



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

Appeal Number: UI-2022-000290
HU/07020/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 10th November 2022**

**Decision & Reasons Promulgated
On 18th December 2022**

Before

UPPER TRIBUNAL JUDGE KEITH

Between

**AYIZA KASHIF
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: *Mr L Youssefian*, instructed by House of Immigration Solicitors

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

DECISION AND REASONS

1. This is the remaking of the decision in the appellant's appeal against the respondent's refusal of her application for entry clearance to settle with her husband, a British citizen, Mohammad Hussain. Her appeal was based on her right to respect for her family and private life under Article ECHR.

Background

2. The respondent refused the appellant's application for entry clearance, in a decision dated 24th April 2020. This was on the basis that the appellant did not meet the financial evidence requirements of paragraph EC-P.1.1 of Appendix FM of the Immigration Rules. Specifically, the respondent concluded that there were gaps in the evidence relating to Mr Hussain's income, necessary to meet the requirements of para E-ECP.3.1 to 3.4, to prove a gross income of at least £18,600. Whilst he had claimed to have been employed and earned an annual income of £24,000 from 1st April 2019, the respondent had concluded that he did not meet the evidential requirements of Appendix FM-SE, specifically paragraph 9(b). Mr Hussain had been appointed on 21st March 2017 as a co-director and co-owner of the company by whom he was employed, alongside his brother, who was his fellow director and shareholder. This meant that the evidence requirements relating to self-employment, rather than arms-length employment, applied. On 1st April 2020, the respondent asked Mr Hussain to provide evidence of payslips and bank statements for the relevant period. He did not do so. The respondent concluded that the appellant had failed to meet the following requirements of Appendix FM-SE: para 9, sub-paras (b)(v), (c)(i), (c)(ii) and (d)(i), and (ii). The respondent was additionally concerned that whilst unaudited accounts indicated directors' salaries of £10,000, there were no other administration expenses of either salary or dividend payments, despite the appellant being in a partnership with his brother. Even if Mr Hussain had provided the specified evidence, he would not have met the financial requirements. Moreover, Mr Hussain had submitted documents relating to a later tax year, ended on 31st March 2020 which were submitted after the application date, and therefore could not be relevant to meet the requirements of paragraph 9(b) of Appendix FM-SE. Also, whilst the appellant asserted that there was evidence of rental income, the respondent was not satisfied that Mr Hussain received the income.

The FtT's Decision

3. As I already identified in my error of law decision, the FtT erroneously excluded evidence at the date of the hearing on the basis of a misapplication of law that had predated 20th October 2014, specifically an earlier provision of Section 85 of the Nationality, Immigration and Asylum Act 2002. As a consequence I had set aside the FtT's decision without preserved findings of fact. I retained remaking in this Tribunal, on the basis of being invited to do so by both representatives. The respondent also consented to my considering new matters, specifically that the appellant and Mr Hussain have two young British citizen children, who currently live with the appellant in Pakistan but who make regular trips to see Mr Hussain, his parents and family, in the UK. I set out below my findings about the family's circumstances.

The Issues

4. I agreed with the representatives the issues in the remaking decision before me. On behalf of the appellant, Mr Youssefian accepted that at the

date of the application for entry clearance, the appellant's application did not satisfy Appendix FM-SE.

5. However, he contended that at the date of the hearing before the FtT, on 24th June 2021, the evidence, which the FtT had declined to consider, was sufficient to meet the requirements of Appendix FM-SE. Ms Nolan disputed this. Mr Youssefian's submission was that if the appellant met the requirements of Appendix FM-SE at the FtT hearing, although matters have moved on since then, that would be a significant factor in the appellant's favour for the purposes of the proportionality assessment under Article 8.
6. Mr Youssefian went on to confirm that at the date of this hearing before me, the appellant did not have evidence which met the requirements of Appendix FM-SE. He was careful, in his measured submissions, not to assert that it would have been impossible for the appellant to have adduced such evidence before me. Rather, he stated that because relevant tax returns were not due to be filed until 31st December 2023, that might present some difficulties in providing evidence which complied with Appendix FM-SE. Ms Nolan disputed that the appellant had ever complied with Appendix FM-SE. Drawing the issues together these are therefore:
 - 6.1. Whether the appellant's evidence before the FtT on 24th June 2021 satisfied the requirements of Appendix FM-SE.
 - 6.2. For the purposes of Article 8 ECHR, it being accepted that family life existed and exists between the appellant, Mr Hussain, and their children and the best interests of those children, if the appellant's evidence did meet the requirements at 24th June 2021, whether that was determinative of the Article 8 appeal (see the authority of TZ (Pakistan) and Another v SSHD [2018] EWCA Civ 1109).
 - 6.3. Regardless of whether the appellant has complied with the strict requirements of Appendix FM-SE, whether the appellant has established that 'in reality,' she meets the income requirements of Appendix FM, such that refusal of her application for entry clearance is disproportionate.
7. I do not recite all of the evidence to which I have been referred or the parties' respective submissions, except where it is necessary to resolve contested findings. Mr Hussain gave brief oral evidence, which supplemented a witness statement in his bundle. The bundle itself ran to some 464 pages and I agreed with the representatives that I would not refer to the documents relating to finances unless expressly referred to them.

