



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

Case No: UI-2024-002242

First-tier Tribunal No:  
HU/01323/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

23<sup>rd</sup> January 2025

**Before**

**UPPER TRIBUNAL JUDGE BLUNDELL  
and  
DEPUTY UPPER TRIBUNAL JUDGE IQBAL**

**Between**

**DAMILOLA ODUKOYA  
(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Sonia Ferguson, instructed by Blackfields Solicitors

For the Respondent: Nicholas Wain, Senior Presenting Officer

**Heard at Field House on 10 January 2025**

**DECISION AND REASONS**

1. The Upper Tribunal issued its first decision in this appeal on 26 November 2024. It found that the First-tier Tribunal (Judge Clarkson) had erred in law in dismissing the appellant's appeal. That decision was set aside and it was directed that the decision on the appeal would be remade by the Upper Tribunal following a further hearing. This decision follows that remaking hearing, which took place on 10 January 2025.

## **Background**

2. The appellant is a Nigerian national who was born on 6 May 1966. He has two adult children: Benjamin Ayomikun Odukoya and Jadesola Benita Odukoya. We intend them no discourtesy by referring to them by their first names throughout this decision. Benjamin and Jadesola were born on 5 July 2002 and 5 April 2006 respectively. They are British citizens. The appellant was married to their mother, Florence Folashade Odukoya, in Nigeria in November 2001. That marriage broke down acrimoniously in 2013, however.
3. The appellant came to the United Kingdom with his wife and Benjamin in 2002. He held entry clearance as a visitor. Jadesola was born in the United Kingdom. The appellant lived with his wife and children in the United Kingdom but he left for Nigeria in 2008 to work in the oil industry. He sought entry clearance as a visitor in 2010 but the application was refused. He was granted a visit visa in 2012, however, and he returned in the summer of that year, as he did every two years or so thereafter.
4. The appellant's most recent entry to the United Kingdom was on 26 March 2022. He held entry clearance as a visitor which conferred leave to enter until 26 September 2022. On 1 August 2022, he sought leave to remain on Article 8 ECHR grounds, submitting that he should be permitted to remain with his children and other family members who reside in the United Kingdom. The respondent sought further evidence of the appellant's relationship with his daughter on 9 June 2023. The appellant replied by email ten days later, stating that it was difficult to provide additional evidence because of the 'serious animosity' harboured against him by his ex-wife.

## **The Respondent's Decision**

5. The respondent refused the application on 20 June 2023. She did not accept that the appellant was taking an active role in his daughter's upbringing and she refused the application with reference to paragraph E-LTRP 2.4 of the Immigration Rules. She also noted that the appellant was in the United Kingdom with (statutorily extended) leave to enter as a visitor, and that he was unable to meet the Immigration Status Requirement as a result. Paragraph EX1 did not apply, therefore. The respondent did not accept that the refusal of the application would result in unjustifiably harsh consequences for the appellant or his daughter, and the application was also refused outside the Immigration Rules.

## **Proceedings on Appeal**

6. The appellant appealed to the First-tier Tribunal and his appeal was dismissed by Judge Clarkson for reasons which need not be set out in this decision. It suffices to note that it is now accepted on all sides that the appellant cannot meet the Immigration Rules and that the appeal falls to be determined on Article 8 ECHR grounds outside those rules.

7. We have before us a consolidated bundle of 239 pages, containing witness statements and letters from the appellant and members of his family and evidence in support of those statements.
8. We heard oral evidence from the appellant and his daughter Jadesola. We do not propose to rehearse the contents of the documentary or oral evidence at this stage of our decision. We will refer to it insofar as it is necessary to do so to explain the findings of fact we have reached.

