



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case Nos: UI-2022-005066**  
**UI-2022-005067**  
**First-tier Tribunal Nos:**  
**HU/02548/2021 HU/02549/2021**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 21 May 2023**

**Before**

**UPPER TRIBUNAL JUDGE STEPHEN SMITH**  
**DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

**Between**

**(1) AKM Fahad**  
**(2) Rezwana Ferdous**  
**(NO ANONYMITY DIRECTION MADE)**

Appellants

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr Z. Malik KC, instructed by Chancery Solicitors  
For the Respondent: Ms A. Nolan, Senior Home Office Presenting Officer

**Heard at Field House on 26 April 2023**

**DECISION AND REASONS**

1. By a decision dated 25 July 2022, First-tier Tribunal Judge Beg (“the judge”) dismissed the appeals against two linked decisions of the Secretary of State dated 4 March 2021, brought under section 82(1) of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”). The appeals were brought by two citizens of Bangladesh; Mr AKM Fahad, born on 10 October 1987, and Ms Rezwana Ferdous, born on 10 February 1988. Mr Fahad, the first appellant, was the primary applicant. Ms Ferdous, his wife, was his dependent.

2. The appellants now appeal against the decision of the judge with the limited permission of First-tier Tribunal Judge Komorowski. We address permission to appeal on the remaining grounds below.
3. We are grateful to the appellants' solicitors for providing a full copy of the appellants' bundles from before the First-tier Tribunal after the hearing. We are satisfied that we have been able fully to consider Mr Malik KC's submissions in light of all relevant materials.
4. We are grateful to the Secretary of State for her rule 24 response dated 3 November 2023, and to Mr Malik for his helpful skeleton argument dated 19 April 2023, which we have considered with care.

### **Factual background**

5. The first appellant arrived in the United Kingdom on 3 September 2009 with entry clearance as a student. His leave in that capacity was extended until 30 October 2014. He made an out of time application for further leave as a Tier 2 migrant on 17 December 2014, which was granted on 20 January 2015 until 10 February 2018. The grant of leave was made on the basis that he was employed by his sponsoring employer, Vanita Malhotra trading as 'Kamal Mahal'. On 25 February 2015, Kamal Mahal informed the Secretary of State that the first appellant had failed to commence his employment.
6. What took place next is a core matter of dispute. It is the Secretary of State's case that on 14 May 2015, the first appellant was sent a letter curtailing his Tier 2 leave under para. 323A(a)(i)(1) of the Immigration Rules. The appellants' case is that the first appellant did not receive the letter and was unaware of the purported curtailment until he received another letter from the Home Office informing him that he was without leave in June 2016. The effective date of curtailment is significant because, on the appellants' case, if service did not take place until the first appellant's claimed date of knowledge, their subsequent applications for leave to remain were in-time (which, in turn, says Mr Malik, could have had an impact on the length of the first appellant's continuous lawful residence).
7. Thereafter, the appellant claims to have been advised by an immigration adviser or solicitor, Mr Dey of Lexpert Solicitors LLP, to make a series of further human rights claims to the Secretary of State. He submitted an application on 17 June 2016, which was refused on 13 April 2017 in circumstances that did not attract an in-country right of appeal. On 29 April 2017, he made a further application, which was refused in circumstances that did not attract a right of appeal at all, on 4 December 2017. On 20 December 2017, he submitted a further application, which he varied on 20 June 2018, and again on 8 August 2018, to an application for indefinite leave to remain on an exceptional basis outside the rules, with the second appellant as his dependent. The latter application was refused by the Secretary of State, initially on 18 July 2019 with no right of appeal. It was reconsidered on 4 March 2021 in circumstances that attracted a right of appeal, and it was that refusal decision that was under appeal before the judge. We refer to the decision of 4 March 2021 as "the refusal decision".
8. In the refusal decision concerning the first appellant, the Secretary of State concluded that there were no circumstances that warranted a grant of indefinite leave outside the rules. The first appellant's mental health conditions, which he had raised in the application, did not meet the threshold for Article 3 of the European Convention on Human Rights ("the ECHR"). There was no evidence that any required treatment would not be available in Bangladesh. The first

appellant's relationship with the second was not eligible for consideration under the partner route, and nor could he succeed on the basis of his private life. He would not face very significant obstacles to his integration in Bangladesh, and there were no exceptional circumstances such that it would be unduly harsh to refuse the application.