Findings

8. Mr Hussain is a British citizen, born in the UK, and lives in the UK in a multi-generational household with his parents and two siblings. He has four other siblings who live in their own houses in close proximity. He also has nieces and nephews who live nearby, and his entire family live in the

UK. He is currently aged 33, married the appellant in October 2019 and stayed with her in Pakistan for a few months until he returned to resume his work in the UK. The couple have two children, whom it is unnecessary to name: a son born on 17th November 2020; and a daughter born on 4th July 2022. Both children are British citizens. The appellant's son has visited the UK a few times, typically for a couple of weeks, although he is currently with his father for a more extended period because of today's hearing. The normal arrangement is that the children live with the appellant in Pakistan but it is difficult for her to cope by herself. Mr Hussain visits the appellant in Pakistan every couple of months for a couple of weeks. He finds it exhausting to do so, misses her and his children terribly and finds it hard mentally.

9. Turning to Mr Hussain's financial arrangements and his work, in her refusal letter, the respondent had rejected the appellant's application because of the absence of the documentation set out below. I asked Mr Youssefian to point out the documents relied on for the proposition that by the date of the hearing before the FtT on 24th June 2021, as opposed to the date of the application for entry clearance on 4th March 2020, the appellant had addressed each of those omissions.

9.1. Corporate/business bank statements covering a 12 month period as at the company tax return CT600 were required under Appendix FM-SE, para 9(b)(v). The appellant had applied for entry clearance on 4th March 2020 and had referred to Mr Hussain's employment from 1st April 2019 by VIP Driven Limited, but given his link to his employing company, as a director and sibling of a shareholder, he was required to provide a CT600 or company tax return for the last full financial year and evidence that the CT600 had been filed with HMRC. The bank statements needed to cover that period. The CT600 for the period from 1st April 2019 to 31st March 2020 begins at page [21] of the appellant's bundle. Mr Youssefian relied on the Barclays current account statements for the directors of VIP Driven Limited, at pages [257] to [288B]. I observe that these statements relate to the following year from April 2020 to April 2021.

9.2. Payslips and P60 (if issued) covering the same period as the CT600 and Personal bank statements covering the same period, showing that the salary as a director or employee of the company (or both) was paid into an account in the name of the person or in the name of the person and their partner jointly. (Appendix FM-SE, paras 9(c)(i) and (ii)). Mr Youssefian relied upon pages [10]; [11]; [220A] to [225], for para 9(c)(i); and pages [226] to [249A] for para 9(c)(ii). Mr Youssefain said that there was no deficiency in sub-paras (d)(i) and (ii), as these related to dividend vouchers and corresponding bank statements, but there had been no dividends.

10. Ms Nolan's challenge, in cross-examination of Mr Hussain, was simple. The appellant's payslips and his bank statements did not match, or were missing.

