



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

Case No: UI-2023-000780

First-tier Tribunal No: HU/52253/2022  
IA/03513/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 1 September 2023**

**Before**

**UPPER TRIBUNAL JUDGE OWENS**

**Between**

**ZIB  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Ms Khalaf, Solicitor, Chamberlain Immigration Services  
For the Respondent: Mr Terrell, Senior Home Office Presenting Officer

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

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and his wife are granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant and his wife. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Gibbs (“the judge”) sent on 27 January 2023 dismissing his appeal against a decision of the Secretary of State dated 21 March 2022 refusing his human rights claim.

2. The appellant is a citizen of Algeria who entered the United Kingdom as a visitor on 23 July 2019. He overstayed his visa because of COVID travel restrictions. On 9 June 2021, he submitted an application to remain in the United Kingdom as a spouse. He claims to have entered into a relationship with a British national, who I will refer to as AA, in September 2020 and to have moved in with her shortly thereafter. The couple were married in an Islamic ceremony on 22 November 2020 and entered into a marriage recognised under UK law on 3 May 2021.
3. The application was refused on the basis that the appellant did not meet the immigration eligibility requirements, and because it was not accepted that he was in a genuine and subsisting relationship with his partner because of a lack of the lack of documentary evidence supplied with the application.

### **Anonymity Order**

4. In respect of the anonymity order, I note that an application for an anonymity order was made on 12 December 2020. This does not appear to have been dealt with by the First-tier Tribunal. The appellant's wife seeks anonymity on the basis of her various medical complaints, which include ADHD, emotionally unstable personality disorder and anxiety and depression. I take into account the principle of open justice but given the severity of her health difficulties and the potential negative effect on her health because of the publication of her name in these legal proceedings, I grant the appellant's spouse anonymity. I also find that it is necessary to grant anonymity to the appellant because of the possibility of inadvertent disclosure of XX's identity if his identity is disclosed. I remind the parties that there is the possibility of making an application to revoke or alter such an order.

### **The Decision of the First-Tier Tribunal**

5. The judge found that the appellant was a visitor at the time his application was made because his leave had been extended under the Coronavirus policy. He therefore could not succeed under the provisions of the Immigration Rules. The judge further found that the couple were not in a genuine and subsisting relationship because of inconsistencies in their evidence. On this basis the judge concluded that Article 8 ECHR was not engaged in respect of the appellant's family life and she found that it would not be disproportionate for the appellant to be removed to Algeria. She dismissed the appeal under Article 8 ECHR.

### **Grounds of Appeal**

6. The appellant advances six grounds of appeal:
  - (1) The judge erred by finding that the appellant's application could not succeed under immigration requirements of Appendix FM of the Rules. His application was submitted a year and a half after the expiry of his visa. He was not a visitor at the date of his application.
  - (2) Procedural unfairness. The appellant was disadvantaged by the judge's decision to commence the proceedings in English. This led the judge to base her decision on discrepancies regarding the appellant's oral evidence in relation to the chronology of his relationship with his wife.

- (3) The judge misunderstood the appellant's evidence or made a material mistake of fact by conflating two separate occasions when the appellant was married in the mosque. This resulted in unfairness.
- (4) The judge failed to give adequate reasons for finding that it was highly unusual that a landlord would agree to backdate a tenancy agreement. The judge failed to give reasons for doubting the credibility of the appellant's wife's oral evidence.
- (5) The judge failed to take into account that the appellant and his wife had changed address, which is why there were documents addressed to two different properties and erred by making "unreasonable findings".
- (6) The judge failed to take into consideration the appellant's wife's medical history, care plan, treatments, mental vulnerabilities etc.

### **The Rule 24 Response**

7. The respondent provided a Rule 24 response addressing the above grounds of appeal.

### **Appeal Procedure**

8. As a result of the allegation of procedural fairness in relation to the interpreter, I issued directions for both parties to be provided with a copy of the audio recording of the hearing. This was not possible, but both parties were invited to attend Field House in order to listen to the recording together and then to directed to file further submissions on this issue following that exercise. I received further submissions from both parties after this exercise and prior to the hearing. The appellant indicated that he wished to pursue the procedural unfairness ground and the respondent indicated that she intended to defend this ground.