### **Submissions**

9. For the respondent, Mr Wain submitted that Article 8 ECHR was not engaged in its family life aspect between the appellant and any of his family members in the United Kingdom. The focus of the appellant's case was on the relationship between him and his daughter but that relationship did not display beyond normal emotional ties such that it satisfied the test in Kugathas v SSHD [2003] INLR 170, as summarised by Carr LJ (as she then was) at [45]-[47] of Mobeen v SSHD [2021] EWCA Civ 886.
10. The appellant said that he had sent financial support to his children whilst he was in Nigeria for fourteen years between 2008 and 2022 but there was no evidence of that. The suggestion in his oral evidence was that he had sent cash from Nigeria via relatives but there was no evidence from those individuals to confirm as much, despite the clear focus of these proceedings. The documentary evidence of financial support to the appellant's daughter began in 2022 and there was a gap between October 2023 and October 2024. Whilst there had been some support, it was not real or committed or effective. The payments which were in evidence were often undated and did not support the assertion of greater support since she had started studying at the University of Essex. The appellant's daughter was certainly not dependent upon him.
11. As for the level of contact between the appellant and his daughter, their evidence had differed. The appellant had said that they spoke every day, whereas his daughter had suggested that it was once or twice a week. There was in any event no documentary evidence of any such contact. In this respect, as with the financial support, there was significant exaggeration in the evidence. Whilst there was no requirement of 'exceptional dependency', the law required there to be a baseline of something more than the normal emotional ties and it was absent in this case.
12. In the event that there was a family life, Mr Wain submitted that the appeal nevertheless fell to be dismissed because the appellant's removal would be proportionate. The appellant had entered as a visitor and then sought to present the Secretary of State with a *fait accompli*. There was no applicable immigration rule. The appellant's daughter was now an adult and the only possible route for the appellant would be as an Adult Dependent Relative, which he evidently could not be. The maintenance of an effective immigration control (s117B(1) NIAA 2002) weighed heavily on the scales of proportionality. It was not accepted that section 117B(6) had applied in the past but even if it had, that was not a matter which was any great moment in the assessment of proportionality.

13. For the appellant, Ms Ferguson developed the submissions she had made in her updated skeleton argument as follows. She submitted that the appellant had always complied with the requirements of immigration control, and had made his application for leave to remain before the expiry of his leave to enter.
14. Ms Ferguson submitted that there had always been a family life between the appellant and his daughter. That had been the position whilst she was a minor because nothing had happened which brought to an end the family life which was assumed to exist between parent and minor child. Financial support had been sent from 2008 onwards and the appellant visited the children every two years from 2012 onwards. It was not correct to suggest that there was no evidence of financial support to 2022; there was a payment to Benjamin in 2020. It was to be recalled that the appellant was unable to work and that he gave whatever he could to his children. The evidence of financial support chimed with the various photographs of the appellant with his children at various ages. There was also a letter from the church which supported the appellant's devotion to his children.
15. Ms Ferguson submitted that the appellant's daughter had only recently turned eighteen and had not formed an independent life for herself. Although she was 'technically' an adult, the authorities showed that there was no bright line at that age, and a family life in existence at the age of seventeen was not suddenly extinguished upon the child attaining majority. The appellant's daughter had given evidence that she was concerned that she and her father would drift apart in the event of his removal. The maintenance of immigration control did not justify that outcome, and that was particularly so when the appellant would previously have enjoyed the benefit of section 117B(6). That was a matter deserving of significant weight and Mr Wain had been wrong to suggest otherwise. The appellant also had other relationships in the UK, including with his mother and his sister, and those were also relevant in the balancing exercise.
16. We reserved our decision at the end of the evidence.

### **Legal Framework**

17. There is no need to set out the requirements of the family or private life Immigration Rules because it is not suggested by Ms Ferguson that those Rules can be met on the facts of this case.
18. Nor is it necessary to set out the terms of Article 8 of the European Convention on Human Rights. We recall that the burden is on the appellant to establish that protected Article 8 rights are engaged. The civil standard of proof applies. In the event that protected rights are engaged, it is for the respondent to justify an interference by establishing that it is proportionate.
19. In considering the latter question, we have regard to Part 5A of the Nationality, Immigration and Asylum Act 2002 and to section 117B in particular. That section provides as follows:

**Article 8: public interest considerations applicable in all cases**

- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
  - (a) are less of a burden on taxpayers, and
  - (b) are better able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
  - (a) are not a burden on taxpayers, and
  - (b) are better able to integrate into society.
- (4) Little weight should be given to—
  - (a) a private life, or
  - (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.
- (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
- (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
  - (a) the person has a genuine and subsisting parental relationship with a qualifying child, and
  - (b) it would not be reasonable to expect the child to leave the United Kingdom.

