having regard to the Respondent's decision under appeal which appears to have led to the Judge's finding.
48. Second, having taken instructions from his client and notwithstanding the lack of any mention of this in the grounds of appeal or any witness statement (including the recent supplementary statement), Mr Chakmakjian indicated that the Appellant did wish to rely on what is said in the 18 May 2018 letter as regards what may happen to him on return. I pointed out to Mr Chakmakjian that this may well amount to a new matter as it appears to amount to a protection claim. He said that this was not so as the Appellant prayed the position in aid of his case that there are very significant obstacles to integration in Bangladesh. With respect to Mr Chakmakjian, I find that difficult to accept. If the Appellant is saying that he is at risk on return to Bangladesh, that is a protection claim however the Appellant seeks to argue it. As such, it would be a new matter. Since the issues are not to be found in either the grounds of appeal or any witness statement, though, I reserve my conclusion in that regard. It will be for the Respondent in the first place to consider whether what is now raised is a new matter and if so, what is the consequence.
49. In that regard, although Mr Whitwell submitted that the Appellant should claim asylum and be interviewed in that regard (or otherwise be prepared for inferences to be drawn as to why he has not done so), I do not need to deal with that submission. It will be for the Respondent to decide whether to consent to a new matter being raised and if she refuses to do so (with reasons), the Appellant will not be able to raise it unless he successfully applies for judicial review of the refusal of consent. It is not appropriate however to pre-judge the Respondent's position which will itself depend on what is said by the Appellant.

50. Mr Chakmakjian asked that I deal at this hearing with the evidence from the other witnesses who had provided supplementary statements and had attended to be cross-examined if necessary. Particularly since the Appellant's case is not fully formulated and that he could not therefore be cross-examined at this hearing, I did not consider that to be an appropriate course. However, I have made a direction below to require the Respondent to indicate whether she wishes to cross-examine any or all of those witnesses in order potentially to spare their further attendance.

## DECISION

I am satisfied that the decision of Designated First-tier Tribunal Judge Manuell promulgated on 8 August 2019 discloses an error of law. I set aside that decision. I make the following directions for a resumed hearing:

1. By 4pm on Tuesday 24 March 2020, the Respondent shall file with the Tribunal and serve on the Appellant her position statement setting out her views concerning the Appellant's immigration history (see [1] to [4] and [47] above);
2. By 4pm on Tuesday 7 April 2020, the Appellant shall file with the Tribunal and serve on the Respondent his response to that position statement by written submissions and/or a further witness statement of the Appellant as appropriate. The further witness statement shall also deal with his claim that he is unable to return to Bangladesh due to events he says have occurred in the UK and/or based on the political situation there (see [21], [22], [48] and [49] above);
3. By 4pm on Tuesday 28 April 2020, the Respondent is to file submissions in response to the Appellant's further witness statement, indicating in particular whether she considers that the evidence therein constitutes a "new matter" and, if it does, whether she consents to it being determined in this appeal;
4. The Respondent is to indicate to the Appellant and the Tribunal, also by 4pm on Tuesday 28 April 2020 whether she requires to cross-examine any of the witnesses (apart from the Appellant himself) whose statements have been filed and served in this appeal and, if so, which of those witnesses.
5. The resumed hearing is to be relisted before me on the first available date after 31 May 2020 with a time estimate of ½ day. No interpreter is required. If any issues arise from the above directions which are not capable of being resolved prior to that date, the parties shall inform the Tribunal accordingly and may request that the resumed hearing be converted to a CMR.



Signed:  
Upper Tribunal Judge Smith

Dated: 13 March 2020