### **Documentation**

9. I checked that both parties had sight of all the relevant documentation. This included the grounds of appeal, the grant of permission from the First-tier Tribunal, the judge's decision, the Rule 24 response, the further submissions made by both parties as well as the original respondent's bundle and two bundles of evidence in relation to the appellant.

### **Ground 2- procedural unfairness**

10. I start with ground 2 in relation to the alleged procedural unfairness because if this ground is made out the decision will need to be set aside. At the outset of the hearing, the relevant parts of the audio recording of the First-tier Tribunal were played to those present in the hearing.
11. The appellant's native language is Arabic, and his representative requested an Arabic speaking interpreter for the hearing at the First-tier Tribunal, which was provided by the Tribunal. In the original grounds, it is submitted that the judge dispensed with the interpreter and permitted a non-native English-speaking appellant to give oral evidence in the English language. It is submitted that the

appellant was disadvantaged by the judge's decision and that this led to procedural unfairness. It is said that it was the appellant's representative who alerted the judge that it was necessary to use the interpreter when it became apparent that the appellant was struggling with the phraseology of questions. It is submitted that at an early stage of the hearing "the elements of due, orderly and impartial process were missing". This in turn, it is submitted, informed the judge's negative credibility findings.

12. After listening to the tape, the appellant's representative made further written submissions which elaborated on these grounds. It is re-asserted that it was the judge who decided that the appellant should give his evidence in English. During the examination-in-chief the questions are said to be simple and straightforward, and it is submitted that the appellant was able to answer these questions as the language used was "plain English" and the phraseology was clear. When the respondent started cross examining the appellant, it was clear that the appellant did not understand the question. The judge intervened and asked the question using different wording. No interpreter was used at this crucial stage. The line of questioning continued, and the appellant was obviously struggling to grasp what was being said. It was the interpreter who interjected and started interpreting for the appellant. By the time the appellant's evidence was interpreted he had already given evidence in English which the judge relied on to make negative credibility findings.
13. Ms Khalaf also submitted that the judge did not ensure that the preliminary legal issues were interpreted, did not allow the appellant's wife's oral evidence to be interpreted and that the legal submissions were not interpreted. This, she said severely limited the role of the interpreter causing a procedural irregularity. It is asserted that the appellant was denied a fair hearing.
14. The respondent submitted that there was no procedural irregularity. The judge asked the appellant if he wanted to use the interpreter and he elected not to do so. Very early into cross-examination an interpreter was used for practically every subsequent question. Any inconsistent evidence the judge refers to emerges only after the interpreter was used. The appellant's representative could have objected at any point and did not. There was no indication that the appellant misunderstood the evidence. His English is adequate. Occasionally he struggled to find the right English words. The first two questions of the cross-examination were straightforward. The interpreter stepped in when the appellant clearly could not understand the question. The appeal was procedurally fair.
15. Mr Terrell, for the respondent, also stated that he intended to rely on the authority of TS (interpreters) Eritrea [2019] UKUT 352. He also pointed to the fact that in the initial grounds there was no reference to any procedural unfairness as a result of the remainder of the evidence and the submissions not being interpreted and that the grounds appeared to have moved on.
16. All those present at the error of law hearing listened to the audio recording of the hearing.
17. Towards the start of the hearing the judge introduces the interpreter and states, "Introduce yourself and confirm that you can understand each other". The appellant and the interpreter are then heard speaking in Arabic. The interpreter then says, "we had a quick report and I think that we do understand each other". The judge then asks, "Do you want to give your evidence in English, or do you

want to use an interpreter if you get stuck or use the interpreter?" The appellant replies, "I can give my evidence in English. I will use the interpreter if I need you". At which point the judge states to the interpreter, "We will use you if we need you". It is agreed that this was what was said by the judge.