**Analysis**

20. As we have already recorded, it is agreed between the parties that the appellant cannot meet the Immigration Rules. That is because a visitor cannot meet the Immigration Status Requirement or rely upon EX1, and because the appellant cannot sensibly contend that there would be very significant obstacles to his return to the country of his nationality.
21. In considering the case outside the Immigration Rules under Article 8 ECHR, we follow the structured approach required by R (Razgar) v SSHD [2004] UKHL 27; [2004] 2 AC 368. We consider first, therefore, whether the appellant's removal would be an interference with Article 8 ECHR rights. Ms Ferguson submitted that Article 8 ECHR was engaged in its family life aspect. Mr Wain disputed that, and it is to that area of dispute that we must turn.
22. There is no dispute as to the relevant test. Both of the appellant's children are now adults, and we must consider whether there are more than normal emotional ties. We state the test in that way, although we are cognisant of

the more fulsome formulations which were set out in Mobeen v SSHD and Jitendra Rai v ECO [2017] EWCA Civ 320.

23. As the appellant's daughter has only recently turned eighteen, we have also reminded ourselves of what has been said in the jurisprudence about there being no bright line which is crossed by a child who attains their majority which has the effect of bringing to an end a family life which existed before that date. In that respect, we have taken account of the detailed analysis undertaken by Sir Stanley Burnton (with whom Christopher Clarke and Richards LJ agreed) at [8]-[23] of Singh v SSHD [2015] EWCA Civ 630; [2016] Imm AR 1.
24. Because of that line of authority, we propose to consider firstly whether the appellant enjoyed a protected family life with his children (and particularly his daughter) *before* they turned eighteen. In that respect, we recall the authority cited in the Upper Tribunal's first decision: Berrehab v The Netherlands (1989) 11 EHRR 322. At [21], the ECtHR said this about the relationship between a parent and their minor child:

It follows from the concept of family on which Article 8 (art. 8) is based that a child born of such a union is ipso jure part of that relationship; hence, from the moment of the child's birth and by the very fact of it, there exists between him and his parents a bond amounting to "family life", even if the parents are not then living together.

25. The court went on to note that subsequent events might break that tie but that there had been no such event in that case. We consider the circumstances in this case to be very different. Whilst there is very little evidence before us to suggest that the appellant lived with his wife and children in the UK from 2002 to 2008, that was not disputed by Mr Wain and we accept it to be the case. During those six years, there was undoubtedly a family life between the appellant and his children. He then chose to return to Nigeria, however, and it was four years until he next saw the children. We accept that he attempted to visit before 2012, and that he was unable to secure a visit visa, but the fact remains that his children did not physically see him for four years. Jadesola was two years old when he left. Benjamin was six years old. The effect of a four year absence on children of that age would have been very significant.
26. We do not consider that the appellant's separation from his children during that period was sufficient, however, to bring their family life to an end. It is the daily experience of this tribunal that many families live apart in this way, with one parent earning money to support the family whilst they live in another country. Family life is demonstrably retained in many such cases, however, because there is evidence of financial remittances, ongoing contact by telephone or video, and regular visits. There is no evidence of financial remittances between 2008 and 2020 in this case. Nor is there any evidence of telephone or other contact. The appellant's marriage came to an end in 2013, after he and his wife had lived apart for five years. We consider it more likely than not that he and his children had also drifted apart during those years.

