



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

Appeal Numbers:  
UI-2021-001288 (HU/01029/2021)  
UI-2021-001289 (HU/01031/2021)

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 27 October 2022**

**Decision & Reasons Promulgated  
On 4 December 2022**

**Before**

**UPPER TRIBUNAL JUDGE O'CALLAGHAN  
DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

**Between**

**THE ENTRY CLEARANCE OFFICER**

Appellant

**and**

**SEETHAKUMARI ROYALA  
SRUJANASRI CHIRUMAMILLA  
(ANONYMITY DIRECTION NOT MADE)**

Respondents

**Representation:**

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer

For the Respondent: Mr D Lemer, Counsel, instructed by Farani Taylor Solicitors

**DECISION AND REASONS**

1. For the purposes of this decision, the appellant is referred to as the Entry Clearance Officer (ECO) and the respondents are referred to as the 'claimants'.

**Procedural Background**

2. In a decision promulgated on 1 November 2021, First-tier Tribunal Judge Taylor (the Judge) allowed the claimants' appeals against the decisions of the ECO, dated 7 January 2021, refusing entry clearance. The first claimant is the wife and the second claimant the daughter of Mahesh Chirumamilla (the sponsor). The family are all citizens of India.
3. The ECO appealed with permission and in a decision on error of law and directions, sent to the parties on 5 April 2022, Upper Tribunal Judge Blum and Deputy Upper Tribunal Judge Grimes found an error of law capable of affecting the outcome of the appeal and set aside the decision of the First-tier Tribunal, to be remade de novo in the Upper Tribunal.
4. The matter came before this panel, pursuant to a transfer order issued by the Principal Resident Judge of the Upper Tribunal, to be remade under section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007.

### **Anonymity**

5. No anonymity direction was made by the Judge and no application was made before us for an anonymity direction.

### **Factual Background**

6. The claimants indicate that the sponsor entered the UK lawfully, on 31 October 1999, with lawful leave until 15 December 2006. On 2 March 2006 the sponsor and the first claimant married in India. The first claimant entered the UK on 18 August 2006 as a dependent of the sponsor. She became pregnant and returned to India on 1 December 2006. The couple's daughter, the second claimant, was born on 27 June 2007 in India. The first claimant entered the UK again, on 20 October 2009, with a Tier 4 (General Student) visa. She claims that she resided with the sponsor in the UK between October 2009 and August 2017. The sponsor in his first witness statement indicates that his wife had valid leave until 21 February 2011 and subsequently overstayed. Throughout this period the second claimant resided in India with the first claimant's parents. The first claimant returned to India in August 2017.
7. On 21 January 2020, the sponsor made a successful application for leave to remain on the basis of his residence in the UK for over 20 years. The sponsor was initially granted 30 months leave to remain until 20 July 2022, with further leave being granted until 31 August 2024. Due to his previous lack of immigration status and then Covid-19 restrictions, the sponsor had not met his daughter (the second claimant) until February 2022, when the sponsor indicates he returned to India from 18 February until 22 February 2022 (the sponsor indicating in oral evidence that work commitments in the UK had precluded a longer visit). The sponsor is employed in the UK and has purchased a part share in a local bar and restaurant with a group of friends (indicating to us in oral evidence that one of his businesses employs twenty people). In addition, he is taking over the local Spar/off-licence shop. The parties before us did not dispute this factual matrix.

8. The claimants applied for entry clearance to the UK on 17 November 2020, as the sponsor's partner and child. The ECO refused those applications on the basis that the sponsor has limited leave to remain in the UK and therefore not settled in the UK as required by Appendix FM (E-ECP.2.1). It was also not in dispute that the earliest dates that the sponsor will be eligible to apply for settled status, or indefinite leave to remain, (under paragraphs 276DE) will be 20 January 2030.
9. It was accepted before us that the claimants could not meet the substantive requirements of the Immigration Rules, although it was argued on behalf of the claimants that they succeeded under GEN.3.1 and 3.2. of Appendix FM, such that refusal would amount to a disproportionate breach of Article 8, European Convention on Human Rights (ECHR).

