Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/06424/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27 November 2019	**On 14 January 2020**

Before

HIS HONOUR JUDGE BIRD
SITTING AS JUDGE OF THE UPPER TRIBUNAL
UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

ABDUL RAHMAN FAZL AHMAD
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Jorro, Counsel, instructed by Sunrise Solicitors
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is an Afghan National and was born on 17 August 1992.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Kimnell ("the judge"), promulgated on 9 July 2019, in which he dismissed the

Appellant's appeal against the Respondent's refusal, dated 26 March 2019, of his human rights claim made on 20 September 2018.

3. The Appellant's claim is predicated upon Article 8 ECHR ("Article 8") and essentially runs as follows. In light of immigration history and the fact that has over the course of time, and continues to, care for his parents, both of whom require assistance with personal care, the Appellant enjoys family life with his mother and father, and, in all the circumstances, his removal from this country would constitute a disproportionate interference with that family life.

4. The immigration history alluded to above can be summarised thus. Having been granted entry clearance pursuant to paragraph 301 of the Immigration Rules ("the Rules"), the Appellant and his mother arrived in the United Kingdom beginning of 2013 to join his father. The father had been here for some years previously, having been recognised as a refugee and then subsequently obtaining British citizenship. Although the Appellant arrived in this country as an adult, the entry clearance applications for him and his mother had been made back in 2007 when he was still a child. The exceptional delay between the applications and arrival here was caused by protracted litigation: following an initial refusal, the appellate proceedings reached the Court of Appeal before the cases were remitted, with successful outcomes in the Upper Tribunal following in June 2012.

5. Following in-time extension applications, the Appellant and his mother were granted further leave to remain, running from 10 April 2015 until 10 April 2017. The Applicant's grant was made pursuant to paras 301 and 302 of the Rules, notwithstanding the fact that he was an adult. On 6 April 2017, the Appellant made an in-time application for indefinite leave to remain as the child of a person present and settled in the United Kingdom, namely his father. That application was refused on 7 November 2017, on the basis that false representation been made: the Applicant had failed to disclose a police caution given to him on 6 April 2017. It was also said that his removal from the United Kingdom would not violate Article 8. On appeal to the First-Tier Tribunal (HU/15390/2017, promulgated on 6 September 2018), Judge Greasley found that the Appellant acted dishonestly in failing to disclose the police caution in the application for indefinite leave to remain. Further, it was concluded that the Appellant's parents could receive assistance from the NHS and/or social sciences, and that a sister would have been able to provide support as well. It was said that there were no very significant obstacles to the Appellant's reintegration into Afghan society. In all circumstances, the appeal was dismissed.

6. On 20 September 2018, within the period during which an onward appeal could have been pursued and within the 14-day "grace period" provided for in the Rules, the Applicant made an application for leave to remain which was treated by the Respondent as a human rights claim, the refusal of which gave rise to a right of appeal under section 82 of the Nationality, Immigration and Asylum Act 2002, as amended ("NIAA 2002").

The judge's decision

7. Having quite properly referred to the decision of Judge Greasley, the judge goes on to consider relevant medical evidence relating to the Appellant's parents (to which we will refer later in our decision). At [32] the judge finds that there was family life between the Appellant and his parents, accepting that the degree of dependency of the parents upon their son went beyond "normal emotional ties". The judge also found that the Appellant enjoyed private life in the United Kingdom. At [35] the judge deals with the issue of para 301 of the Rules summarily, stating that the point was not argued at the hearing and did not appear in the Appellant's skeleton argument. In any event, concluded the judge, as the parents were dependent upon the Appellant rather than the other way round, this provision of the Rules could not be satisfied. Further, he essentially agreed with the conclusions of Judge Greasley, finding that there would be no very significant obstacles to reintegration into Afghan society, with reference to paragraph 276ADE(1)(vi) of the Rules.

8. In considering the Appellant's Article 8 claim on a wider basis, the judge attached "little weight" to the previous failure to disclose the police caution in the 2017 application for indefinite leave to remain. Other factors relating to the Appellant's private life are considered in [41] – [48], and in [49] the judge took into account what he described as "a margin of appreciation" on the Respondent's side of the balance sheet. The appeal was duly dismissed.

The grounds of appeal and grant of permission

9. The grounds essentially put forward three bases of challenge: first, that the judge failed to adequately consider the question of para 301 of the Rules and its relevance to the Appellant's Article 8 claim; second, that the judge failed to take account of all relevant factors when assessing para 276ADE(1)(vi) of the Rules; third, that in considering the wider Article 8 claim, the judge failed to take account of all relevant aspects of the Appellant's immigration history in the context of family life, as opposed to simply private life. Within this third limb of challenge, a point is made about the inappropriateness of according the Respondent "a margin of appreciation".

10. Permission to appeal was granted by Upper Tribunal Judge Pickup on 17 October 2019.

11. The Respondent has not provided a rule 24 response in this case.

The hearing

12. Having heard Mr Jorro's submissions (which followed the grounds of appeal, with some expansion upon the immigration history and the relevance of paras 301 and 302 of the Rules), Mr Walker accepted that the judge had materially erred in law. This

concession was made on the basis of a failure to have considered the Appellant's Article 8 claim adequately in the context of the accepted family life and in light of the relevant immigration history.