27. The appellant resumed his visits to the United Kingdom in 2012. We accept that he returned in 2012, 2014, 2016, 2018 and 2021, before his final arrival in 2022. We accept, in light of the rather poorly copied photographs in the consolidated bundle, that the appellant spent time with his children when he returned in those years. The appellant is clearly recognisable in those photographs, as is Jadesola, who gave evidence before us. It is clearly the case, therefore, that the appellant spent some time with his children when he returned to the United Kingdom as a visitor.
28. The appellant says that his relationship with the children consisted of much more than these occasional visits. He submits that there was regular financial support and regular contact. The evidence does not support his assertions. There is no evidence of financial support passing through the banking system or the remittance system from 2008 to 2020. When that was put to the appellant by Mr Wain, he maintained that he did have the evidence. Although we gave him and Ms Ferguson some time to peruse the bundle, this important point remained unanswered in re-examination or in Ms Ferguson's submissions. We think that Mr Wain was correct to suggest that there is simply no evidence to support the assertion that remittances were sent from the appellant to his children in the years 2008-2020.
29. The financial evidence in this case is poorly presented. Much of it consists of screenshots from a mobile telephone. There is a good deal of repetition, with some payments being represented on a number of pages. Many of the screenshots give no indication of the date of the payment in question. The bundle as a whole has been subjected to Optical Character Recognition which has rendered some of the documents illegible in part. Ms Ferguson invited us to access the bundle from the First-tier Tribunal hearing, which was more legible. We had access to that bundle and we have considered it in order to do justice to the appellant's case.
30. Having done so, and having considered the papers at length, we note that the first payment from the appellant to either of his children was a payment of £500 to Benjamin on 15 October 2020 (PDF p202). The final payment in evidence is of £200 to Jadesola on 29 November 2024 (PDF p188). The smallest remittance was £20 to Jadesola on July 2023 (PDF p 64). The largest was the payment to Benjamin in 2020. Some of the payments appear to come from the appellant's account with Revolut. Some were made from the appellant's sister's account with the Starling Bank. Because of the obvious repetition (see for example pp204-208), it is difficult to calculate how much was transferred or with what degree of regularity.
31. The appellant sought to suggest that he gave cash to relatives who were returning from Nigeria to bring to his children (or their mother) in the United Kingdom. As Mr Wain noted, however, there is also no evidence in support of this assertion. The appellant suggested that his mother and his sister had brought money to the United Kingdom in this way. His oral evidence was that he sent £50 every month for his son and his daughter. The appellant's mother and sister both live in this country and it would have been a simple matter for them to make a statement and attend the Tribunal to confirm that they had brought money. There is no reference in any of the statements

before us to confirm that the appellant sent money in this way. The appellant's older sister says in her statement that the appellant gave the children money for their upkeep "when he was even in Nigeria" but she says nothing about having transported that money. The appellant's mother made a statement in which she refers to the appellant providing financial support to his children but she also says nothing about having facilitated such support.

32. Mr Wain asked the appellant's daughter about the financial support she had received from her father. When she was asked about the support he had provided before he came to the United Kingdom in 2022, she said that she had received "some" financial support from her father, although she qualified that by adding "as far as I can remember". Given that the appellant's daughter was fifteen years old in 2021, we would have expected her to be able to provide rather more by way of confirmation. We formed the impression that she was giving a vague and non-committal answer because she considered that it would help her father. We regret to say that we did not consider her evidence to be truthful in this respect. There is nothing in the financial material before us to suggest that she received any financial support from her father before he arrived in 2022.
33. The evidence of the appellant's contact with his children during the period 2008-2022 is similarly lacking. There is nothing to show that he maintained contact with his son or his daughter whilst he was in Nigeria. The assertion that the appellant maintained contact with them could easily have been established by telephone bills or Whatsapp records, for example, and the absence of that evidence militates in favour of the same conclusion as the almost complete absence of financial support during this time. In our judgment, the truth of the matter is that the appellant and his children drifted further apart during his fourteen year absence from the United Kingdom. We consider that he was little more than an occasional presence in their lives during those years. He visited, and photographs were taken of him with the children, but we are unable to accept his suggestion that he also provided them with regular remittances and was in contact with them.
34. In the circumstances, we do not consider that there was a family life between the appellant and his children when he arrived in the United Kingdom in 2022. He returned to Nigeria when his son was six and his daughter was two. He could not visit them for the next four years. He then visited every two years, from 2012 onwards, but we do not accept that he remained in contact with them between those visits, or that he sent regular remittances for their support. Whilst we take account of the presumption of family life between a parent and a minor child, we consider that the lengthy period of separation and the absence of contact and support had the effect of breaking that tie. We consider that Mr Wain was correct to accept that there has always been a relationship of sorts between the appellant and his children, but we do not accept that it was a genuine and subsisting parental relationship which engaged Article 8 ECHR in its family life aspect in 2022.
35. We note that there is more evidence of the appellant's relationship with his children since he re-entered the United Kingdom. What we have, however, is very far from the quality of evidence which we would expect to see to support the existence of a non-cohabiting parental relationship in this country. There



are no telephone records to support the assertion of regular contact between the appellant and his children. He accepted in his evidence before us that he has not been in contact with his son since May or June but he maintained that he chatted with his daughter every day. His evidence was not consistent with his daughter's version of events, however. She suggested that she was in contact with him twice a week or "sometimes more", but she changed her evidence when Mr Wain asked her about the lack of telephone records, stating that they spoke weekly. We concluded that Mr Wain was correct in his submission that the appellant and his daughter had set out to exaggerate the extent of the contact they enjoy.