### **The Law**

10. The claimants' appeals against the ECO refusal were brought on the grounds that the refusal of entry clearance would be unlawful under section 6 of the Human Rights Act 1998, on the basis that it would breach the UK's obligations under Article 8 of the ECHR to exclude the claimants from the UK. Since this is an entry clearance case, it is necessary to determine whether the claimants' exclusion from the UK is a proportionate interference with any family/private life enjoyed.
11. Paragraph GEN.1.1 of Appendix FM provides that the requirements of the Immigration Rules reflect how the balance, under article 8 of the Human Rights Convention, will be struck between the right to respect for private and family life and the legitimate aim of maintaining an effective system of immigration control.
12. GEN.3.2 provides including as follows:

'GEN.3.2.(1) Subject to sub-paragraph (4), where an application for entry clearance or leave to enter or remain made under this Appendix, or an application for leave to remain which has otherwise been considered under this Appendix, does not otherwise meet the requirements of this Appendix or Part 9 of the Rules, the decision-maker must consider whether the circumstances in sub-paragraph (2) apply.

(2) Where sub-paragraph (1) above applies, the decision-maker must consider, on the basis of the information provided by the applicant, whether there are exceptional circumstances which would render refusal of entry clearance, or leave to enter or remain, a breach of Article 8 of the European Convention on Human Rights, because such refusal would result in unjustifiably harsh consequences for the applicant, their partner, a relevant child or another family member whose Article 8 rights it is evident from that information would be affected by a decision to refuse the application.'

## **The Proceedings**

13. We had before us the respondent's bundle (106 pages), the claimants' bundle (251 pages) and the claimants' supplementary bundle (69 pages).
14. The sponsor gave evidence in English. The claimants joined the hearing by video link as observers for the majority of the hearing. The first claimant was visibly upset during parts of the hearing and it was agreed by the panel and the parties that the claimants should be given the opportunity to disconnect from the hearing, it being explained that no adverse inference would be drawn by the Upper Tribunal. Although an application had been made the day prior to the hearing for a Telegu interpreter, as the claimants were not giving evidence (no request having been received in line with the procedure outlined in the guidance from the Presidential panel in *Agbabiaka (evidence from abroad; Nare guidance)* [2021] UKUT 00286 (IAC)) and were legally represented, that request was refused. We heard submissions from Mr Tufan and Mr Lemur.

## **Findings**

15. We have considered that Gen.3.2 of Appendix FM asks whether there are exceptional circumstances leading to unjustifiably harsh consequences. We have considered that GEN.2 reflects the decision of the Supreme Court in *Agyarko v SSHD* [2017] UKSC 11. Lord Reed confirmed in considering exceptional circumstances:

"56.

.....

Cases are not, therefore, to be approached by searching for a unique or unusual feature, and in its absence rejecting the application without further examination. Rather, as the Master of the Rolls made clear, the test is one of proportionality. The reference to exceptional circumstances in the European case law means that, in cases involving precarious family life, "something very compelling ... is required to outweigh the public interest", applying a proportionality test. The Court of Appeal went on to apply that approach to the interpretation of the Rules concerning the deportation of foreign criminals, where the same phrase appears; and their approach was approved by this court, in that context, in *Hesham Ali*.

.....

60. It remains the position that the ultimate question is how a fair balance should be struck between the competing public and individual interests involved, applying a proportionality test. The Rules and Instructions in issue in the present case do not depart from that position. The Secretary of State has not imposed a test of exceptionality, in the sense which Lord Bingham had in mind: that is to say, a requirement that

the case should exhibit some highly unusual feature, over and above the application of the test of proportionality. On the contrary, she has defined the word "exceptional", as already explained, as meaning "circumstances in which refusal would result in unjustifiably harsh consequences for the individual such that the refusal of the application would not be proportionate". So understood, the provision in the Instructions that leave can be granted outside the Rules where exceptional circumstances apply involves the application of the test of proportionality to the circumstances of the individual case, and cannot be regarded as incompatible with article 8. That conclusion is fortified by the express statement in the Instructions that "exceptional" does not mean "unusual" or "unique": see para 19 above."

