IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003640

First-tier Tribunal No:
EU/58260/2023
LE/01802/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 18 December 2024

Before

UPPER TRIBUNAL JUDGE SMITH

Between

AHMED MOHAMED AHMED RAHMY
[ANONYMITY DIRECTION NOT MADE]

Appellant

and

ENTRY CLEARANCE OFFICER - SHEFFIELD

Respondent

Representation:
For the Appellant: Ms E Mahmoud (Appellant's wife and sponsor) attended in person
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at Field House on Monday 16 December 2024

DECISION AND REASONS

BACKGROUND

1. By a decision promulgated on 11 October 2024, I found an error of law in the decision of First-tier Tribunal Judge Buckwell dated 6 June 2024 dismissing the Appellant's appeal against the Respondent's decision dated 5 December 2023 refusing his human rights claim made in the context of an application for entry clearance to settle with his partner in the UK. I also gave directions for the Appellant via his partner, Ms

Eman Mahmoud ("the Sponsor"), to file updated evidence in particular in relation to the Sponsor's medical condition, the family's financial circumstances and the impact of separation on the Appellant, the Sponsor and their children. My error of law decision is appended hereto for ease of reference.

2. As at the first hearing, the documentation was not in good order. The Sponsor explained that, after her solicitors had ceased to act, she had endeavoured to obtain the bundle filed in the First-tier Tribunal for herself but was told by the Tribunal that she could not do so. She had not been able to obtain it from her previous solicitors. Whilst I and Ms Ahmed were able to access the 675-page bundle before the First-tier Tribunal, therefore, the Sponsor did not have that. I nonetheless permitted Ms Ahmed to make reference to that bundle so far as she needed to. References to that bundle below are to [B/xx].

3. In addition, the Sponsor complied with my directions and filed a letter from herself and the Appellant together with two documents in relation to her medical condition and benefits claim. I make reference to those below.

4. In the course of the Sponsor's evidence, however, it emerged that those documents did not give a complete picture. With Ms Ahmed's assistance, the Sponsor was able to put forward updated documents which were on her phone which brought her evidence about her medical condition and benefits claim up to date.

5. It was also necessary for me and Ms Ahmed to conduct our own internet research during the hearing in order to ascertain precisely the Sponsor's medical condition and treatment.

6. I am extremely grateful to Ms Ahmed for her patient and pragmatic approach to the handling of the appeal hearing which enabled it to proceed notwithstanding the unsatisfactory state of the documentary evidence (for which I intend no criticism of the Sponsor who appeared in person, is clearly unwell and did her best to provide the necessary evidence).

7. Having heard evidence from the Sponsor via questions asked by Ms Ahmed and myself and submissions from Ms Ahmed, I indicated that I would be allowing the Appellant's appeal and would provide my reasons in writing which I now turn to do.

DISCUSSION

8. The factual background to this case does not emerge readily from either my error of law decision or the decision of Judge Buckwell and it is therefore helpful to set that out as it emerges (piecemeal) from the appeal bundle.

9. The Appellant is a national of Egypt still living there. The Sponsor was also born in Egypt but naturalised as a British citizen on 19 September 1984 ([B/207]). As such, their two children, born 2013 and 2015 are both British citizens (birth certificates at [B/198] and [B/200]). The Sponsor was previously married to another man but divorced from him on 25 September 2009 ([B/265]). Therefore, although the Respondent in the decision letter under appeal takes issue with the couple's ability to meet the eligibility requirements of the Immigration Rules – "the Rules" – that is no longer at issue. Judge Buckwell accepted that the Sponsor's previous relationship had broken down permanently when the couple married on 18 March 2010 (marriage certificate at [B/268]).

10. The Appellant explains in his application form at [B/651-669] that he and the Sponsor originally lived together in Egypt, first with his mother and then with the Sponsor's father. The children were born in the United Kingdom. The Appellant's passport at [B/209-235] shows that he visited the UK around the time of their births. He, the Sponsor and the children thereafter returned to live in Egypt. There are numerous photographs in the bundle which show them living as a family in Egypt. I am entirely satisfied (as was Judge Buckwell) that the relationship is a genuine and subsisting one.

11. The Appellant explains in the application form that, after the death of her father in March 2017 and the death of his mother in May 2022, the Sponsor and the children came to live with her mother in the UK. The Sponsor explained in her evidence that she has no remaining family of her own in Egypt. She and the children live with her mother and stepfather in the UK. Her brother, his family, her uncles, aunts and cousins all live in the UK.