36. The appellant and his daughter gave consistent evidence that he now supports her financially to the tune of £200 every month. They said that he had decided to provide that money to her since she started studying at the University of Essex in the autumn. We note that there were payments of £200 on 30 October 2024 (PDF p185) and 29 November 2024 (PDF p 194). As Mr Wain observed, there is scant evidence of the appellant's ability to make such contributions. He is not currently permitted to work. Mr Wain asked him how he was able to muster £200 per month for his daughter. His response was that he has sold properties and a car in Nigeria but there is no evidence of any such sales. We consider it more likely that these sums originated from the appellant's relatives in the United Kingdom, and were given to him in an attempt to bolster his prospects in this appeal. We do not accept that these recent sums represent real or committed or effective support.
37. Mr Wain also noted that there was a significant gap in the evidence regarding the appellant's provision of financial support to his children between October 2023 and October 2024. He does not claim to have been providing Jadesola £200 per month at that stage but he still claims to have been providing money to her and her brother, but there is nothing to support that assertion.
38. In summary, there is no documentary evidence to support the appellant's claim that he has been in regular contact with his children since he entered the United Kingdom in 2022. The oral evidence given by the appellant and his daughter about the regularity of their contact was inconsistent. There is some evidence of him providing financial support to his children since 2022 but it is sporadic at best.
39. We take account of the additional written evidence before us. The appellant's younger sister wrote a letter in July 2022 in which she spoke of the appellant's commitment to his children. The appellant's brother-in-law stated in a letter dated November 2023 that the appellant had "always played a fatherly role" in the lives of his children. The appellant's older sister made a statement in 2023 (the rest of the date has been corrupted by Optical Character Recognition). She stated that the appellant was a doting father who provided regular funds to his children. The appellant's mother's statement was to similar effect, as was the letter from the appellant's pastor. None of these individuals attended to give oral evidence despite the fact that they are in the United Kingdom. Given the inconsistency between the evidence of the appellant and his daughter, and given the sparse or absent documentary evidence in support of these assertions, we attach little weight to the untested evidence from these individuals.

40. Drawing all of the threads of the evidence together, we find that the reality of this case is quite clear. The appellant was only an occasional presence in the lives of his children between 2008 and 2022. He visited them in the United Kingdom, but we do not accept that he regularly sent money for their upkeep or that he even remained in regular contact when he was not in this country. His marriage to their mother fell apart acrimoniously in 2013 and he and the children drifted apart during the formative years of their lives, and the lack of regular contact and parental involvement had the effect of breaking the tie of family life which had existed prior to 2008.
41. On returning to the United Kingdom in 2022, the appellant has made some attempt to rekindle the relationship between him and his children. He has provided sporadic financial support and he has spent some time with them but the effect of that has not been to engage Article 8 ECHR in its family life aspect. There was no family life before the children turned eighteen and there is no family life now. The financial and emotional support which the appellant has provided, such as it is, has not been real or committed or effective and the emotional ties between them are nothing more than would normally be expected between an adult child and a parent. As a student who returns home during the holidays, Jadesola undoubtedly retains a protected family life with her mother, but that relationship and the relationship between her and her father are entirely different.
42. The appellant's relationship with his son has all but come to an end. He accepted at the hearing before us that he has not spoken to him for some months. He said that this was because his ex-wife was "really tough" and had effectively poisoned his son's mind against him. The appellant said, and we accept, that he had sent some money to his son at Christmas but had heard nothing in response. There is nothing here which suggests a relationship of more than normal emotional ties. If anything, the relationship as it stands is one which displays less than normal emotional ties.
43. The appellant also relies on other adult relationships he has in the United Kingdom. He has siblings and his mother here, and there was some reference to other relatives as well. There is nothing whatsoever in the documentary evidence to suggest that those relationships engage Article 8 ECHR in its family life aspect, however. The appellant might prefer to live in the United Kingdom and to see those relatives but the "irreducible minimum" of family life between adults is not shown to exist.
44. Whilst the appellant might have a private life in the United Kingdom, comprising his human relationships and the links he has built to the community (including his church) since 2022, that is the only extent to which Article 8 ECHR is engaged in this case. Taking account of what was said at [28] of AG (Eritrea) v SSHD [2007] EWCA Civ 801; [2008] 2 All ER 28, we are prepared to accept that the appellant's removal would interfere with his private life, and we focus on the process of justification under Article 8(2).
45. There is little to place on the appellant's side of the balance sheet in terms of proportionality. He does not have a family life in the United Kingdom. He can remain in contact with the relatives and contacts he has in the United