16. We are satisfied that family life exists. We take into account that this family has been separated since the second claimant's birth in India in 2007, with the second claimant currently residing in India with her mother, the first claimant, although the second claimant resided with the first claimant's parents for almost eight years between October 2009 and August 2017, when the first claimant was living with the sponsor in the UK. The second claimant is now fifteen years old.
17. The sponsor, in his first witness statement, indicated that his wife returned to India in August 2017, as their daughter was entering her teenage years and required her mother to be physically present and it being claimed that his wife's parents were no longer able to care for their daughter independently due to their increasing old age.
18. At the time of the claimants' application for entry clearance the second claimant was studying at High School in India with a letter from her school dated 5 November 2020 confirming the sponsor's involvement in his daughter's education. The claimants' bundle also contained a number of documents dated July, August and September 2021, from Pavan Neuropsychiatric Clinic, in respect of the second claimant.
19. In his letter dated 3 September 2021, Dr Pavan Kumar, a Consultant Neuropsychiatrist details that he had recently assessed the second claimant with her mother, the first claimant. He recorded the first claimant's report that due to her father's physical absence, the second claimant's 'lack of confidence and extreme sensitivity' had developed over several years. Dr Pavan Kumar was of the opinion that the second claimant needed stability, security and continuity in her family life and that there appeared to be some direct connection between her emotional functioning and her physical symptoms. He was also of the opinion that the second claimant's high levels of vulnerability and emotional hypersensitivity appeared to have developed during the ongoing period of her father's physical absence. He was of the opinion that continued separation from her father would result in an increased risk of the second claimant suffering harm.

20. The 2021 documents from Dr Pavan Kumar indicated that the second claimant needed 5-6 sessions of counselling and noted a prescription of Lonazep 0.25mg. It is within the knowledge of the Tribunal that Lonazep is a medicine used to treat anxiety. Dr Pavan Kumar's August 2021 handwritten notes indicate a 15-20% improvement in the second claimant's symptoms and that she was doing better, with his 6 September 2021 notes indicating a 25% improvement in symptoms. All of Dr Pavan Kumar's 2021 handwritten notes in relation to the second claimant, are headed '? Mild Depression'.
21. The claimants' supplementary bundle contains further evidence from Dr Pavan Kumar including a letter dated 10 October 2022. He again indicates that the second claimant is experiencing challenges in respect of the physical separation from her father and that whilst she 'got better' when she physically met her father the first time in February 2022, he details that she 'gradually went back to current situation'. He states that she feels solely responsible for the separation of the family and also explained that she had experienced bullying at school due to the physical absence of her father and was not willing to go to school. He stated that the first claimant indicated that teachers at the second claimant's school expressed their concerns in relation to the second claimant's 'sudden tearfulness, social withdrawal from the gatherings and hardships in making new friends'. Dr Pavan Kumar strongly recommended that the second claimant should unite with her father to prevent further distress and that he was afraid the second claimant 'might end up into mild to moderate depression'. The supplementary bundles contain Dr Pavan Kumar's notes on seeing the second claimant on a three-monthly basis, with ongoing counselling and Sermind 25mg (an anti-depressant medication) being added to her prescription and the most recent notes being headed 'Depression'.
22. The witness statements from the claimants and the sponsor, together with the sponsor's oral evidence, confirm the family's unhappiness at their continued separation.
23. Mr Lemer did not disagree with our assessment of the medical evidence as a little tentative and he conceded that Dr Pavan Kumar was reflecting what he had been told by the claimants. We accept that this evidence supports a finding that the second claimant, now a 15 year old girl, is understandably upset at the prospect of not being permanently reunited with her father and that she is experiencing some anxiety and depression.
24. The sponsor told us that his daughter has not been in school for 14 months. This would suggest that the second claimant was last in school August 2021. We note that although the most recent October 2022 letter from Dr Pavan Kumar indicates that the second claimant 'was not willing to go to school' (although he provides no timeframe for any absence from school and indeed refers to the first claimant relaying information to him from the second claimant's teachers) his September 2021 letter, 13

months before the hearing, indicates that she was studying at High School at that time.