18. I am not in agreement with Ms Kalaf that at this point there was any procedural unfairness. It was not the judge who decided that the appellant could give evidence in English without using an interpreter. The judge ascertained quite properly that the interpreter and the appellant understood each other. When the appellant indicated that he had a good level of English, the judge gave the appellant the option of deciding whether he preferred to give his evidence in English and use an interpreter if he had any difficulty or whether he wanted to use the interpreter. It was the appellant's decision to proceed without an interpreter and use one if required. The appellant's representative did not object to this.
19. There was then a discussion in relation to some preliminary legal issues which took place in English. At approximately 11 minutes into the recording, the appellant was asked some questions in evidence-in-chief. He provides his name, date of birth, nationality and states that his current postcode is SW17. The appellant is then asked, "Did you complete this statement with the assistance of your solicitor and sign it at page 14 of the stitched bundle?". "Can you confirm that this is your signature?". He states "Yes". He is asked, "Do you believe your witness statement to be true?". He says "Yes". He is asked, "Do you adopt your witness statement as true?". He says "Yes". He is asked, "Are you in contact with your family?" He states, "No, not at the moment". He is asked "Why are you not in contact with your family?" He says "They are not quite happy with this marriage. I was in touch, but stuff faded slowly, slowly". He is then asked "Would your family support you and your wife if you returned to Algeria?". The appellant answers, "No, because they are not happy with the marriage. In my culture it is not easy to accept her". He is asked, "If you are forced to return to Algeria what impact will that have on your wife?". He responds, "It is difficult for her to live in Algeria. It will affect our relationship. There is a completely different culture, mentality, not like the way that she grew up in this country and she would struggle so much". There was one further question in examination in chief which was "What is your wife's profession?". The appellant responded, "She is a pet stylist". The examination-in-chief ended approximately at 15.07 into the recording.
20. It is agreed by both parties that this exchange occurred in English and that there was no indication that the appellant could not understand what was put to him nor that there were any difficulties in him understanding the questions or expressing himself. Ms Khalaf's submission is that these questions were straightforward, unlike those of the respondent. I find that these questions were in fact fairly complex. He was asked about his relationship with his family and the impact on his wife and he answered giving clear and understandable evidence and using sophisticated words such as "culture" and "mentality". Importantly, the appellant's representative did not at any stage, indicate that it was not appropriate for the appellant to give his evidence in English or that he was struggling to understand. I am not satisfied that there was any procedural unfairness in this part of the proceedings.
21. At approximately 15.07 into the recording, the respondent starts his cross-examination. Mr Wain, the Presenting Officer, asked the appellant, "You said in

your witness statement that you met your wife in a coffee shop. When was that? When did you meet your wife?”. He responds, “In September 2020”. He was then asked, “You moved in together after she got COVID right?” He responds “Yes, that is correct”. He is asked again, “Was that in September 2020?” There was no response. The question was repeated “Was that in September 2020?” The appellant is heard to say, “When was that?” The judge steps in and says, “Was this in September 2020?” At this point the interpreter, realising that the appellant is unable to answer the question steps in and interprets. From then on, the remainder of the appellant’s evidence is interpreted, including all the questions put to the appellant in relation to his marriage. At one point, when he tries to respond in English, the judge asks him to speak using the interpreter.

22. I am not satisfied that there was any procedural unfairness. The appellant used the interpreter immediately after it became apparent that he could not understand the question. He was asked very few questions in English during this initial part of the cross-examination. He simply confirmed that he met his wife in September 2020, and he moved in with his wife after she contracted COVID. Later when using the interpreter, he confirmed that he had moved in with his wife in September 2020. The remainder of his evidence was given in Arabic.
23. I note that there is no particularisation by the appellant’s representative of the prejudice or unfairness that was caused to the appellant by these two questions. I also note that at no point in the original hearing did the appellant’s representatives raise any concerns about the lack of interpretation or any issues with interpretation. When I asked her about her failure to intervene if she felt that there was unfairness, she said it was for the judge to make that decision and it was not up to her. With respect if the representative believed that her client could not understand the interpreter, she would have been duty bound to act in his best interests and draw attention the judge’s attention to this.
24. Having listened to the recording I am satisfied that the hearing was not procedurally unfair. I am satisfied that the appellant was able to understand all those questions put to him and that immediately that he indicated that he was not able to understand that the remainder of the proceedings were interpreted. I can find no prejudice to the appellant whatsoever as a result of the lack of interpretation at the beginning of the hearing which was the appellant’s own choice. Nor do I find that it was uninterpreted evidence that led to the negative credibility findings.
25. The original written grounds of appeal did not refer to the fact that the wife’s evidence and closing submissions were not interpreted, however I consider that Ground 2 is wide enough to encompass these arguments which are an amplification of the original grounds. It is best practice for the evidence and the submissions to be interpreted. However, in this appeal the appellant clearly spoke a good level of English. He was aware of the nature of the proceedings. He can communicate with his wife in English. There was no further evidence given that he was subsequently called upon to comment on. The grounds do not particularise what unfairness was caused to the appellant by this failure. In the particular circumstances of this appeal I do not find that there was procedural unfairness. Ground 2 is not made out.