11. First, whilst he had referred at paragraph [7] of his witness statement to starting to draw a salary and earning an income of £24,000 in the financial period of 2019 to 2020, at the date of his application for entry clearance, he provided only payslips for 2019. When challenged, Mr Hussain said that the gaps in payslips were because he was only withdrawing funds from VIP Driven Limited when it was making money. He also expressed difficulty in remembering details.
12. Ms Nolan developed her challenge that there was an apparent inconsistency between payments shown in Mr Hussain's monthly regular salary in 2020, as recorded in his PAYE payslips, as later provided to the FtT, and the payments recorded in his bank statements.
13. By way of example, for the 'process date', as recorded in a payslip, for '31/12/20', his net monthly salary, as recorded in that payslip, was £1,568.40. In contrast, the bank statement at page [244], for the period 1st to 31st December 2020, recorded a payment to him of £2,000, on a different date, 2nd December 2020.
14. Turning to further examples, at page [223], the November 2020 payslip recorded a net salary payment, processed on 30th November 2020, of £1,568.40. In contrast, Mr Hussain's bank statement for November 2020 at pages [242] to [243] showed three payments. The first was on 2nd November of £2,000. The second was on 11th November, for £1,920. The third was for £500 on 17th November.
15. Working back, Mr Hussain's September 2020 payslip, with a process date of 30th September 2020, at page [224], showed salary paid of £1,568.40. In contrast, at page [238], Mr Hussain's bank statement showed no payments at all from his employer.
16. Mr Hussain's payslip for August 2020 at page [225] showed pay of £1,682.84, with a process date of 31st August 2020. His bank statement for August 2020 recorded no payment (see page [237]).
17. Mr Hussain explained in oral evidence that he took some of his salary at a later date and left money with the company, VIP Driven Ltd, to 'keep it going'. It was his money, which the company owed him.
18. Mr Youssefian referred to a document at page [392] entitled "VIP Driven Ltd - MK Hussain - Director loan account" which recorded regular monthly net pay amounts, which corresponded to the payslips, shown as credits, with a balance (Mr Hussain's loan to VIP Driven Ltd) building up, and then an aggregate of funds drawn "during the year." He submitted that if I added VIP Driven's payments to Mr Hussain of £2,000 on November 2020 (page [242]); £1,920 on 11th November; £500 on 17th November (page [243]); £2,000 on 2nd December (page [244]); £2,000 on 7th January 2021 at [246]; a single payment of £20,000 on 10th March 2021, not from VIP Driven, but from 'M A Hussain' (page [385]); and from VIP Driven of £1,100 on 30th March 2021, at page [385], the total of £29,520 corresponded to the loan schedule, which recorded Mr Hussain drawing total funds 'during the year' to 31st March 2021, of £14,520, funds introduced by him of

£4,000, and a separate item on 10th March 2021 of funds withdrawn by Mr Hussain 'through MA Hussain' (not Mr Hussain, the sponsor, but a fellow VIP director), of £20,000.

19. Having reviewed the evidence before the FtT, I accept Ms Nolan's submission that the requirement of para 9(c)(ii) is clear. This is for Mr Hussain's personal bank statements to show that the salary relied on, was paid into his account. They do not. Mr Youssefian submitted that the paragraph does not require that the amount indicated in the payslip and the amount received in the bank statement should match. He cited no authority for that submission. Such an interpretation would defeat the very purpose of Appendix FM-SE, which stipulates payslips for the relevant period and personal bank statements showing that the salary was paid. In Mr Hussain's case, there were a series of payslips, purporting to show salary payments to him, which do not correspond with payments made to him at the time. The 'Director loan account' to which Mr Youssefian referred is not a bank account. It is effectively an internal ledger, which VIP Driven's accountant has signed to say is a financial statement provided by the company's directors. It is accompanied by an email from the same accountant at page [392], which says that delays in funds being drawn is 'common practice' in shareholder run businesses. While that may be the case (although Mr Youssefian was unable to assist on whether such practices complied with the "Real Time Information" or 'RTI' requirements of the PAYE Regulations when I queried it with him) the very risk that paragraph 9(c)(ii) was seeking to mitigate is illustrated in the figures provided. The Director loan account or ledger refers to Mr Hussain introducing £4,000 of his own money and then borrowing money back, via the £20,000 withdrawn through a fellow director.
20. Even if were possible to reconcile the figures, (which I do not accept, as the totals do not match, with the drawings, which include a loan to Mr Hussain of £4,000, totalled £28,520, while the total salary payments to which Mr Youssefian referred totalled £29,520) it is only possible to attempt the verification by the ledger and a drawing made through a fellow director, which appears to include a loan to Mr Hussain. There is ample scope for these internal loans, both in favour of, and given by, an employer, to be inaccurate, as the figures already referred to illustrate. The danger is that an employee who is also a director, is never actually paid the salary indicated on the payslip. The simple answer, as required by para 9 of Appendix FM-SE, is to provide payslips and bank statements which correspond. Any separate director's loans (to and from a director) can be shown by way of additional bank transfers.
21. On the evidence before me, the documents provided to the FtT did not comply with Appendix FM-SE. I am also not satisfied that the facts relating to loans by, and to Mr Hussain, are as claimed. The evidence is confused, notwithstanding the Director loan account and the correspondence from Mr Hussain's accountant, to which Mr Youssefian refers in his skeleton argument. The correspondence is an email and not a witness statement

(page [392]) and correspondence from the same firm (page [218]) for that year states that:

“The above information is being disclosed at the request of Mr. Mohammed Kashif Hussain in his personal capacity and as a director of the company and without any responsibility on part of our firm or its employees.”