25. Whilst that apparent inconsistency was not specifically put to the sponsor and we do not rely on it, there is an absence of independent evidence that might support the claimants' assertion of the level of distress experienced by the second claimant, where such ought reasonably to be available, for example from her school including given that the first claimant was able to relay information said to come from the second claimant's school, to Dr Pavan Kamar. The claimants have previously provided evidence from the second claimant's school, but have not provided any information to support the claim that she has not been attending school for 14 months or any independent assessment from the school in relation to the second claimant's progress or otherwise when she was at school, where such ought reasonably to have been available. Neither was there any confirmation or otherwise from the school of any issue in relation to bullying. The only letter from the school, in November 2020, relates to the involvement of the sponsor in his daughter's schooling.
26. The sponsor, when asked why his daughter was not at another school, told us that she was quite reserved and that he did want to put pressure on her as she preferred it that way. Whilst we accept that the claimants and the sponsor state that the second claimant is not at school and that this has been reported to Dr Pavan Kumar, it was only the sponsor in oral evidence who provided the 14 month timeframe. If the second claimant had been absent from school for this period of time we would have expected some independent confirmation of that claim, for example correspondent between the school and the second claimants' parents in relation to that absence. Whilst we accept on the balance of probabilities, that the second claimant may not currently be willing to go to school, we are unable to make a finding, on the evidence before us, that this has persisted for 14 months.
27. Mr Lemer confirmed that whilst the Tribunal must also look at the impact on both the first claimant and the sponsor, reliance was placed primarily on the second claimant's circumstances. We accept that the second claimant misses her father and we accept the medical diagnosis of depression and that the second claimant is being prescribed anti-depressant and anxiety medication and has been receiving counselling. Without any independent evidence, for example from her school, that might support the level of distress claimed, we are not satisfied however, that the second claimant's health (and Mr Lemer conceded that this was not a case where the Article 3 threshold was reached) either considered in isolation, or in combination with the other factors before us, constitutes compelling reasons why the refusal of the claimants' entry clearance applications would result in unjustifiably harsh consequences for the second claimant or the family generally.
28. In not being so satisfied, we have considered the wider circumstances, including that we accept that the sponsor has established himself in the

UK and that since regularising his immigration status in 2020 he has obtained employment and started businesses. We accept his evidence that he misses his family and is lonely. Although we note that the supplementary bundle contains a hand written letter with positive comments from a member of his local community, who refers to the sponsor and his sister Sheetal, we accept that the possible company of a sibling is not the same as that of immediate family.

29. We take into account that whilst the family undoubtedly wish to be reunited, the ECO refusals maintain the situation as it has been since the second claimant's birth, in that she has lived in a different country from her father (and indeed lived without both parents for a large part of her life, although we accept that she has been with her mother since 2017).
30. We have considered that, as argued before the First-tier Tribunal, whereas the sponsor will not be eligible to apply for indefinite leave to remain until 2030 and therefore not eligible to make an application for dependent family members until at least that date, there are other categories of leave, for example under paragraph 276B, where a successful applicant after ten years lawful residence in the UK may be granted indefinite leave to remain and therefore be in a position to immediately sponsor family. Although the claimants before the First-tier Tribunal had argued that such a distinction in the Immigration Rules, was unfair and an unjustifiably harsh consequence of the Immigration Rules, Mr Lemer quite properly conceded that this was not the case. We agree and note as the panel which found the error of law did, that the distinction in the Immigration Rules is one which has been enacted by Parliament. The other routes allowing a quicker route to settlement, for example paragraph 276B, involve periods of lawful leave, whereas the sponsor was granted limited leave following a substantial period when he did not have lawful leave. Such distinction is a legitimate expression of the public interest in the maintenance of immigration control, through compliance with the Immigration Rules.
31. We have considered in the round however, that the distinction in the Immigration Rules provides the context in which the sponsor and his family find themselves.
32. We take into account that until this year the second claimant had not met her father. We have also considered, that although this is an entry clearance case and therefore section 55 of the Borders, Citizenship and Immigration Act 2009 does not apply, the Secretary of State's Immigration Directorate Instructions invites entry clearance officers to consider the statutory guidance issued under section 55. Whilst we accept on the balance of probabilities, that it would be in the second claimant's best interests to live with both parents and that the best interests of a child are a primary consideration, that is not a paramount consideration and can be outweighed by the cumulative effect of other considerations, including the countervailing consideration in relation to the need to maintain firm and



fair immigration control (*ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4).