Decision on error of law

13. There is no good reason for us to go behind Mr Walker's concession. We agree that the judge did fail to consider the Appellant's case in light of what can fairly be described as the two central planks of the Article 8 claim, namely the family life with the parents, together with the overall immigration history.

14. The judge was also wrong to have factored in "a margin of appreciation" to the balancing exercise. That is a concept relevant to the jurisprudence of the European Court of Human Rights and doES not play an additional role on the domestic front, given that the Respondent is already entitled to rely on the overarching public interest (as provided for by section 117B(1) NIAA 2002) and the significance to be attached to the relevant Rules. Whilst there is an error here, it is in reality a subsidiary point.

15. In all the circumstances, we exercise our discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and set the judge's decision aside.

Remaking the decision

16. Having canvassed the issue of disposal with the representatives, both were agreed that we could and should remake the decision in this appeal based upon the evidence before us. That evidence comprises the Appellant's bundle before the First-tier Tribunal, a letter from the St Margaret's Medical Practice, dated 11 June 2019, and the Respondent's bundle, under cover of letter dated 24 May 2019.

The relevant Rules

17. We set out only paras 301 and 302 of the Rules here, as they play a material particular in our considerations. These provide as follows:

> "Requirements for limited leave to enter or remain in the United Kingdom with a view to settlement as the child of a parent or parents given limited leave to enter or remain in the United Kingdom with a view to settlement
>
> 301. The requirements to be met by a person seeking limited leave to enter or remain in the United Kingdom with a view to settlement as the child of a parent or parents given limited leave to enter or remain in the United Kingdom with a view to settlement are that he: (i) is seeking leave to enter to accompany or join or remain with a parent or parents in one of the following circumstances: (a) one parent is

present and settled in the United Kingdom or being admitted on the same occasion for settlement and the other parent is being or has been given limited leave to enter or remain in the United Kingdom with a view to settlement; or

(b) one parent is being or has been given limited leave to enter or remain in the United Kingdom with a view to settlement and has had sole responsibility for the child's upbringing; or

(c) one parent is being or has been given limited leave to enter or remain in the United Kingdom with a view to settlement and there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care; and

(ii) is under the age of 18; and

(iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and

(iv) can, and will, be accommodated adequately without recourse to public funds, in accommodation which the parent or parents own or occupy exclusively; and

(iva) can, and will, be maintained adequately by the parent or parents without recourse to public funds; and

(ivb) does not qualify for limited leave to enter as a child of a parent or parents given limited leave to enter or remain as a refugee or beneficiary of humanitarian protection under paragraph 319R; and

(v) (where an application is made for limited leave to remain with a view to settlement) has limited leave to enter or remain in the United Kingdom; and

(vi) if seeking leave to enter, holds a valid United Kingdom entry clearance for entry in this capacity.

Limited leave to enter or remain in the United Kingdom with a view to settlement as the child of a parent or parents given limited leave to enter or remain in the United Kingdom with a view to settlement

302. A person seeking limited leave to enter the United Kingdom with a view to settlement as the child of a parent or parents given limited leave to enter or remain in the United Kingdom with a view to settlement may be admitted for a period not exceeding 27 months provided he is able, on arrival, to produce to the Immigration Officer a valid passport or other identity document and the applicant has entry clearance for entry in this capacity. A person seeking limited leave to remain in the United Kingdom with a view to settlement as the child of a parent or parents given limited leave to enter or remain in the United Kingdom with a view to settlement may be given limited leave to remain for a period not exceeding 27 months

> provided the Secretary of State is satisfied that each of the requirements of paragraph 301 (i)-(v) is met."

The parties' submissions

18. Mr Walker had no further submissions to make. He was content not to seek any further information in respect of the Appellant's immigration history, in particular the basis upon which leave to remain had been granted in 2015.

19. As announced in open court, and in light of Mr Walker's position, we indicated that we were minded to proceed on the basis that the Respondent had taken a conscious decision to waive at least one requirement of the Rules when granting leave in 2015.

20. For his part, Mr Jorro effectively relied on the submissions made in respect of the error of law issue. We shall deal with relevant aspects of these when setting out our conclusions and reasons, below.

Findings of fact

21. As matters now stand, there is little, if any, dispute as to the underlying material factual matrix in this case. We adopt the immigration history summarised in paras 4-6, above. We expand on certain points arising therefrom. First, the Appellant arrived in the United Kingdom aged 20. Whilst on the face of the relevant Rule (namely, para 301 - there is no dispute that this was the applicable provision), it appears as though he could not have met the age criterion under para 301(ii), it is to be remembered that the entry clearance application had been made way back in 2007, when he was still a minor. Thus, para 27 of the Rules applied and the attainment of majority by the time of the grant of entry clearance in 2012 was no bar. Second, we find as a fact that when granting the extension application on 10 April 2015, the Respondent took a deliberate decision to waive the age requirement under para 301(ii): the Applicant was at that time 22 years old. Third, we find that when refusing the Appellant's indefinite leave to remain application in 2017, with reference to para 298 of the Rules, the Respondent relied on the fact that his mother was being refused at the same time and that there had been a failure to disclose a material fact, namely the police caution. In the absence of cogent evidence on the point from the Appellant, and in line with findings of Judge Greasley and the well-known Devaseelan principles, we too find that the Appellant did deliberately fail to disclose the police caution, and that para 322(1A) of the Rules applied. Having said that, it is of note that when refusing the latest application for leave to remain, the Respondent did not rely on the non-disclosure issue. Indeed, under the sub-heading "Suitability", it is expressly stated that the application did not fall for refusal on grounds of suitability, with reference to section S-LTR of Appendix FM to the Rules.