12. Also, in his application form the Appellant confirms that he is unable to meet the income threshold under Appendix FM to the Rules ("Appendix FM"). The Sponsor was at that time working part-time in Boots but earning under the threshold. She was also in receipt of Universal Credit. The Appellant says however that he owns a car in Egypt which he proposes to sell to obtain money to tide him over whilst he looks for a job. He says that he intends to obtain a UK driving licence which would enable him to work for Uber. He refers to having 18 years' experience in companies supplying gas and water pipes and carrying out waterproofing work. The Sponsor said in her evidence that the Appellant is a Sales Director in a company supplying gas and water pipes which is consistent with what the Appellant says. The Appellant says that he would look for work with companies carrying out similar functions.

13. The Sponsor was diagnosed with a form of lymphoma in November 2023 for which she is being treated. I come to the detail of that below. As a result of her treatment, the Sponsor gave evidence that she is not currently working but in receipt of sick pay. She is also now receiving

Personal Independence Payments ("PIP"). Again, I will come to the detail of that evidence below.

14. The appeal was originally lodged as an appeal under the EU Settlement Scheme. The Appellant lodged the appeal in person and cannot therefore be criticised for not understanding the relevant appeal provisions. Although the application is one for a spouse visa, it is the refusal of the human rights claim made in that context which generates the right of appeal. The decision under appeal therefore is the one dated 5 December 2023 ([B/647-650]). That decision takes issue, as I have already noted, with the Appellant's ability to meet the eligibility requirements of the Rules and also the financial requirements. Only the latter factor remains at issue. The Respondent accepts that the Appellant meets the English language requirement. The decision also considers whether there are exceptional circumstances under paragraph GEN.3 of Appendix FM. The Respondent concludes that there are not.

15. I begin with the Sponsor's medical condition. The best evidence about that is the letter from Dr Andrew Laurie, MSc, FRCP, FRC Path, Consultant Haematologist at Ashford and St Peter's Hospital. His letter dated 19 December 2023 ([B/386-7]) describes the Sponsor's condition and treatment for it. He describes the condition as "grade 2 follicular lymphoma" which is "a cancer type condition of the cells of the lymph and immune system". He sets out treatment as being a combination of an antibody with low-intensity chemotherapy. The Sponsor will require six to eight cycles of chemotherapy every three to four weeks and two years of antibody treatment every two months. The letter indicates that the Sponsor can continue to work but will have reduced immunity.

16. As I pointed out at [17] of my error of law decision, that medical evidence did not show what treatment the Sponsor was continuing to receive at date of hearing. Among the documents filed by the Sponsor in response to my directions is a letter dated 19 September 2024 also from Dr Laurie which confirms continuing treatment. Although, as Ms Ahmed pointed out, the nature of the treatment is not specified in the letter, by a combination of internet research and the Sponsor's answers, we were able to determine that "Obinutuzumab" referred to in the heading is the antibody with which the Sponsor is treated. "Bendamustine" also there referred to is a form of chemotherapy. That is also confirmed when this letter is read with Dr Laurie's letter dated 19 December 2023.

17. I am therefore satisfied that the Sponsor continues to be treated for cancer in the way described in Dr Laurie's original letter.

18. Although Dr Laurie indicated in December 2023 that the Sponsor was able to continue to work, she confirmed that she is not currently working and is receipt of a fit note and sick pay from her employer in the sum of £500 per month. I am therefore satisfied that she is

currently unable to work. That is also confirmed by the position in relation to the PIP claim. Although the document which I and Ms Ahmed had sight of indicated only that a claim had been made, the Sponsor told me that she had uploaded a later document which for some reason had not reached the Tribunal's file. She was able to show that to Ms Ahmed on her phone. Ms Ahmed confirmed that this document indicated that the Sponsor has been in receipt of PIP of £76.65 per week since September 2024 (backdated from November 2024 and continuing to October 2028) to cover the Sponsor's daily living needs.

19. Before turning to the effect of the evidence about the PIP, I complete the evidence about the Sponsor's medical condition by referring to her and the Appellant's letters filed with the Tribunal where they say that the Sponsor and children have been unable to visit the Appellant since August 2023 due to the Sponsor's medical condition (which was discovered in November 2023). Although there is no independent evidence confirming the Sponsor's inability to travel, I accept that if her immune system is compromised by her condition and treatment as appears to be the case, flying is likely to be inadvisable.