9. The second appellant's immigration history is that she arrived in the UK on 15 March 2012 with entry clearance as a dependent of a student. She held leave continuously until 13 June 2016, when it was curtailed. In June 2017, she gave birth to a girl, N, with the first appellant.
10. The Secretary of State's decision of 4 March 2021 concerning the second appellant was in largely similar terms to that concerning her husband. Since the issues on appeal to the Upper Tribunal focus primarily on the first appellant's immigration history, we do not need to address the reasons for the second appellant's refusal in greater depth.
11. The appellants appealed to the First-tier Tribunal. The hearing was originally listed to be heard on 6 May 2022, but it was adjourned for the Secretary of State to consider whether to grant her consent to a "new matter" being heard in the form of the first appellant's submissions that he had accrued ten years' continuous lawful residence for the purposes of para. 276B of the Immigration Rules. The Secretary of State provided her consent, and the appeal was effective on 25 July 2022. The appellants were represented by Chancery solicitors and by counsel (not Mr Malik, who did not appear below).

### **Decision of the First-tier Tribunal**

12. Insofar as the issues on appeal to the Upper Tribunal are concerned, the judge made the following relevant findings of fact. First, the judge found that the first appellant had received the curtailment letter curtailing his leave on 18 May 2015 (para. 31). Secondly, she rejected the first appellant's case that he had received negligent advice from Mr Dey about challenging the curtailment (paras 34 to 36). Thirdly, she found that the appellants would not face very significant obstacles to their integration in Bangladesh for the purposes of para. 276ADE(1)(vi) of the Immigration Rules.
13. As to the appellants' prospective integration in Bangladesh, they had claimed to have lost contact with their families, and to have previously received threats from their families as a result of their marriage being disapproved. The judge rejected those accounts, finding that the appellants were not credible witnesses. The second appellant claimed that one of her uncles was the Deputy Attorney General in Bangladesh, and that her mother had a senior role working for a university, yet there was no corroborative evidence to that effect. There was "no credible evidence" that either appellant had been threatened. They had not claimed asylum.

### **Issues on appeal**

14. There are four grounds of appeal to the Upper Tribunal.
  - a. First, whether the judge erred by failing to determine the appeals by reference to Article 3 ECHR (prohibition of cruel, inhuman and degrading treatment).
  - b. Secondly, whether the judge erred in finding that the May 2015 curtailment letter had been validly served.
  - c. Thirdly, whether the judge's logic concerning the poor legal advice was flawed.

- d. Fourthly, whether the judge's credibility-based reasons for rejecting the appellants' claimed risk of harm in Bangladesh were adequately reasoned.
15. First-tier Tribunal Judge Komorowski granted permission in relation to ground 4 only. Mr Malik contends that, notwithstanding that purported limited grant of permission, pursuant to *EH (PTA: limited grounds; Cart JR) Bangladesh* [2021] UKUT 0117 (IAC), the appellant enjoys permission to appeal on all grounds in any event, in the absence of a direction limiting the grounds of appeal. In addition, the appellants applied to renew their application for permission to appeal to the Upper Tribunal on grounds 1 to 3. That application remained pending at the date of the hearing.
16. While we doubt whether *EH* is of any import in a case where the First-tier Tribunal has granted permission on limited grounds, we informed the parties at the hearing that we granted the appellants permission to appeal in relation to all remaining grounds in any event. Grounds 2 and 3 challenge findings of fact reached by the judge based, in part, on credibility findings following her assessment of the evidence in the round. Since Judge Komorowski had granted permission to appeal against some of the judge's credibility findings under ground 4, we considered that it would be necessary to review the judge's credibility assessment as a whole. Having granted permission to appeal on those grounds, we saw no reason to give a direction limiting the extent to which the appellants could pursue ground 1, and expressly granted permission to appeal in relation to it.