33. We have also considered that the sponsor could return to India to live permanently with his wife and daughter. In so finding, we accept that the sponsor is established in the UK and wishes to continue living here and as already noted there was undisputed evidence in relation to the sponsor's employment and businesses in the UK, together with evidence of the sponsor's life in the UK including that he volunteers in the community.
34. The sponsor stated in his first witness statement that it would be 'both unreasonable and disproportionate' to expect him to reside in India as he has spent his 'formative years' in the UK and developed strong connections and adapted to the British way of life.
35. Whilst the sponsor now has limited leave to remain in the UK, little weight should be given to a private life established when the person is in the UK unlawfully and little weight should be given to a private life when the person's immigration status is precarious. Whilst the sponsor arrived in the UK lawfully and is now once again here lawfully, in terms of the weight to be attached to that private life, his immigration status has always been precarious.
36. The sponsor, who is now 44 years old, states he has spent his 'formative years' in the UK. Whilst we accept that he has spent most of his adult life in the UK and has now lived longer in the UK, he lived in India, the country of his birth until he was 21, which arguably could be said to be his formative years, although nothing turns on this in our findings. His wife and child still live in India. The sponsor asserts that his own parents disowned him when he married his wife, as he is a different caste from his wife. The family maintain contact however with his wife's family, his wife and child living with his in-laws.
37. It was the sponsor's oral evidence before us that he had no support and would not be able to establish himself in India. Although we explained that such a bald statement was unhelpful, including that the sponsor is an Indian national and has family in India and we therefore provided the sponsor with the opportunity to expand and clarify his evidence, he restated that he would 'not be able to provide anything for my family' in India. He also referred to his established businesses and jobs in the UK and the length of time he has spent in the UK.
38. We do not, on balance, accept the sponsor's evidence that he would be unable to provide for his family if he returned to India. The sponsor came to the UK as a student and confirmed to us in oral evidence that he had obtained post graduate qualifications in the UK, from Aberdeen University, in both business administration and Bioinformatics.
39. We accept that the sponsor was granted leave to remain under the Immigration Rules as a result of his private life and long residence in the

UK. Whilst he wishes to continue his life here, we are satisfied that the evidence, including that he has two post graduate qualifications and has been able, in a short time since his grant of leave in 2020, to obtain employment and start two businesses, indicates on balance that he has transferrable skills which would enable the sponsor to re-establish himself in India and provide for his family there. Despite the sponsor being asked why he could not go back, there was no evidence to support a finding that he could not use his qualifications and the skills he has acquired in the UK, to establish his life in India, where he would have the support of his wife and child and his in-laws.

40. Whilst we accept Mr Lemer's submission that giving evidence can be a stressful experience and that the sponsor was at times emotional, we do not accept the sponsor's unsubstantiated assertion that he is unable to go back and would be unable to provide for his family; we take into account that in our findings, his oral evidence focused more on not wanting to leave his employment and businesses in the UK, rather than providing any evidence of any specific impediment to supporting himself and his family in India. Whilst this is not a case where we are required to consider whether there are very significant obstacles for the sponsor, we have considered that the idea of 'integration' into India on any return by the sponsor, to the extent that he could provide for his family, also requires a broad evaluative judgement as to whether the sponsor will be enough of an insider in terms of understanding how life in India is carried on and a capacity to participate in it, to be able to operate on a day-to-day basis in that society (*Secretary of State for the Home Department v Karmara* [2016] EWCA Civ 813).
41. We have taken into account that the sponsor was able to establish employment and businesses in the UK in 2020. Whilst he established himself relatively quickly after obtaining leave, we accept on balance that he may have been assisted in doing so as a result of having already lived in the UK for 20 years. We accept that the sponsor would be expected to establish himself immediately on, or soon after, return to India, having been absent from India for over 23 years. However, we also take into account that as well as his qualifications and transferrable skills from the UK, including the ability to obtain employment and start businesses, the sponsor would have the benefit of his family, cultural and language links with India (which he did not have in the UK) where he grew up, was educated and lived until he was 21. The sponsor may not be able to immediately put himself in an analogous position financially to the one he is currently in in the UK (although we note that he would not no longer need to send remittances to India). However we do not accept that he would not be able to, on return to India, or very soon after, support his family in India.
42. In conclusion therefore, whilst the refusal of leave to enter may impact the claimants' ability to see the sponsor as often as they might like, particularly if he chooses not to relocate back to India, we are not satisfied that the refusal of leave to enter to both claimants results in unjustifiably

harsh consequences for the claimants or the sponsor. Therefore the claimants cannot meet the requirements of Appendix FM GEN.3.2 of the Immigration Rules.