20. I therefore accept that the Sponsor and children and the Appellant have been unable to be together since August 2023 and that this situation is likely to continue until at least late 2025 (when the antibody treatment may cease).

21. As Ms Ahmed accepted, if the Sponsor is in receipt of PIPs as the evidence shows she is, that changes the position in relation to financial eligibility under the Rules. If the Appellant were to apply for a visa now, he would not have to show that he meets the income threshold. Instead, he would have to show that he could be adequately maintained and accommodated without recourse to public funds.

22. I accept Ms Ahmed's submission that the Appellant is still unable to meet the Rules. Under Appendix FM-SE to the Rules, he would be required to provide certain evidence about the Sponsor's PIPs and receipt of those benefits as at date of application which he could not do. As Ms Ahmed very fairly accepted, however, the public interest in the maintenance of effective immigration control is significantly reduced if the Appellant can show that he would meet the Rules as at date of hearing.

23. Ms Ahmed ascertained through her questions of the Sponsor that the Sponsor and children live with her mother and stepfather in a property which has two bedrooms and one other living room. The Sponsor and children share the living room as a bedroom. Her mother and stepfather use the two bedrooms as her stepfather uses one as an office. The Sponsor said that the living room was the largest room which is why she and the children sleep there. She said that the Appellant would be able also to live there with them.

24. I share the concerns expressed by Ms Ahmed about whether the current living situation would be suitable given the ages of the two children. However, I accept the Sponsor's evidence that if that were found to be unsatisfactory, there are other alternatives available to the family. Her brother and sister-in-law live nearby and have room to accommodate them (her sister-in-law who attended the hearing with the Sponsor confirmed this). The Appellant also has uncles living nearby. One uncle lives alone and in a three-bedroom house. The Sponsor used to live there when she was a child, and her uncle would let the family stay now. I am satisfied therefore that there would be adequate accommodation for the family if the Appellant were to join them.

25. As to maintenance, the Appellant in his application has indicated that he would look for a job immediately on arrival. He would have some savings to tide him over (from sale of his car). He also refers to third party support. I have no information about a Mr Pereira who is said to be willing to assist and what is his relationship with the Appellant. However, I do have information about Islam Mahmoud who is said to be the other potential source of support. He is the Sponsor's brother. According to the document at [B/412], he earns £36,400 plus overtime and bonuses. He and the Sponsor's sister-in-law have one child, and I am therefore satisfied that there is an additional potential source of maintenance if the Appellant were to struggle to find employment on arrival.

26. I am however satisfied that the Appellant would be able to work on arrival. The Sponsor said that he would take whatever work was offered and he has a long employment history which should assist him in that regard. I disregard for present purposes what is said in the application form about the Sponsor's ability to work longer hours if the Appellant were in the UK since the Sponsor is currently unable to work at all.

27. I am however satisfied on the evidence that the Appellant would be adequately maintained were he to come to the UK.

28. On the basis of the finding that the Appellant would be adequately maintained and accommodated in the UK, I am therefore satisfied that the Appellant would be able to satisfy the Rules were he to apply for entry clearance at the date of the hearing.

29. That does not mean that he meets the Rules for the reasons I have already set out. I therefore turn to consider the case outside the Rules. In so doing, I take into account the factors in section 117B Nationality, Immigration and Asylum Act 2002 ("Section 117B") so far as relevant in entry clearance cases.

30. The Appellant speaks English. I am satisfied that he is able to maintain and accommodate himself without recourse to public funds.

Sections 117B (2) and (3) are not therefore negative factors. They are however merely neutral factors.

31. I am satisfied however that Section 117B (1) does not operate adversely to the Appellant either. Were he to apply for a visa now, based on the findings I have made and the only issue which remained outstanding, I find that the Appellant would meet the Rules. The public interest in the maintenance of effective immigration control does not therefore weigh heavily against him.

32. As I have already set out, the Appellant is separated from the Sponsor and his children and will remain so if he loses this appeal. I accept that the Sponsor and the children are currently unable to visit him due to the Sponsor's medical condition. Although the family has not lived together in the UK previously, they did live together in Egypt until the Sponsor moved back to the UK in 2022. The family can currently only remain in contact via remote means or visits by the Appellant to the UK.

33. The Sponsor and children cannot be expected to relocate to Egypt. The Sponsor gave evidence that she has not researched availability of treatment for her condition in Egypt as she said that treatment and medication generally is expensive there. Whilst there is therefore no evidence that she could not receive the same or similar treatment in Egypt nor evidence that she could not afford it, she is already undergoing treatment in the UK and is part way through that course of treatment. If she were to move to Egypt, that treatment would be disrupted.