22. Given the disclaimer of responsibility, I placed limited weight on the Director loan account schedule and the correspondence from VIP Driven’s accountants, who disclaim any responsibility for their comments.
23. I turn to the question of Mr Hussain’s income at the date of the hearing before me. Mr Youssefian accepts that the documents before me do not comply with Appendix FM-SE. I have indicated in the earlier part of the reasons that Mr Youssefian was careful not to suggest that it was impossible for the appellant to have adduced evidence that satisfied the requirements of Appendix FM-SE. Mr Youssefian pointed out that as VIP Driven’s corporation tax return was not due until 31st December 2023, that “may present some difficulties...at present.” However, when I asked him, he stated on specific instructions that Mr Hussain was in a position to have filed a corporation tax return ‘tomorrow’, but had not been advised of the necessity to provide evidence to me that would comply with Appendix FM-SE and it had not occurred to him to do so.
24. Instead, Mr Youssefian invited me to find, on balance, that notwithstanding the lack of evidence that could have been adduced, but had not been, Mr Hussain had earned £18,600 or more in a period working back from the hearing before me, or was now on a salary of more than that amount. It was said that Mr Hussain was now working for Uber, which he had started doing in April 2022, and in the six month period since then he had earned over £35,000, as shown on bank statements. This gross figure did not include his fuel costs and insurance but he now had his own car and it was cheaper for him to meet these expenses. Mr Hussain also relied on another letter from VIP Driven’s chartered accountant, at page [395], dated 12th August 2022, which states that he received a salary of £24,000 during the year ended 5th April 2022 and he has also earned £23,568 from Uber from 31st March to 31st July 2022. As before, the letter states that it is based on information provided by Mr Hussain and disclaims any responsibility for the contents of the letter.
25. Mr Hussain relied bank statements from 1st March 2022 onwards at page [398], which show payments from “Stichting Custodia” (said to be Uber) and also large cash deposits of £2,000 at a time. Whilst there are a number of payments including multiple deposits in cash on the same day, there is no contractual documentation with Uber by way of Mr Hussain’s engagement with them for services.
26. I have been invited to accept on the basis of Mr Hussain’s oral evidence, bank statements showing large deposits, including from Uber, but also in cash and also a letter from a chartered accountant which clearly states

that it does not accept responsibility on behalf of the firm or its employees, that the appellant is receiving the monies in the capacity of an employee or worker and not for, example, from friends or relatives. This is all in the context of Mr Hussain being a co-director with a sibling of a company on whose employment income the appellant has relied in her application. It was also open to Mr Hussain to have adduced the evidence which complied with Appendix FM-SE. He has not. It remains open to the appellant to adduce such additional evidence in the future. I do not go so far as to find that Mr Hussain's income is not equal to, or is less than £18,600. I conclude that there is not reliable evidence to which I have been referred, to satisfy me of that fact.

27. I am also conscious of the appellant's wider circumstances, for the purposes of an Article 8 ECHR analysis outside the Rules. While not referred to me, I have also born in mind section GEN.3.2 of Appendix FM. Adopting an analysis under the five stage test of Razgar v SSHD [2004] UKHL 27, there is family life between the appellant, Mr Hussain and their children. The refusal of entry clearance has had a consequence of such gravity so as to engage Article 8.
28. However, I am also satisfied that that interference is in accordance with the law, bearing in mind section GEN.3.2 (unjustifiably harsh consequences) and that it is proportionate, for the following reasons.
29. In terms of the factors in the appellant's favour, Mr Youssefian submits, and I accept, that it cannot be in the best interests of the two British citizen children, for them to be separated from one of their parents, or for them remain outside the UK. The children are not benefiting from their British citizenship. These are weighty factors in the proportionality analysis. The appellant has had to cope with looking after their children alone, supplemented by Mr Hussain having to travel great distances or bring the children here, when the appellant could otherwise move to live with Mr Hussain's family in the UK.
30. Mr Youssefian argues that it is not enough to say that the appellant can simply reapply for entry clearance with the required evidence, which Mr Hussain accepts is readily available. He says that would render the well-known authority of 'Chikwamba' (Chikwamba v SSHD [2008] UKHL 40) meaningless. He argues that the appellant's human rights claim is on the basis that the appellant meets the income requirements of the Rules, even if not the strict evidential requirements. If she did not, Mr Youssefian says that his submissions would be on a very different basis, i.e. the potentially permanent separation of the children and one of the parents from each other, or Mr Hussain having to move to Pakistan. Instead, Mr Youssefian says that the challenge is to the needless delay which would be caused by requiring a renewed entry clearance application, when the appellant meets the substance of the Rules.
31. In conclusion, the fact that the appellant is able to re-apply swiftly for entry, with what she says is the required evidence, is a factor in this case counting against her. She is not being required to leave the UK, as she is