### **Ground 3 - Mistake of fact/Misunderstanding the evidence**

26. The appellant's representative submits that the judge made an error of fact or mischaracterised the appellant's evidence in relation to his Islamic marriages. In the grounds of appeal, it is stated that the appellant in his oral evidence stated that he approached a religious scholar at an Islamic Centre and sought advice and guidance about marriage which in Islam is a "khitabh" or engagement which is different from a "nikah" (the Islamic marriage). It is submitted that the judge conflated these two separate ceremonies. Orally Ms Khalaf submitted that there were two marriage certificates before the judge. One was an Islamic marriage certificate on 22 November 2020 and one was a lawfully recognised English marriage certificate dated 2 May 2021 where the marriage was contracted in an Islamic mosque. The judge has misdirected herself to the evidence.
27. Mr Terrell submitted that there was no third Islamic marriage certificate. The judge analysed the documents correctly. She understood the evidence which was very confusing. She noted that there were inconsistencies in the evidence and did her best to clarify those inconsistencies. The judge was entitled to take into consideration the mismatch in the timeline and take a credibility point, against the appellant. There was no error of fact and no error of law.
28. Firstly, I comment that the grounds of appeal appear to go above and beyond repeating the evidence given by the appellant on the day of the hearing. At no point in his witness statement or oral evidence did the appellant mention that he had entered into a "formal engagement" or a "khitabh" prior to his wedding. This appears to be evidence provided by the representative after the hearing.
29. In any event since there is no objective, independent or incontrovertible evidence that the appellant and his wife entered into a khitabh, this cannot amount to a mistake to a material fact. I go on to consider whether the judge misunderstood the appellant's evidence.
30. The judge characterised the appellant's evidence as follows at [10] to [13]:

"I find that there are significant discrepancies in the appellant's oral evidence regarding the chronology of his relationship with his wife. I note that in his witness statement, he avoided referring to any dates, giving instead a general history of the relationship but in cross-examination he was, I find, unable to provide consistent or coherent answers to Mr Wain's straightforward questions".

"In oral evidence the appellant accepted that he and AA had moved in with one another quickly after meeting. Given that the date on the joint tenancy agreement is 12 September 2020, the appellant accepted that he must have met AA earlier in September. He states that because of his religion he could not cohabit with AA and that therefore the couple had undertaken a religious marriage one to two days after moving in together. This evidence was inconsistent with the marriage contract, which was dated 22 November 2020. When the appellant was asked about this apparent inconsistency, his evidence was that this was merely the document that the couple had been advised to obtain by the respondent, but the marriage had taken place before this. The appellant stated that his first marriage was not in a grand mosque although an imam was present. It was on the second occasion that the wedding was in a grand mosque and this was 22 November 2020".

"It was however put to the appellant that he had submitted a certificate of marriage dated 3 May 2021 for a ceremony at the Old Kent Road Mosque. He was asked what ceremony this reflected, given his evidence that he has married informally one to two days after moving in with AA on 12 September 2020 and relied on the marriage contract as evidence of the later marriage on 22 November 2020. Not only do I

consider that this is a significant inconsistency in the appellant's evidence but also that as the appellant's oral evidence continued his answers became more discrepant. I find that he then says that the couple had married on 22 November 2020 and that the document of 3 May 2021 was obtained by the couple only in a response to a request from the respondent of documentary evidence of the marriage.

"In an attempt to clarify matters Ms Khalaf asked the appellant to confirm how many mosques he had attended in relation to his marriage. His answer was that just after the couple married, they attended not a proper mosque for advice, undertook a religious marriage on 22 November 2020 and a civil marriage on 3 May 2021. I did not find that this evidence clarified matters and, in my view, simply cast further doubt on the appellant's credibility".

