



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

Case No: UI-2024-002580

First-tier Tribunal No: HU/00619/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

3<sup>rd</sup> January 2025

**Before**

**UPPER TRIBUNAL JUDGE STEPHEN SMITH**

**Between**

**Sibomana Abdalla Abdallah**  
**(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellant: Mr B. Bedford, Counsel instructed by Central England Law Centre

For the Respondent: Mr P. Lawson, Senior Home Office Presenting Officer

**Heard at Birmingham Civil Justice Centre on 6 December 2024**

**DECISION AND REASONS**

1. The issue in these proceedings is whether First-tier Tribunal Judge Thapar (“Judge Thapar”) made an error of law when concluding that the appellant, a citizen of Burundi born in 1978, would not face “very significant obstacles” to his integration in the event of his removal. Judge Thapar reached that conclusion in a decision promulgated on 20 March 2024, dismissing an appeal against a decision of the Secretary of State dated 20 February 2023 to refuse the appellant’s human rights claim.
2. By a decision promulgated on 15 January 2019, First-tier Tribunal Judge Juss (“Judge Juss”) had reached the opposite conclusion on the basis of different evidence, and allowed the appellant’s appeal. The central issue for my consideration is whether Judge Thapar failed properly to adopt Judge Juss’s

decision as her starting point, and in doing so failed to follow the guidelines given in *Devaseelan v Secretary of State for the Home Department* [2002] UKIAT 000702.

3. Both judges heard the appeals under section 82(1) of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”).
4. The appellant now appeals against the decision of Judge Thapar with the permission of Deputy Upper Tribunal Judge Wilding.

### **Factual background**

5. In 2019, Judge Juss found that this appellant would face “very significant obstacles” to his integration in Burundi, and that there would be “insurmountable obstacles” to his relationship with Ms R, a fellow citizen of Burundi previously recognised as a refugee in the United Kingdom, continuing in Burundi. Judge Juss accepted the appellant’s evidence to have no remaining family in Burundi, and accepted that his relationship with Ms R could not be continued in Burundi. He allowed the appeal. Consequently, the appellant was granted leave to remain on the ten year private and family life route until 13 August 2021.
6. On 13 August 2021, the appellant made an in-time application for further leave to remain. His circumstances had changed; his relationship with Ms R had come to an end, and he had spent six months in Burundi, from January to June 2021, staying with his niece and nephew.
7. The appellant’s 13 August 2021 application was refused by the Secretary of State’s decision of 23 February 2023. The Secretary of State concluded that the appellant would not face very significant obstacles to his integration. There would be no exceptional circumstances such that it would be unduly harsh for him to be removed to Burundi.

### **The decision of the First-tier Tribunal (Judge Thapar)**

8. The appellant’s appeal was heard by Judge Thapar. There was an issue at the hearing before her as to whether the tribunal had the jurisdiction to consider a range of additional matters contained in the appellant’s witness statement. The appellant alleged that he had been subject to persecutory treatment in Burundi in 2021. That was, everybody accepted, a “new matter” within the meaning of section 85 of the 2002 Act. The Secretary of State refused to provide her consent to the tribunal considering that matter, and it was not considered.
9. Judge Thapar concluded that there had been a marked change in the appellant’s circumstances since the appeal before Judge Juss (para. 13). A significant factor in Judge Juss’s decision was the appellant’s relationship with Ms R, which was no longer subsisting.
10. The appellant had claimed that his return visit to Burundi was to arrange for his niece and nephew to move to Uganda, and that they had since left Burundi. The judge rejected that claim; there was insufficient documentary evidence of the sort that would reasonably be expected (para. 17). It had not been established that the appellant would be unable to secure accommodation in Burundi (para. 18). Although the appellant had sought to rely on the general in-country conditions in Burundi, there was no background material before the judge to justify accepting

those unparticularised assertions (para. 19). Those findings, the judge concluded, permitted her to depart from the findings of Judge Juss (para. 20).

### **Issues on appeal to the Upper Tribunal**

11. The grounds of appeal are not articulated as a series of succinct propositions, but on a fair reading they make the following assertions:
  - a. First, Judge Thapar failed properly to apply the *Devaseelan* guidelines and unjustifiably departed from the decision of Judge Juss;
  - b. Secondly, since the judge did not enjoy the jurisdiction to consider the new matter in relation to the alleged persecutory treatment experienced by the appellant in Burundi, any doubt concerning the in-country conditions should be resolved in favour of the appellant;
  - c. Thirdly, the Secretary of State had not provided any evidence that in-country conditions in Burundi have changed. It is for the Secretary of State to justify any interference with the appellant's Article 8 private life, and in the absence of any evidence provided by the Secretary of State it was not open to the judge to dismiss the appeal on the basis she did, for the reasons she gave.
12. Mr Bedford expanded on the grounds of appeal in submissions. Mr Lawson relied on the Secretary of State's rule 24 response dated 22 July 2024.