outside it. It counts against what Mr Youssefian says is the unjustifiably harsh consequence of refusal, the delay in the family being reunited. He said that he was not advancing an argument based on the family being permanently separated and I have accordingly not considered permanent separation. On the issue of delay, refusal would be disproportionate, if I were satisfied that there was reliable evidence about Mr Hussain's income, so as to meet the Rules (see: Begum (employment income; Rules/Article 8) [2021] UKUT 00115 (IAC)). However, for the reasons already given, I am not. I reiterate that I do not go so far as to find that Mr Hussain's income does not meet the Rules, which would entail a very different analysis concerning the permanent separation of the family. Instead I find that there is not sufficiently reliable evidence before me that he does. There are gaps in the evidence for which there is not an adequate explanation. I have concerns, which may be addressed in a future entry clearance application, in light of the nature of the arrangements in relation to employment income, specifically a small family-run business (VIP Driven Ltd) where the payslips do not correspond to payments received; there is casual work for Uber, and large cash deposits.

32. In this case, the public interest in ensuring the appellant meets the income requirements is a legitimate and weighty factor, as part of the maintenance of effective immigration controls, (noting that public interest as per section 117B(1) of the Nationality, Immigration and Asylum Act 2002). The current circumstances, although distressing and resulting in significant expense and inconvenience, are stable. The fact of delay (realistically for many months), but with the ability to make a swift renewed application, is ultimately not of sufficient weight to make the respondent's decision disproportionate, or the delay unjustifiably harsh, even in the context of the best interests of the appellant's children.
33. The refusal of entry clearance does not breach the appellant's rights to respect for her family and private life under Article 8 ECHR.

Conclusions

34. On the facts established in this appeal, there are no grounds for believing that the refusal of entry clearance breaches the right to respect for the appellant's family life under Article 8 ECHR.

Decision

35. The appellant's appeal on human rights grounds is dismissed.

Signed: J Keith

Upper Tribunal Judge Keith

Dated: **11th December 2022**

ANNEX: ERROR OF LAW DECISION



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

Appeal Number: UI-2022-000290

THE IMMIGRATION ACTS

**Heard at Field House
On 17th August 2022**

**Decision & Reasons Promulgated
On**

Before

UPPER TRIBUNAL JUDGE KEITH

Between

**AYIZA KASHIF
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the appellant: *Mr P Georget*, instructed by House of Immigration Solicitors

For the respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. These are the approved record of the decision and reasons which I gave orally at the end of the hearing on 17th August 2022.
2. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Chana (the 'FtT'), promulgated on 28th July 2021, by which she

dismissed the appellant's appeal against the respondent's refusal on 24th April 2020 of her application for entry clearance for settlement as the spouse of her British national husband. The core of the appellant's appeal, based on her human rights, was whether she met the financial eligibility requirements of Appendix FM-SE of the Immigration Rules. In the refusal letter, the respondent referred to the specific parts of where it was said the appellant's application had not complied with Appendix FM-SE. The appeal to the FtT was put in general terms, referring to evidence that had been ignored, the principles of natural justice and breach of article 8 ECHR. By the time that the matter was considered by the FtT, the appellant sought to adduce additional evidence which had not been before the respondent in reaching her decision.

The FtT's decision

3. Crucially, at §29 of her decision, the FtT stated:

"29. Under 85(5) of the 2002 Act, in entry clearance cases, evidence is limited to matters arising before and on the date of the decision. At the date of decision the appellant did not provide the documents to show she meets the requirements of the immigration rules. I can only consider as evidence documents provided at the date of the decision or anything which sheds light on documents already submitted. Under the Immigration Act 2014, no new evidence can be put forward unless it demonstrates that previously submitted documentation is genuine and meets the immigration rules. I therefore not consider the late submission of documents. I will only consider the documents at the date of the decision."