31. I am satisfied that the judge correctly noted that the witness statements were vague. Having listened to the audio recording of the appellant's evidence, I am also satisfied that the judge has properly understood the appellant's evidence and that it was entirely open to her to find that there were various inconsistencies in that evidence. The appellant's initial oral evidence was that he moved in with his wife in September 2020 possibly two to three weeks after meeting her, that they held an Islamic marriage ceremony within a few days of moving in together and later in May 2021 held a lawful Islamic ceremony. He made a distinction between the more informal ceremony and the grander ceremony. It was only when it was pointed out to him that his evidence that he entered into an Islamic marriage in mid-September within days of the tenancy agreement being signed on 12 September 2020 was inconsistent with the date on the marriage contract which was 22 November 2020 did he mention for the first time a third attendance at the mosque in September 2020. In the witness statements, the application form and skeleton argument there is no reference to the appellant undertaking three Islamic marriages or any kind of engagement ceremony. Later in re-examination the appellant clarified that he only attended a mosque twice. He also later confirmed that his first marriage was documented and took place on 22 November 2020. He then referred to the ceremony on 22 November 2020 as being a ceremony to obtain proofs after he had attended the mosque informally in September 2020. I am satisfied that the judge correctly noted that his evidence contained contradictions and inconsistencies which were not explained and that his evidence was confusing and not clarified in re-examination. There was no mischaracterisation of the evidence by the judge.

32. Even if this error were to have been established, the appellant's wife's evidence would in itself prevent the error from being material. The wife's evidence manifestly was inconsistent with the appellant's evidence. The judge sets out this evidence at [14]:

"In contrast to the appellant, AA' evidence was clearer. She said that the couple had met at the beginning of September 2020 and had started to cohabit from the end of 2020 in a property that she had been viewing prior to meeting the appellant. AA submitted that the tenancy agreement submitted to the court had been created after the appellant had moved in and that the date had been changed because the appellant had not moved in on 12 September. I find it highly unusual that a landlord would agree to backdate a tenancy agreement and consider that this is further evidence on which I must place, in my assessment of the appellant's credibility and the credibility of his relationship".

33. Ms Khalaf did not attempt to argue that the judge had misconstrued or misrecorded the wife's evidence. The wife's evidence was that the couple had



moved in together later than September 2020 and that the tenancy agreement had been backdated. She did not give evidence that she attended an engagement ceremony in September 2020. Indeed, her evidence was that the couple were not living together until later in the year (which could potentially be consistent with the marriage dated 22 November 2020 taking place shortly after the couple started living together). Ms Khalaf's argument that the judge misunderstood the appellant's evidence and that there was a third engagement ceremony is unsustainable in light of the wife's evidence. I am satisfied that it was open to the judge to find that there were significant unexplained discrepancies before her. The judge was entitled to make negative credibility findings in the light of this evidence. Ground 3 is not made out.

**Ground 5 - Failure to take into account material evidence leading to "unreasonable findings"**

34. It is submitted that the judge failed to take into account further documentary evidence of cohabitation and at [15] failed to understand that the couple had moved to a new address in Tooting High Street.
35. At [15] the judge noted that there was a discrepancy between the documents showing cohabitation at Tower Bridge Road including the tenancy agreement, marriage certificate and water bill and later documents which were all addressed to Tooting High Street. The judge commented that "No explanation has been given for this apparent discrepancy and it casts further doubt on the veracity of the relationship". The judge manifestly found that the documents gave two different addresses which had no explanation and that this undermined the appellant's credibility. This finding fed into her ultimate finding that the couple were not in a genuine and subsisting relationship.
36. The respondent submitted that this finding was open to the judge. The appellant submits that there was a simple explanation in that the couple had moved to a new address.
37. The original decision was based on the failure to provide evidence of cohabitation. The application was submitted on 9 June 2021. It included the two marriage certificates mentioned above. It is not clear what other evidence of cohabitation was provided with the application as this is not produced in the respondent's bundle although it is asserted in the grounds of appeal that the couple provided utility bills, bank statements, pay slips, a contract of employment, a flat share agreement and council tax bills.
38. In support of the appeal the appellant provided further evidence of cohabitation and of the relationship.
39. Having considered the documentation in detail, it is apparent that when the application for further leave dated June 2021 was made the appellant's address was given as Tower Bridge Road. Other documents tying the couple to that address were the marriage certificate dated May 2021, a Thames Water document dated 2020, the tenancy agreement purported to have been signed on 12 September 2020 and a Halifax Bank account in XX's name from May to June 2021.
40. All of the appellant's and his wife's appeal witness statements variously dated 27 June 2022, 19 August 2022 and 6 December 2022 place them at an address at

Tooting High Street. In evidence in chief both gave their current address as Tooting High Street. In cross examination the appellant is asked, "Is that your current address in Tooting?" And he states "Yes".

