



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

Case No: UI-2022-006623

First-tier Tribunal Nos: HU/51108/2020  
IA/02558/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 3rd of November 2023**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MUHAMMAD ARSHAD  
(NO ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr T Melvin, Senior Home Office Presenting Officer  
For the Respondent: Mr T West, of Counsel

**Heard at Field House on 17 October 2023**

**DECISION AND REASONS**

**EXTEMPORE JUDGMENT**

1. The Secretary of State appeals the decision of the First-tier Tribunal, Judge Suffield-Thompson, issued following an oral hearing on 26<sup>th</sup> October 2022. The judge allowed the Appellant's appeal on Article 8 grounds. The Secretary of State's grounds challenge the decision on the basis that the characterisation of the relationship between the Appellant and his sister's children being one of the Appellant effectively being a third parent is a finding which is unsustainable in law, there being no such role or relationship, and that the finding that removing the Appellant from the lives of his nieces and nephew aged 14, 7 and 4 would result in unjustifiably harsh consequences for the children in the context of the close bond that he has with them is not made out. Not least that finding is not supported in the evidence by any independent third party evidence of the impact

of removal but only on bare assertion. Finally the grounds challenge the judge's conclusions in respect of the proportionality assessment for failure to direct and properly weigh the evidence in the context of the statutory provisions as elucidated in case law. Both parties were agreed that in the event that I found error of law I should move to re-make the decision today.

2. In a Rule 24 notice served during the course of the hearing Mr West on behalf of the Claimant argues that the grounds are in effect no more than a disagreement with the weight of the various factors that the judge has properly taken into account in the Article 8 exercise. I am satisfied that the grounds are made out and the decision of the First-tier Tribunal does reveal material error. The judge does not correctly self-direct in respect of Article 8 and in particular at no point in the decision is there reference to the little weight to be attached to a private and family life garnered in the context, as here, of unlawful and precarious status. Mr West argued that the reference at paragraph 65 to "the real significance of the public interest in maintaining a firm but fair immigration policy and protecting the economic wealth" is a sufficient self-direction in the context of the reasoning of the judge as a whole, but in the context of Section 117 of the 2002 Act that is not an adequate dealing. Mr West asked that I specifically deal with the perversity issue in respect of Ground 1 of the Respondent's grounds. Plainly the judge has erred in categorising the relationship as being a parental relationship and in that context has assessed the impact of removal as if the Appellant were being removed as a parent and on both counts there is irrationality. I am satisfied that the Respondent has established both limbs of the error of law argued for in the application for permission.
3. Taking into account the relevant factors including the matters found by the judge in the context of the relationship between the Appellant and the children I am satisfied that there is a family life which is sufficient to engage Article 8 and that the Respondent's decision to remove the Appellant is an interference to the point that it is necessary to consider the proportionality of that decision. In the context of the factors relevant to the proportionality assessment I take into account the immigration history of the Appellant who is an acknowledged overstayer following the six month period that he was with leave as a visitor on arrival in June 2008. In the context of the relationship with the children he has resided in his sister's household since 2015 and so has been very present in their lives and played a significant role although Mr West was right to acknowledge before me that in the context of having two parents in the household his assistance with childcare and the support of the children cannot be characterised as being parental but rather a close "uncle" relationship. Whilst that is sufficient to find that it is in the children's best interests for him to remain in the United Kingdom I am not satisfied that the position of the children would be so detrimentally affected in the event that he were removed that it should be a significant or dispositive factor in the context of a proportionality assessment. Clearly their primary relationship in terms of parental responsibility remains with their parents and there is nothing in the evidence to suggest that they would not be able to continue to adequately care for the children in the event that he were to be removed. The evidence was that in the event that he were granted leave he would be living separately in rented accommodation and supporting himself through employment. Taking into account all of the other matters including the ability to speak English and the presence of the Appellant in the United Kingdom to the point that he has integrated and being able to make his way in the United Kingdom he has worked and plainly has sufficient skills in order to integrate, those are matters which are neutral in my consideration. In terms of the

Appellant's ability to sustain himself financially whether through the assistance of his family as he has been receiving currently but also in the context of his past history of work and his intention to work in the future, it is likely that he would be able to be self-sufficient financially. In terms of the failure of the Respondent to remove the Appellant since he was served with his notice in 2011 there is not evidence of his suffering prejudice as a result of that and it would of course have been open to him to leave and in those circumstances that is not a matter which weighs significantly in reducing the public interest in the context of the facts here.

4. Standing back and looking at all of the matters that I need to take into account in the context of Section 117 I find that this is a case where removal of the Appellant does not constitute a breach of Article 8 and it follows accordingly that the Appellant loses his appeal.

**Notice of Decision**

5. The Decision of the First tier Tribunal is vitiated by material error. I set it aside. I remake the decision. The Appellant's appeal is dismissed.

**E M Davidge**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**25 October 2023**