34. The Appellant's children are both British citizens. I have very little evidence about them but as children aged eleven and nearly ten, they will be in education in the UK. Whilst they lived in Egypt for most of their lives and will therefore be familiar with life there, their best interests are marginally to remain in the UK where they are currently in education and to receive the benefits of their British citizenship.

35. Considering the diminished public interest in the refusal of entry clearance for the reasons set out above and balancing the interference with the family lives of the Appellant, Sponsor and their children against that limited public interest, I have reached the firm conclusion that refusal of entry clearance is a disproportionate interference with the Article 8 rights of the Appellant and his family.

36. For those reasons, I allow the appeal on Article 8 grounds outside the Rules.

CONCLUSION

37. The Appellant's appeal is allowed on human rights grounds (Article 8 ECHR) outside the Rules.

NOTICE OF DECISION

The Appellant's appeal is allowed on human rights grounds (Article 8 ECHR).

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

17 December 2024

APPENDIX: ERROR OF LAW DECISION

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-003640

First-tier Tribunal No:
EU/58260/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

.....11/10/2024.....

Before

UPPER TRIBUNAL JUDGE SMITH

Between

AHMED MOHAMED AHMED RAHMY
[ANONYMITY DIRECTION NOT MADE]

Appellant

and

ENTRY CLEARANCE OFFICER - SHEFFIELD

Respondent

Representation:
For the Appellant: Ms E Mahmoud (Appellant's wife and sponsor) attended in person
For the Respondent: Mrs A Nolan, Senior Home Office Presenting Officer

Heard at Field House on Tuesday 8 October 2024

DECISION AND DIRECTIONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Buckwell dated 6 June 2024 ("the Decision") dismissing the Appellant's appeal against the Respondent's decision dated 5 December 2023

refusing his human rights claim made in the context of an application for entry clearance to settle with his partner in the UK.

2. The Appellant is a national of Egypt. His partner, Eman Mahmoud ("the Sponsor"), is a British citizen living in the UK.

3. The Appellant's application for entry clearance was refused by the Respondent on the basis that he could not meet the eligibility requirements as to relationship and finances. The Respondent was not satisfied that the Sponsor's previous relationship had broken down permanently. The Respondent also did not accept that the Appellant met the financial requirements of the Immigration Rules ("the Rules"). Outside the Rules, the Respondent concluded that there were no exceptional circumstances in the Appellant's case and that refusal of entry clearance would not result in unjustifiably harsh consequences for the Appellant and Sponsor.

4. The appeal was determined by Judge Buckwell on the papers. The fee paid by the Appellant was for an appeal to be determined potentially without a hearing and the Respondent had not requested an oral hearing. The Judge therefore determined the appeal based on the documentary evidence which had been filed.

5. The Judge had before him a 675 page bundle but, as he observed, the Appellant's own evidence was "significantly duplicated". That may be because the Appellant's evidence was filed piecemeal rather than in a separate bundle. I come on to the issue of documentation below.

6. Judge Buckwell was satisfied that the Sponsor's marriage had been dissolved ([8] of the Decision). However, he found at [9] of the Decision that the Sponsor's earnings were such that the financial requirements could not be met. Although there was reference to support from a third party, the Judge noted that this could not be taken into account in such applications for entry clearance. For that reason, the Appellant could not succeed within the Rules.

7. Outside the Rules, the Judge concluded that there were no exceptional circumstances. It would not be unjustifiably harsh for the Sponsor to go to live with the Appellant in his home country. His reasons at [10] to [12] of the Decision made reference to the Sponsor's health conditions, and that she has two children, then aged ten and nine respectively.

8. The Appellant appeals on three grounds as follows:

   Ground 1: the Judge failed to consider the obstacles to family life continuing outside the UK. Reference is made to paragraph EX.1. of Appendix FM to the Rules and the reference there to whether there are "insurmountable obstacles" to family life continuing outside the UK. It is said that the treatment for the Sponsor's health condition would be interrupted if she were to go to live abroad and that this was not taken into account.

Ground 2: the Judge failed to take into account the best interests of the two children who are both British citizens. Reference is made to ZH (Tanzania) v Secretary of State for the Home Department [2011] UKSC 4 ("ZH (Tanzania)") and Zoumbas v Secretary of State for the Home Department [2013] UKSC 74 ("Zoumbas").