43. Although as we have already noted, GEN 3.1-3.3 is the articulation of the Article 8 proportionality test, we have gone on to consider Article 8 outside of the Immigration Rules and whether refusal of leave to enter is nevertheless disproportionate. We have considered the five questions set out by the House of Lords in *R (Razgar) v Secretary of State for the Home Department* [2004] UKHL 27. We accept on balance that the refusal of entry clearance interferes with the claimants' right to respect for their private and family life and that such interference is of sufficient gravity to potentially engage Article 8. We accept that the interference is in accordance with the law and necessary for the maintenance of effective immigration control. In reaching our decision on proportionality, we have had regard to the public interest considerations set out in s117B of the 2002 Act.
44. We have applied the balance sheet approach, in considering the Article 8 proportionality test (*Hesham Ali (Iraq) v Secretary of State for the Home Department* [2016]- UKSC 60).
45. Factors mitigating against the claimants being granted entry clearance are:
  - (a) The public interest in the maintenance of effective immigration control (as set out in s117B(1) of the 2002 Act). The claimants' applications do not succeed under the Immigration Rules. Although the claimants meet the remaining requirements under the Immigration Rules, as explained in paragraph 26 of *Miah & Ors v Secretary of State for the Home Department* [2012] EWCA Civ 261, there is no "near miss" principle and the requirements of immigration control are not weakened by the degree of non-compliance with the Immigration Rules. Whilst the sponsor meets the financial requirements and the claimants would be financially independent, and the first claimant meets the English language requirements, those are neutral factors, under sections 117B (2 ) and (3) of the 2002 Act, in terms of the public interest (*Rhuppia v Secretary of State for the Home Department* [2018] UKSC 58).
  - (b) The second claimant, who is now aged 15, is cared for by her mother the first claimant, which has been the case since 2017 and they have the continued support (including accommodation) of her grandparents (who were responsible for a large period of her upbringing) in India. Although it was argued that her grandparents are no longer able to provide care due to their advanced age, no medical or other evidence was submitted which would support such a finding and there was no evidence that might support a finding that they could not provide

emotional support to the claimants or continue to accommodate the claimants (and the sponsor) if required.

- (c) Although it is accepted that the second claimant is suffering from depression and that the medical evidence suggests some link between that depression and her continued separation from her father, the second claimant can continue to receive any medical treatment required for her depression in India, as she has done to date. The evidence in relation to her mental health and the impact on her was relatively limited and there was no evidence to support a finding that she could not, with the support of her family, return to education, either at her previous High School or another school.
- (d) The sponsor has limited leave to remain and although he was unable to travel prior to his grant of limited leave in January 2020, he is now able to visit India as he did in February this year, for four days. The second claimant has now met the sponsor. Although we accept that the effects of the Covid-19 pandemic meant that he was unable to visit until February 2022, there are no longer any such barriers to him visiting his family, thus reducing the impact of any separation.
- (e) In our findings the sponsor could return regularly, if not permanently to India and re-establish himself there, reuniting with his family. The sponsor and his family may wish to enjoy their family life in the UK, but Article 8 does not provide an absolute right to choose where that family life is enjoyed (*Huang and Kashmiri v Secretary of State for the Home Department* [2007] UKHL 1)

46. Factors in favour of a grant of entry clearance to the claimants:

- (a) Although the sponsor had a long period without leave in the UK he arrived in the UK legally and has now regularised his stay.
- (b) The first claimant formed her relationship with the sponsor and moved to the UK to live with him at a time when they both had lawful leave to remain in the UK and those bonds have deepened. It is in the second claimant's best interests as a child to live with both parents.
- (c) The sponsor has established a private life including employment/businesses, since being granted limited leave in 2020, as well as community connections in the UK. A return to India by the sponsor would mean an interruption in that private life.

47. We are satisfied that the factors in favour of allowing the appeal are outweighed by the factors against and we have taken into account that the UK is not subject to a positive obligation under Article 8 ECHR to admit the claimants to the UK. Whilst the refusal of entry clearance will interfere with the claimants' and the sponsor's private and family life, in our judgement that interference is proportionate.

**Notice of Decision**

48. The decision of the First-tier Tribunal promulgated on 1 November 2021, involved the making of a material error of law such that it is set aside. We remake the decision, dismissing the claimants' appeals on all grounds.

Signed **M M Hutchinson**

Date: 2 November 2022

**Deputy Upper Tribunal Judge Hutchinson**

**TO THE RESPONDENT**  
**FEE AWARD**

As the appeals have been dismissed no fee award is made.

Signed **M M Hutchinson**

Date: 2 November 2022

**Deputy Upper Tribunal Judge Hutchinson**