41. There are various documents tying both the appellant and his wife to this address. These include, in the name of the appellant's wife, an Octopus energy bill, EE documents, a new Thames Water document and Halifax bank statements. AA's bank statements show transfers to the appellant. Medical documents also place the appellant's wife at this address. A council tax bill dated July 2021 is addressed to the both the appellant and his wife at Tooting High Street. The reason for the bill is given as "New account". There are Amazon delivery notes to the appellant at Tooting High Street
42. In my view it was apparent from the face of the evidence that the couple, who both adopted their statements, had moved to a new address in Tooting High Street. The appellant and his wife were not asked about the discrepancies between the two addresses during the appeal. The judge does not record what submissions if any were made in relation to these discrepancies. On this basis, I am satisfied that the judge erred by using the different addresses on the documentary evidence to make a negative credibility finding when these discrepancies were not put to them and it was prima facie obvious that they were living at a new address. In my view, there was a significant amount of evidence pointing to the couple currently cohabiting.
43. Given that the judge was entitled to make negative credibility findings because of the discrepant evidence in relation to when the couple had moved in together and how many times they had attended a mosque, the real issue is whether this error was material to the outcome of the appeal.
44. The issue before the judge was whether the appellant and his wife had a family life together at the date of the appeal hearing. They had produced two marriage certificates and evidence of their current cohabitation to deal with the reasons given by the respondent for refusing the initial application. The appellant's spouse also attended the hearing to give evidence.
45. It is trite law that a witness may not be truthful about one aspect of his evidence but may be truthful about other aspects. It seems to me that even though it is clear that the judge was entitled to find that the couple had not been able to give consistent evidence about when they precisely moved in together in 2020 and was entitled to draw conclusions from that they had not been truthful in this respect, the judge was still mandated to stand back and consider the remaining evidence in the round holistically. By the time of the appeal hearing in January 2023, over two years had elapsed since the couple entered into their first Islamic marriage. There was little focus on their current circumstances. Having carefully considered the evidence I am satisfied that had the judge's failure to take into account the evidence that the couple had moved to a new address and her failure to consider the additional evidence of cohabitation was material to the outcome of the appeal. Had she considered this evidence, she may have come to a different conclusion in respect of whether the relationship was genuine and subsisting as at the date of the appeal hearing.
46. I take into account that an appeal Tribunal should be slow to overturn the findings of an experienced specialist Tribunal and that that Tribunal had regard to the "sea" of evidence. In this appeal, I have also had an opportunity to both hear

the audio recording and see the totality of evidence before the judge and despite my reluctance to interfere with a decision of the lower court, I am satisfied that there has been a material error of law such that the decision should be set aside in its entirety with no findings preserved.

47. I therefore do not go on to consider the remaining grounds at 1, 4 and 6.
48. In any event, it was agreed at the outset in respect of grounds 1 and 6, that if the judge's findings on the genuine nature of the relationship were sustainable any asserted errors would be immaterial. If, at the remitted appeal the Tribunal finds that the appellant and XX are in a genuine and committed relationship and that family life exists between them, the Tribunal will need to consider the difficulties that XX might face in Algeria.
49. I make one further comment in respect of ground 1. The legal status of the appellant at the date of the application will need to be revisited and it would be helpful for the respondent to produce the Coronavirus policies so that the Tribunal is able to ascertain properly whether the appellant's visitor leave had been extended until June 2021 when he made his application as asserted in the letter acknowledging the application.

### **Disposal**

50. The parties did not make submissions on disposal. The normal course of action is to retain the decision for re-making in the Upper Tribunal. Nevertheless, having found that the findings of the First-tier Tribunal Judge cannot be preserved, the First-tier Tribunal will need to make substantial findings in respect of the current relationship between the appellant and XX. In these circumstances it is fair and in the interests of justice to remit the appeal to the First-tier Tribunal for a de novo hearing.

### **Notice of Decision**

1. The decision of the First-tier Tribunal involved the making of a decision of law.
2. The decision is set aside in its entirety with no findings preserved.
3. The appeal is remitted to the First-tier Tribunal for a de novo hearing in front of a judge other than First-tier Tribunal Judge Gibbs.

**R J Owens**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

1 September 2023