Ground 3: the Judge incorrectly conducted the balance sheet exercise by requiring "exceptional circumstances" rather than considering whether refusal of entry would be disproportionate.

9. Permission to appeal was granted by First-tier Tribunal Judge C Scott on 6 August 2024. Having exercised discretion to admit the application for permission out of time, he went on to grant permission in the following terms:

> "..3. There is an arguable error of law. As to (1), it is arguable that insufficient weight is afforded to the sponsor's health if she was to relocate to Egypt with the appellant, given her cancer diagnosis. As to (2), it is arguable that there is no assessment of the fact that the children are British citizens, and as to (3) is is arguable that the Judge has failed to conduct the balancing exercise in sufficient detail.
> 4. Permission to appeal is granted on all grounds."

10. The appeal comes before me in order to decide whether there is an error of law. If I determine that the Decision does contain an error of law, I then need to decide whether to set aside the Decision in consequence. If I set the Decision aside, I must then either re-make the decision or remit the appeal to the First-tier Tribunal to do so.

11. There has been no Rule 24 Reply from the Respondent.

12. In terms of documentation, the Appellant's solicitors were reminded by the Tribunal of their obligation to file a bundle in accordance with the standard directions. There was no reply to that reminder. Instead the Sponsor contacted the Tribunal to say that she had not been able to access the documents electronically. There has been no indication by the Appellant's solicitors to say that they are no longer acting and it is therefore not clear why the Sponsor was expected to comply with the standard directions. In any event, she cannot be criticised for failure to submit a bundle. She explained that she was unable to access the bundle previously filed as the code given to her by the solicitors did not work.

13. As it was, I and the Respondent were able to access the 675 page bundle which was before the First-tier Tribunal and to deal with the grounds by reference to that coupled with the documents relating to the appeal before this Tribunal. I refer to pages in the 675 page bundle as [B/xx] by reference to the pdf page number.

14. Having heard submissions from Mrs Nolan and following discussion with the Sponsor, I indicated that I would reserve my decision and provide that in writing which I now turn to do.

ERROR OF LAW

Ground 1

15. It is not entirely clear to me whether paragraph EX.1. of Appendix FM to the Rules applies in entry clearance cases. Whether it does or not though is of no consequence because, as Mrs Nolan accepted, paragraph GEN.3 of Appendix FM requires the Judge to consider whether there are "exceptional circumstances" which render a refusal of entry to be unjustifiably harsh. That would include consideration both of a family split if family life could not be continued in an applicant's home country and whether family life could be continued outside the UK.

16. The first ground is that there would be "insurmountable obstacles" to family life continuing abroad based on the Sponsor's medical condition (she is being treated for cancer) and the position of the two minor children who are both British citizens and that the Judge failed to take into account those factors.

17. As Mrs Nolan emphasised, the Judge was determining the appeal on the papers and could therefore proceed only on the documents before him. There was no witness statement from either the Appellant or the Sponsor. In relation to the medical evidence, there was a letter from Dr Andrew Laurie, Consultant Haematologist dated 20 December 2023 at [B/386]. As Mrs Nolan pointed out, whilst that does set out the diagnosis of the Sponsor's medical condition and treatment available to her, it does not say what treatment the Sponsor was undergoing as at the date of the hearing nor provide any evidence about treatment which may be available in Egypt. The Sponsor mentioned that she is currently undergoing chemotherapy but that is not set out in this evidence.

18. As Mrs Nolan also pointed out, the Judge did refer to this letter at [10] of the Decision and said that he had taken this into account. The Judge also said that he had taken the Sponsor's health condition into account in his reasoning at [12] of the Decision.

19. As regards the children, as Mrs Nolan pointed out, the Judge was aware that there are two children who are the children of the Appellant (see [15] and [11] of the Decision). However, Mrs Nolan very fairly accepted that the Judge did not appear to have factored their citizenship into his reasoning.

20. Before dealing with whether this constitutes an error of law, I consider the second ground as this significantly overlaps with the first in relation to the position of the children.

Ground 2

21. As Mrs Nolan again very fairly accepted, although the Judge refers to the children at [11] and [15] of the Decision, there is no finding as to what their best interests require.

22. At [23] to [26] of the judgment in ZH (Tanzania) the Supreme Court emphasized the importance of giving proper weight to the best interests of minor children affected by, inter alia, immigration decisions. Although the Supreme Court there accepted that the primacy of the best interests of a child would not "lead inexorably to a decision in conformity with those interests", it made clear that both the Respondent and the Tribunal should consider where those interests lie.