### **The law**

13. The *Devaseelan* guidelines are well known. The following guidelines are relevant in these proceedings: the first guideline (the first decision should always be the starting point); and the second guideline (fact happening since the first decision can always be taken into account by the second judge).
14. It is well established that nothing in the *Devaseelan* guidelines absolves the judge hearing later appeal from the obligation to decide all relevant issues for herself. In *LD (Algeria) v Secretary of State for the Home Department* [2004] EWCA Civ 804 it was held, at para. 30 by Judge LJ:

“the most important feature of the [*Devaseelan*] guidance is that the fundamental obligation of every special adjudicator independently to decide each new application on its own individual merits was preserved.”
15. The Immigration Rules relevant this appeal are paragraph 276ADE(1)(vi) (very significant obstacles to integration) and paragraph EX.1(b) of Appendix FM (insurmountable obstacles to a relationship with a qualifying partner continuing in the proposed country of removal).

### **Judge Thapar entitled to depart from Judge Juss's starting point**

16. In granting permission to appeal, the deputy judge observed that Judge Thapar's decision was “not helped” by her “failure to fully set out” the decision of Judge Juss in her decision. I respectfully disagree. Her decision was eminently helped by her succinct approach. It was not necessary for her to set out the

findings of a previous judgment of which the parties were well aware, and in relation to which the judge was plainly fully aware. The judge was sitting as an expert judge in a specialist tribunal, and made extensive references to the decision of Judge Juss throughout her decision. It was no more necessary for Judge Thapar to set out the findings of Judge Juss in detail in her decision than it is for me to do so in this decision. Judge Thapar's decision was commendably brief.

17. It was common ground before me that the decision of Judge Juss could, in places, have been clearer. However, the central findings were tolerably clear. Judge Juss found that the appellant would face very significant obstacles to his own integration in Burundi, on account of his lack of connections and the general in-country conditions. He also accepted that the appellant's then relationship with Ms R would face "insurmountable obstacles" to continuing in Burundi. Those factual propositions formed the starting point for Judge Thapar's consideration of the updated evidential position.
18. Against that background, I can deal with the core proposition at the heart of this appeal swiftly. Judge Thapar was entitled – bound, even – to depart from the findings of Judge Juss in those circumstances. To the extent that Judge Juss's findings were based on the appellant's relationship with Ms R, there had been a significant change in circumstances since his decision; the appellant was no longer in a relationship with Ms R. That approach is entirely consistent with *Devaseelan* and the guidance of the Court of Appeal in *LD (Algeria)*, quoted above.
19. To the extent that Judge Juss found that the appellant would face "very significant obstacles" to his integration in Burundi, he had resided there for six months in 2021. Whereas previously he claimed to have no relatives in the country, he accepted before Judge Thapar that he had a niece and nephew in the country. Although his evidence had been that he had travelled to Burundi to help his niece and nephew migrate to Uganda, there was no documentary evidence to support that assertion. Judge Thapar was entitled, in my judgment, to reach findings of fact rejecting that aspect of the appellant's evidence.
20. While in the proceedings before Judge Thapar the appellant claimed to have encountered persecutory treatment during that trip, that part of his case was a "new matter" (it having not been raised in the application to the Secretary of State), for which the Secretary of State had not provided her consent. It would have been an error for Judge Thapar to consider that matter, and no error arises from the judge resolving the proceedings by reference to the factual matrix that she was permitted to consider, as she did.
21. On any view, residing in a country for six months is a significant change in circumstances when assessing whether an appellant would face "very significant obstacles" to his integration – in that country. That was a factor which Judge Thapar was rationally entitled to take into account as part of her overall evaluative assessment, especially in light of her findings rejecting the appellant's evidence that the family he had been visiting during that six-month period no longer lived in the country.
22. I reject Mr Bedford's submission that it was for the Secretary of State to provide updating evidence concerning any changes in the in-country conditions in Burundi. While it is, in principle, the Secretary of State's burden to demonstrate that any derogation from Article 8(1) of the European Convention on Human

Rights is justified within the terms of Article 8(2), in practice the Secretary of State does so by relying on the requirements of the Immigration Rules. Those rules set out the requirements which must be met in order for a person making a human rights claim to demonstrate that their removal would be disproportionate for the purposes of Article 8(2) of the ECHR (subject to the ability to demonstrate that there are exceptional circumstances, not otherwise captured by the Immigration Rules: see GEN.3.2.). That being so, the burden is, in practical terms, on a person seeking to demonstrate that the rules are met that they are, in fact, met. Put another way, he who asserts must prove.

23. As Judge Thapar observed, there was no country evidence to substantiate the appellant's assertions pertaining to the general in-country conditions. That was finding the judge was rationally entitled to reach. Indeed, on the evidence before her, it is difficult to see how she could legitimately have concluded otherwise. Contrary to the submissions of Mr Bedford, there was no obligation on the judge to resolve any doubt in favour of the appellant.
24. Drawing this analysis together, therefore, there had been a significant change in the appellant's circumstances justifying a departure from the starting point contained in the decision of Judge Juss. Judge Thapar was rationally entitled to ascribe determinative significance to the fact the appellant had resided in Burundi for six months in 2021 when determining whether, if he were to be removed to Burundi, he would face "very significant obstacles" to his integration there. Having approached the evidence in that way, the judge reached an evaluative conclusion that the appellant would not face such very significant obstacles. She was entitled to dismiss the appeal for the reasons she gave.
25. This appeal is dismissed.

### **Notice of Decision**

This appeal is dismissed.

The decision of Judge Thapar did not involve the making of an error of law.

**Stephen H Smith**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**24 December 2024**