#### **Grounds 2 to 4: challenges to the judge's findings of fact**

17. It will be convenient first to address grounds 2 to 4 together, since, properly understood, they challenge the judge's findings of fact.
18. Mr Malik founded his submissions concerning ground 2, the curtailment issue, on the premise that it is for the Secretary of State to prove that service in writing took place in order for the curtailment letter to be effective. Even if there is evidence that the letter was sent, that merely creates a rebuttable presumption. There is no challenge to that summary of the principles by the Secretary of State and we need not address them any further.
19. Turning to the substance of the ground, Mr Malik submitted that, at its highest, the Secretary of State's "GCID" records show that she intended to send the curtailment letter, but did not demonstrate that it had, in fact, been served. It merely stated that the notices were "to be despatched to..." the appellant's address. While there was a Royal Mail *Recorded Delivery* reference number, there was no record of a delivery receipt. Mr Malik initially said that the number was not traceable, but later clarified that there was no evidence before the judge on that issue. Either way, there was no evidence to justify the following finding reached by the judge, at para. 24, he submitted. The relevant reasoning, to which we have added emphasis, is:
- "In his witness statement dated 30 January 2022, the appellant does not state that he was living at a different address [to the one specified in the Home Office GCID records] when the curtailment letter was sent to him. **Nor does he answer the question of receipt of the recorded delivery letter which had a tracking number.**"
20. In relation to ground 3, by which the appellants challenge the judge's rejection of the first appellant's evidence that he had received poor advice from Mr Dey, Mr Malik submitted that the judge's logic was flawed. At para. 34, one of the reasons given by the judge for rejecting the first appellant's evidence was as follows:

“He [the first appellant] said another solicitor told him in 2018 about complaining about Mr Dey. I do not find the appellant a credible witness. I find that if the appellant in any way genuinely blamed Mr Dey for giving him poor legal advice, he would not have gone back to him to make two further applications for leave to remain following the curtailment. The appellant is an educated man who holds an MBA.”

21. Mr Malik submitted that, by definition, the first appellant would not have known that he had received bad advice at the time he submitted the repeat, failed applications following the purported curtailment. The judge did not make a finding concerning when the first appellant became aware that Mr Dey’s advice was substandard. It was perverse to rule against the appellants on the basis that they should have known that professional advice they had received was substandard before being told about those failings by another solicitor as, on their case, the first appellant had in 2018.
22. Pursuant to ground 4, Mr Malik criticised the judge’s formula that “there was no credible evidence” that the appellants would face family ostracization and related risks in Bangladesh. In *Secretary of State for the Home Department v Starkey* [2021] EWCA Civ 421, Laing LJ held at para. 91 that the formulation “there is no satisfactory evidence...” was ambiguous. It could have meant that there was no evidence, or that there was evidence that the judge did not accept. The same was true of the judge’s decision, Mr Malik submitted. Moreover, the only substantive reasons given by the judge for rejecting the appellants’ evidence centred on the absence of corroborative evidence. It is trite law that risk can be established on the basis of oral evidence alone. There is no need for corroboration.
23. Ms Nolan submitted that the judge reached findings of fact that she was entitled to reach, for the reasons she gave.
24. We turn to some of the relevant legal principles. The Presidential panel in *Joseph (permission to appeal requirements)* [2022] UKUT 218 (IAC) observed, at para. 13ff:

“13. The right of appeal to the Upper Tribunal is on any ‘point of law’ arising from a decision made by the First-tier Tribunal, other than an excluded decision: section 11(1) of the 2007 Act. There are many reported authorities, in this jurisdiction and from further afield, addressing the need for grounds of appeal to be pleaded properly and succinctly, and by reference to an arguable error of law. Maintaining the distinction between errors of law and disagreements of fact is essential; it reflects the jurisdictional delimitation between the first-instance role of the FTT and the appellate role of the UT, and reflects the institutional competence of the FTT as the primary fact-finding tribunal. The distinction, however, is often blurred, with unhelpful consequences. As Warby LJ put it in *AE (Iraq) v Secretary of State for the Home Department* [2021] EWCA Civ 948; [2021] Imm AR 1499 at [32]:

‘Commonly, the suggestion on appeal is that the FTT has misdirected itself in law. But it is not an error of law to make a finding of fact which the appellate tribunal might not make, or to draw an inference or reach a conclusion with which the UT disagrees. The temptation to dress up or re-package disagreement as a finding that there has been an error of law must be resisted.’

14. Warby LJ recalled the judgment of Floyd LJ in *UT (Sri Lanka) v Secretary of State for the Home Department* [2019] EWCA Civ 1095 at [19]:

‘...although 'error of law' is widely defined, it is not the case that the UT is entitled to remake the decision of the FTT simply because it does not agree with it, or because it thinks it can produce a better one. Thus, the reasons given for considering there to be an error of law really matter.’”

25. In *Fage UK Ltd. v Chobani UK Ltd.* [2014] EWCA Civ 5 at [114], Lewison LJ said that an appeal court was merely able to engage in “island hopping” when reviewing the evidence considered by the trial judge, in contrast to the trial judge’s role of considering “the whole sea of evidence.” As Lady Hale PSC said in *Perry v Raleys Solicitors* [2019] UKSC 5 at [52], the constraints to which appellate judges are subject in relation to reviewing first instance judges’ findings of fact may be summarised as:

“...requiring a conclusion either that there was no evidence to support a challenged finding of fact, or that the trial judge's finding was one that no reasonable judge could have reached.”

26. In our judgment, each of grounds 2 to 4 are attempts to categorise legitimate findings of fact as errors of law. For the reasons set out below, the judge’s findings of fact were rationally open to her and were not infected by any errors of law.

27. By way of a preliminary observation on this point, it is important to view the judge’s findings in the round. The judge plainly reached her findings as part of an overall, holistic assessment: see para 37 (“taking the evidence as a whole...”). She found the appellants to lack credibility at various junctures. For example, the first appellant had claimed that he had worked for his Tier 2 sponsor for two months before leaving. By contrast, the sponsor had informed the Secretary of State (in a step which would ultimately lead to the 2015 curtailment decision being taken) that he had not worked at all for them. At para. 25, the judge found that the first appellant lacked credibility. He had not provided any details (payslips, bank details, HMRC records) to corroborate his claim to have been employed. The judge was entitled to take a dim view of his credibility for those reasons. The appellants have not challenged that reasoning. It runs throughout the decision, for example at paras 35, 42, and 44.

### **The judge gave rational reasons for her curtailment letter findings**

28. In our judgment, the judge gave a series of rational reasons as part of her overall assessment that entitled her to conclude that the Secretary of State had proved service of the curtailment letter. The curtailment letter was recorded on GCID as to be sent to the address then on file for the appellant (para. 23). A *Recorded Delivery* tracking number had been generated, strongly suggesting that the entry was more than merely aspirational, and that concrete steps had been taken to serve the decision. In his evidence before the judge, the first appellant had not claimed *not* to have been living at the address at the time (para. 24). At para. 32, the judge noted that Mr Dey’s subsequent cover letter to the Home Office in the appellant’s next application referred to the appellant’s leave having been curtailed by the Home Office on 18 May 2015, with no reference to the letter having not been received. The judge later found that the appellant’s attempts to blame his former solicitors were an attempt to bolster his case: para. 35. The timing of the referral to the Legal Ombudsman was inconsistent with his case to have found out in 2018 that he received bad advice; his complaint to Mr

Dey's firm was not made until 12 November 2021. It was entirely rational for the judge to conclude that the appellant would have raised his concerns at an earlier stage, had they been genuine.