23. Also in ZH (Tanzania), the Supreme Court pointed to the importance of nationality when determining beset interests. As was said at [29] of the judgment, that includes consideration of "the level of the child's integration in this country and the length of absence from the other country, where and with whom the child is live and the arrangements for looking after the child in the other country, and the strength of the child's relationship with parents or other family members which will be severed if the child has to move away". Here, although the Sponsor explained that she and the children had lived with the Appellant until moving back to the UK after 2022, as things currently stand, they are separated from their father and will continue to be so unless and until he is granted entry clearance or they return with their mother to Egypt. The loss of the benefits of nationality would be relevant if, as the Judge appeared to conclude, the family were to live together in Egypt. What is said at [30] of the judgment in ZH (Tanzania) would then be relevant.

24. The foregoing points are also summarised by the Supreme Court at [13] of the judgment in Zoumbas albeit reaching the opposite conclusion in that case because it was not disproportionate for the children in that case (who were not British citizens) to return with their parents to their home country.

25. The Judge made no findings as to what the best interests of the minor children required. Although in this case, if findings were made they may not all have pointed in one direction, the Judge has failed to consider a factor which was clearly relevant and might have been material.

26. For that reason, when taking together the failure expressed in ground two with the challenge set out in ground one (particularly as to the position of the children), I am satisfied that there is an error of law in the Decision.

Ground 3

27. Having found an error established by the first two grounds, strictly I do not need to move on to the third. I deal with this ground for completeness.

28. I would not have found an error on this ground. The Judge having found that the Appellant could not meet the Rules due to a failure to meet the financial requirement (which is not disputed), the Judge had to consider whether the Appellant should succeed outside the Rules. That involved considering whether refusal of entry would lead to unjustifiably harsh consequences. The self-direction set out at [6] of the Decision is legally correct.

29. The Judge having found at [9] of the Decision that the Appellant could not meet the Rules went on at [10] to [14] of the Decision to conduct a balancing assessment. At [11] and [12] of the Decision, he set out the factors in the Appellant's favour (in essence the Sponsor's medical condition and the position of the children). Although I have concluded that he did not properly evaluate in particular the position of the children, he then went on at [13] of the Decision to recognise the public interest before concluding at [14] of the Decision that the Appellant's appeal should be dismissed. There is no error in the way in which the Judge conducted the balancing assessment.

30. However, having concluded that the Judge failed to factor into account all the relevant circumstances telling in the Appellant's favour, the Decision contains an error of law in the substance of the assessment.

CONCLUSION

31. For the reasons set out above, the grounds disclose an error of law in the Decision. I therefore set that aside (but preserve the finding that the Appellant meets the relationship requirement of the Rules) and give the directions set out below for a remaking hearing in this Tribunal.

32. As I explained to the Sponsor, in order to proceed with a remaking hearing, the Tribunal will need to be provided with updated evidence, in particular in relation to the Sponsor's health condition and treatment, her financial circumstances (particularly in relation to her application for personal independence payments which may impact on whether she has to meet the income threshold under the Rules) and the position of the children (in particular in relation to their education and any health conditions). The Tribunal would be assisted by evidence in writing from the Sponsor and the Appellant detailing their relationship and the relationship between the Appellant and the children and how that is impacted by the ongoing separation.

33. The Sponsor should seek guidance from the Tribunal in relation to the way in which the evidence is to be submitted (there is also guidance online). The Tribunal will be able to have access (as it did for this hearing) to the evidence submitted to the First-tier Tribunal. The

Sponsor should however ask the Appellant's solicitors to provide her with access to the bundle to which I have made reference. The Respondent also has that bundle but will need to be separately served with any updated evidence.

NOTICE OF DECISION

The Decision of First-tier Tribunal Judge Buckwell dated 6 June 2024 involves the making of an error of law. I set aside the Decision. I make the following directions for the rehearing of this appeal:

DIRECTIONS

1. **Within 6 weeks from the date when this decision is sent, the Appellant shall file with the Tribunal and serve on the Respondent any updated evidence on which he wishes to rely (see above). In the event that the Appellant needs further time to obtain evidence, he must notify the Tribunal accordingly, explaining the delay and how much additional time is required.**

2. **The appeal will be relisted for a resumed hearing face to face before UTJ L Smith on the first available date after 8 weeks from the date when this decision is sent with a time estimate of ½ day. No interpreter is required.**

L K Smith
Upper Tribunal Judge Smith
Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 October 2024