Kingdom. There is no reason to think that he will have any particular difficulty in returning to Nigeria, given that he has worked in the oil industry there and has only been absent for less than three years. He and his family would undoubtedly prefer that he remain in the United Kingdom, but the consequences of his removal will not cause any particular difficulty for him or anyone else.

46. On the other side of the scales, there are cogent factors telling in favour of removal. The appellant cannot meet the Immigration Rules. He is not an overstayer, as Mr Wain accepted before us. He has leave to enter as a visitor, statutorily extended by section 3C of the Immigration Act 1971 whilst this appeal remains pending. The maintenance of immigration control nevertheless militates against him in this appeal as a result of s117B(1). The appellant applied for a visa for a specified and finite duration and has subsequently sought to remain in the United Kingdom for a greater duration and for a different purpose. In making that application in reliance on his relationship with his children, he sought to present the Secretary of State with a *fait accompli*, which in itself is a matter which militates her favour in the assessment of proportionality: Mobeen v SSHD refers, citing R (Agyarko) v SSHD [2017] UKSC 11; [2017] 1 WLR 823 in that connection.
47. The appellant speaks good English and there is no reason to think that his presence in this country presents the public purse with an additional burden. The considerations in s117B(2) and (3) are therefore neutral in the assessment of proportionality. Section 117B(4) does not apply; the appellant is not in the UK unlawfully.
48. Section 117B(5) militates against the appellant on the facts of this case, however. He established his private life in this country when his immigration status was precarious - Rhuppiah v SSHD [2018] UKSC 58; [2018] 1 WLR 5536 refers, at [44] - and there are no particularly strong features of the appellant's private life which override the generalised normative guidance that little weight should be given to it.
49. It is common ground that section 117B(6) does not apply as at today's date. The appellant's daughter is not a qualifying child as she has turned eighteen. Ms Ferguson was concerned (as she was at the initial Upper Tribunal hearing) to observe that the appellant might have had the benefit of that provision if the point had been considered sooner. On the findings of fact we have reached above, however, that would have made no difference. The appellant did not have a genuine and subsisting parental relationship with his daughter whilst he was in Nigeria and he did not have a genuine and subsisting parental relationship with her when he was in the United Kingdom. This is not a case in which the passage of time has deprived the appellant of the benefit of an argument which would previously have been dispositive of the appeal in his favour.
50. In our judgment, the matters which militate against the appellant in this case are far more weighty than those which feature on his side of the balance sheet. We find that the interference with his private life is a proportionate one.

51. We would add that we would have reached the same conclusion if we had accepted that the appellant had enjoyed a family life with his children throughout. Section 117B(5) would not have operated against the appellant in the event of such a finding, since it only applies to private life, but section 117B(1) would have applied, as would the appellant's inability to meet the requirements of the Immigration Rules and his attempt to present the respondent with a *fait accompli*. Even if we had been persuaded to answer the family life question in the appellant's favour, we would have found (in light of Mobeen v SSHD and the other authorities considered therein) that the respondent had clearly established removal to be a proportionate course as matters stand at today's date. Had we been satisfied that there was a point in the past at which section 117B(6) was satisfied, we would not have considered that to be sufficient to tip these heavily weighted scales in the appellant's favour.
52. In the circumstances, we remake the decision on the appeal by dismissing it on Article 8 ECHR grounds.

### **Notice of Decision**

The decision of the First-tier Tribunal having been set aside, the decision on the appeal is remade by dismissing it.

**Mark Blundell**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

20 January 2025