29. Properly understood, the judge's observation at para. 24 that the first appellant's evidence did not "answer the question of receipt of the recorded delivery letter which had a tracking number" did not amount to a finding that there was a functional tracking number which had confirmed delivery. There was no evidence either way of that issue. The judge was simply observing that the appellant's evidence was silent as to whether he had attempted to validate the tracking number that was visible from the GCID record. It was open to the judge to ascribe significance to that matter. One would ordinarily expect an appellant mounting a genuine challenge to service of a curtailment letter on that basis to address precisely this point. The appellant did not.
30. The reasons given by the judge that we have analysed above were sufficient to merit the conclusion she reached. But, if any further clarity be needed, we also observe that there was other evidence before the judge that rationally supported this conclusion. Although the judge did not expressly refer to it, she did say that she had considered "the evidence as a whole", and it is not necessary expressly to refer to all items of evidence. The letter from Lexpert Solicitors dated 6 December 2021, responding to the first appellant's complaint against them, additionally demonstrated that the judge was entitled to find that the curtailment letter had been served validly. Lexpert's response to the first appellant's allegation that the firm had failed to advise the first appellant that he could challenge ineffective service of the curtailment letter was in these terms:

"Our records show that we had asked you about the receipt of the 'curtailment letter' which was referred to in the Home Office letter dated 10 June 2016. **You informed us that you did receive it, but you have subsequently misplaced it.** As such, you confirmed that you were aware that your leave to remain was curtailed on the 18 May 2015. You also informed us that your then sponsor had lost their Tier 2 sponsor licence and as such you were unable to challenge the Home Office decision regarding the curtailment of your leave to remain.

Your leave was curtailed on 18 May 2015. You came to us on 15 June 2016 (after one year) only after receiving the second letter from the Home Office dated 10 June 2016. You did not raise any issue(s) in relation to the curtailment letter. Our instruction was to advise you on how you can make a valid application based on your compelling circumstances. That was the extent of our instructions and that was what we dealt with."

31. Thus, there was plainly evidence before the judge that supported the finding that the first appellant had received the curtailment letter. Her findings were not findings in respect of which there was no evidence to support, or that no reasonable judge could have reached (c.f. *Perry v Raleys Solicitors*, quoted at para. 24, above).
32. In relation to ground 3, Mr Malik accepted at the hearing before us that grounds 2 and 3 are linked. We therefore touch on ground 3 only briefly as it stands or falls with ground 2. The reasoning targeted by Mr Malik is at para. 34:

"I find that if the appellant in any way genuinely blamed Mr Dey for giving him poor legal advice, he would not have gone back to him to

make two further applications for leave to remain following the curtailment. The appellant is an educated man who holds an MBA.”

33. In our judgment, the judge was entitled to view the first appellant’s evidence concerning the timing of his complaint about Lexpert Solicitors with a considerable degree of scepticism. On her findings of fact, the first appellant received the curtailment letter in May 2015. There was nothing to complain about: he received the letter shortly after it was sent and was aware of its contents. The judge was entitled to find that the appellant’s late complaint to Lexpert Solicitors and the Legal Ombudsman (in 2021) was inconsistent with his claim to have been informed by another solicitor in 2018 that other options had been available to him, namely a challenge to the curtailment letter. The judge was entitled to conclude that, had the concern been genuine, the appellant could and should have complained at a much earlier stage, rather than at the last minute, when appeal proceedings were imminent, as she did at para. 36. In that respect, Mr Malik’s forensic criticism of a single sentence of the judge’s reasoning at para. 34 is without merit. The point the judge made at para. 34 is that the actions of the first appellant were wholly inconsistent with an immigration applicant aggrieved by not having received proper service of a curtailment letter. As held in *Volpi v Volpi* [2022] EWCA Civ 464 at para. 2(vi):

“Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract.”

This ground is disagreement of fact and weight, and an exercise in island hopping. It is without merit.