4. The FtT concluded at §30 that there was no issue that the appellant had not provided the requisite documentation at the date of her application and therefore she did not meet the requirements of the Rules. The FtT went on to consider the appellant's appeal by reference to article 8, in circumstances where the appellant had a British citizen husband living in the UK and a young child living in Pakistan. The FtT noted the family's application for a British citizen passport for the child but concluded that the child's best interests lay in remaining with his mother, the appellant, in Pakistan and that it was open to the sponsor to join them in Pakistan as part of a family unit. Refusal of entry clearance was therefore not in breach of the appellant's rights under article 8 ECHR.

5. The FtT rejected the appellant's appeal.

The grounds of appeal and grant of permission

6. The appellant lodged grounds of appeal which are essentially that the FtT could consider evidence available at the date of hearing, and that if that evidence satisfied the Rules that would be positively determinative of the appeal (see the authority of TZ (Pakistan) v SSHD [2018] EWCA Civ 1109).

7. First-tier Tribunal Judge Ford initially refused permission, but permission was granted by Upper Tribunal Judge Plimmer on 18th March 2022. The grant of permission was not limited in its scope.

Rule 24 response

8. In her rule 24 response dated 5 April 2022, the respondent did not oppose the appellant's application for permission and invited this Tribunal to set aside the FtT's decision and remit it to the FtT for a decision *de novo*. The FtT was said to be best placed to hear new evidence as to the updated article 8 position.

Decision

9. I regard the Rule 24 response as pragmatic and correct in not opposing the appeal. The FtT plainly had not considered the relevant version of section 85 of the Nationality, Immigration and Asylum Act 2002, which read:

"Matters to be considered

(1) An appeal under section 82(1) against a decision shall be treated by the Tribunal as including an appeal against any decision in respect of which the appellant has a right of appeal under section 82(1).

(2) If an appellant under section 82(1) makes a statement under section 120, the Tribunal shall consider any matter raised in the statement which constitutes a ground of appeal of a kind listed in section 84 against the decision appealed against.

(3) Subsection (2) applies to a statement made under section 120 whether the statement was made before or after the appeal was commenced.

(4) On an appeal under section 82(1) against a decision the Tribunal may consider any matter which it thinks relevant to the substance of the decision, including a matter arising after the date of the decision.

(5) But the Tribunal must not consider a new matter unless the Secretary of State has given the Tribunal consent to do so."

10. The ability to consider post-decision evidence in an entry clearance case was confirmed as long ago as 2017, in the reported case of HH (conditional appeal decisions) Somalia (2017) UKUT 00490 (IAC).
11. The FtT erred in law in disregarding potentially relevant post-decision evidence, because she regarded herself as bound to do so. That error was material.

Decision on error of law

12. I conclude that there are material errors in the FtT's decision, and I must set the FtT's decision aside.

Disposal

13. Notwithstanding the respondent's initial view on remittal in the rule 24 response, both representatives invited me to retain remaking in the Upper Tribunal. In agreeing to do so, I canvassed with Ms Cunha whether the respondent consented to consideration of post-decision evidence, including the fact that that the appellant now has two children with the sponsoring husband, both of whom are British citizens and one of whom is in the UK. She confirmed the respondent's consent to a remaking judge considering these new matters. In that context, and having considered paragraph 7.2 of the Senior President's Practice Statements, I was content for the Upper Tribunal to remake the appellant's appeal, without preserved findings of fact.

Directions

14. The following directions shall apply to the future conduct of this appeal:

- (a) The Resumed Hearing will be listed at Field House, in person, on the first available date, time estimate **2 hours**, to enable the Upper Tribunal to substitute a decision to either allow or dismiss the appeal.
- (b) The appellant shall no later than 4 pm, **21 days** before the Resumed Hearing, file with the Upper Tribunal and serve upon the respondent's representative an electronic consolidated, indexed, and paginated bundle containing all the documentary evidence upon which she intends to rely, including new evidence relating to the family's current circumstances. The bundle should not include out-of-date evidence. Witness statements in the bundle must be signed, dated, and contain a declaration of truth and shall stand as the evidence in chief of the maker who shall be made available for the purposes of cross-examination and re-examination only.
- (c) The parties shall file and serve written skeleton arguments no later than 4 PM, **7 days** before the Resumed Hearing.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law and I set it aside.

Remaking is retained in the Upper Tribunal.

No anonymity direction is made.

Signed **J. Keith**

Date: 17th August 2022

Upper Tribunal Judge Keith