### **“No credible evidence” was an adequate reason in these proceedings**

34. We now turn to the sole ground which Judge Komorowski considered to be arguable, namely the judge’s use of the “no credible evidence” formula. The judge used the term in the context of address the appellant’s claims to face very significant obstacles to their integration in Bangladesh. The claimed very significant obstacles arose from the appellants’ circumstances and life together in the UK. They also said that their families in Bangladesh disapproved of their marriage. They had lost contact with them. The second appellant’s family had threatened them; her uncle was Bangladesh’s Deputy Attorney General. Her mother worked in a senior position and had threatened them, too. The second appellant’s child would be removed from her, and she would be prevented from seeing the first appellant, were they to return.
35. The judge assessed the above claims to the balance of probabilities standard. She did not find the appellants’ evidence to be credible. There was no corroborative evidence. The appellants had fabricated the claim that the second appellant’s mother and uncle were influential, and had made threats against them, she found: para. 44. The second appellant was an untruthful witness. The appellants still had friends and family in Bangladesh. In any event, they would not need to live near them. Their friends and supporters in the UK may be able to support them with money and contacts in Bangladesh.
36. This ground is without merit, for the following reasons.
37. First, there is no general rule that the formula “no credible evidence” cannot be used. In some cases, the term will be ambiguous, as was the position in *Starkey*. In other cases, it will not be. Certainly, *Starkey* established no new point of general principle; Laing LJ’s criticism of the “no satisfactory evidence” formula was targeted at the First-tier Tribunal’s analysis of the medical evidence in those



proceedings, which was expressed in ambiguous terms when taken in the context of the evidence that was before it. The identified weakness was the failure of the tribunal to give reasons for saying *why* it considered the evidence to lack credibility (see para. 91), if indeed that was what it meant. The findings reached by the judge in these proceedings are not tainted by that weakness. The judge found both appellants to lack credibility. She was satisfied that their evidence had been fabricated; the first appellant's evidence concerning the curtailment letter was inconsistent with the remaining evidence, for the reasons identified above. In relation to the second appellant's claim to be at risk from her extended family in Bangladesh, the judge said there was no corroboration, and that the second appellant was not a truthful witness.

38. Looking at the evidence that had been before the judge, the appellants had provided scant detail about the claimed risk from their families, and the second appellant's family in particular. The first appellant's witness statement dated 30 January 2022 was silent as to the claimed risks. It merely referred, at paras 18 to 20, to having established a life in the UK, to the appellant's feared prospective difficulties integrating in Bangladesh through not owning property or having anywhere to live, and through diminishing ties in the country. The second appellant's witness statement said the following at para. 10:

"My uncle is a very powerful and politically influential person, and he is the deputy Attorney General. He will certainly do something that I may lose my baby girl [N], as well as Fahad... We are nothing to regarding his power in Bangladesh. That is the main reason that I cannot leave the United Kingdom."

39. The evidence before the judge on this issue was, if anything, a makeweight. It was not emphasised in the human rights claim to the Secretary of State. In the context of her overall findings, the judge was entitled to ascribe significance to the absence of corroborative evidence, in particular concerning the second appellant's uncle's claimed position as the or a Deputy Attorney General. As recently held in *MAH v Secretary of State for the Home Department* [2023] EWCA Civ 216 at para. 86:

"It was common ground before this Court that there is no requirement that the applicant must adduce corroborative evidence: see *Kasolo v Secretary of State for the Home Department* (13190, a decision of the then Immigration Appeal Tribunal, 1 April 1996). **On the other hand, the absence of corroborative evidence can, depending on the circumstances, be of some evidential value: if, for example, it could reasonably have been obtained and there is no good reason for not obtaining it, that may be a matter to which the tribunal can give appropriate weight.**" (emphasis added)

40. The appellants had been in the UK for around ten years by the time of the appeal before the judge. They were not, on any view, in a flight situation, deprived of the ability to gather corroborative evidence when fleeing persecution or serious harm in a rush. Further, evidence as to the identity of the holder of a high political office such as the Deputy Attorney General in Bangladesh could, in principle, reasonably have been obtained. There was no good reason in the evidence before the judge for the appellants not to have provided corroborative evidence of at least the existence of the claimed familial relationship with the Deputy Attorney General. Similar observations apply in relation to the second appellant's mother's claimed position as the deputy comptroller of accounts at a leading university in Bangladesh.

41. Against that background, the judge was entitled to conclude that the appellants had fabricated their evidence. The term “no credible evidence” used by the judge meant that there was evidence, but she did not find it to be credible. The evidence that did exist concerning this issue was threadbare, lacked corroboration, and had been given by two appellants found by the judge to have fabricated evidence. The *Starkey* ambiguity simply does not arise. The reasons given by the judge were adequate.
42. This ground is without merit.

**Ground 1: no ‘Robinson obvious’ error**

43. It was common ground before us that the issues as identified by the parties before the judge, including by the appellants’ then counsel, Ms Amanda Jones, did not identify Article 3 ECHR has a disputed issue requiring resolution. The issues as identified at para. 6 of Ms Jones’ skeleton argument before the judge were, first, whether the appellants would face “very significant obstacles” to their integration for the purposes of paragraph 276ADE of the Immigration Rules, and, secondly, whether the first appellant (and therefore the second) should be treated as if they had acquired ten years’ continuous lawful residence. The Respondent’s Review cast the issues in consistent, but slightly broader terms, by adding a general reference to Article 8 outside the rules. The judge summarised the issues in those terms at para. 21.
44. Mr Malik submitted that the judge was seized of an “obvious Article 3” claim. The Secretary of State dealt with Article 3 in the decision letter. The judge was therefore obliged to deal with it, even though it was not expressly pursued, pursuant to *R v SSHD ex parte Robinson* [1998] QB 929. The judge’s Article 8 findings were no substitute for a proper Article 3 analysis, which would have benefitted from the lower “reasonable likelihood” standard of proof.
45. Ms Nolan submitted that the judge considered all matters raised before her, and that there was no Article 3 *Robinson* obvious claim.
46. To determine this point, it is necessary to look to what the Court of Appeal held in *Robinson*. At para. 39, Lord Woolf MR said:

“If there is readily discernible an obvious point of Convention law which favours the applicant although he has not taken it, then the special adjudicator should apply it in his favour, but he should feel under no obligation to prolong the hearing by asking the parties for submissions on points which they have not taken but which could be properly categorised as merely ‘arguable’ as opposed to ‘obvious’...  
**When we refer to an obvious point we mean a point which has a strong prospect of success if it is argued.** Nothing less will do.”  
(Emphasis added)

47. In our judgment, there was not even an arguable Article 3 claim before the judge, still less did it have a strong prospect of success. The judge had found that the first appellant had claimed not to have received the curtailment letter when, on her findings he had. He had bolstered his case by advancing a late complaint against his former solicitors on unmerited grounds. Both appellants had fabricated evidence of their claimed very significant obstacles before the judge and were found to lack credibility.
48. The factual matrix that was before the judge fell short of being a *Robinson* obvious Article 3 claim by a considerable margin. The appellants’ experienced counsel was right not to pursue it. As with the appellants’ approach to Mr Dey,

their criticisms of Ms Jones are entirely without foundation. This ground is without merit.

**Postscript: materiality**

49. We queried with Mr Malik at the hearing whether, assuming the grounds of appeal were made out, the errors would be material in any event. Mr Malik submitted that the first appellant's lawful residence would have continued under section 3C of the Immigration Act 1971, had the curtailment letter not been served. We also queried whether an Article 3 claim would have been a "new matter" for the purposes of section 85(5) of the 2002 Act, since, at best, those matters had only been considered by the Secretary of State under the auspices of Article 8.
50. Since we have dismissed the appeal on all grounds, we do not need to engage with these issues in further depth.
51. We are grateful to both advocates for their assistance.

**Conclusion**

52. The appeal is dismissed.

**Notice of Decision**

We grant permission to appeal to the appellants on grounds 1 to 3 (permission to appeal on ground 4 having already been granted by the First-tier Tribunal).

We find that the decision of Judge Beg did not involve the making of an error of law such that it must be set aside.

This appeal is dismissed.

**Stephen H Smith**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**10 May 2023**