22. On the evidence before us, and in view of the Respondent's position taken thereon, we find that aside from the non-disclosure issue, there has been no other material misconduct by the Appellant in respect of his immigration history. There has been no

specific challenge to his written evidence, that of his parents, and the supporting independent medical evidence, specifically that emanating from Dr Marzio Ascione, Consultant Clinical Psychologist, dated 10 June 2019, and the GP letter of 11 June 2019. In all the circumstances, we find this evidence to be reliable.

23. We find, as did Judge Greasley, that the parents' medical problems largely pre-dated their arrival in the United Kingdom (the father having come in 1999, and the mother having accompanied the Appellant in 2013). On the basis of the medical evidence, we find that the father suffers from significant mobility and lower back problems, in addition to Type II diabetes, asthma, and depression and anxiety. We find that the mother suffers from severe depression and anxiety, together with memory loss, ischaemic heart disease, and Addison's Disease (a condition affecting the adrenal glands, often resulting in fatigue and low mood). We also find that the Appellant himself suffers from depression and anxiety, albeit not at a particularly significant level. In this last respect, the evidence before us differs from that considered by Judge Greasley in August 2018. Thus, our finding on the Appellant's current health is not inconsistent with the previous finding that he was "fit" (to the extent that this term was being used by Judge Greasley to indicate overall good health).

24. On the basis of the reliable evidence contained in the report of Dr Ascione, the GP letter, and the witness statements from the Appellant and his parents, we find that the latter have, for the period during which the Appellant has resided in the United Kingdom and to date, required care with personal functions such as dressing, washing, and to an extent toileting. In addition, they also require assistance with housework and getting out and about in a meaningful sense. There is limited evidence in the Appellant's bundle about the father's entitlement to disability benefits. On the face of it, he has been in receipt of Employment Support Allowance, with the Support Group allocation. This is consistent with significant functional limitations.

25. We find that it is the Appellant, and the Appellant alone, who is providing the care to his parents. We are inclined to agree with the view expressed by Dr Ascione that the Appellant has been providing "a great deal of support physically and psychologically" to his parents. The doctor's view, to which we attach considerable weight, is that the parents would "not be able to cope with the complexity of their physical and psychological needs without the support of their son". As in respect of the Appellant's own health, the medical evidence before us differs from the fairly brief GP letter considered by Judge Greasley in 2018. Our conclusion that the parents' ability to cope without the Appellant is likely to be significantly reduced is therefore not inconsistent with the previous finding of the First-tier Tribunal.

26. It is the case that the Appellant has a sister living relatively close to the parents' house. In his 2018 decision, Judge Greasley was concerned over the absence of evidence from her. Similarly, we have not been provided with a statement from this particular source, something that is less than helpful. On what we do have, we are willing to accept that the sister has a family of her own and has not played a meaningful role in the care of her parents. Whilst we cannot rule out the possibility

of this changing in the future, taking the evidence as a whole, such an occurrence is in our view unlikely, given her lack of involvement thus far, together with what is clearly the significant input required.

27. We find that the Appellant had always lived with his parents in Afghanistan and continued to live with his mother once the father left that country. The evidence clearly shows that the Appellant has resided with both his parents in the United Kingdom throughout his time here. The Appellant has undertaken employment in this country, as evidenced by bank statements and payslips. The documentary evidence shows that the Appellant's earnings have ranged from approximately £564 a month to £921 a month over the course of 2019.

28. We find that the Appellant is unmarried and has never formed an independent life of his own. He has been, and remains, at least partially financially dependent upon his parents, particularly in respect of essential needs such as accommodation.

29. In light of our findings on the historical and current relationship between the Appellant and his parents, we go on to find that there is a very strong bond between them arising from the particular family history (including the father's forced departure from Afghanistan and the prolonged attempt at a family reunification), and the practical and emotional support provided by the former to the latter over the course of years.

30. Finally, although we did not hear the Appellant give oral evidence, having to regard to what is said in the latest First-tier Tribunal decision, it is clear enough that he speaks English to a reasonable degree. He also speaks Dari.

Conclusions on the Article 8 claim

31. We have no hesitation in concluding that the Appellant enjoys a strong family life with his parents in the United Kingdom. This is in part on the basis of the judge's finding on the issue; one which we see no reason to disturb, particularly in light of the absence of any submission by Mr Walker against the existence of such a relationship. In addition, the facts, as we have found them to be, clearly demonstrate that there are ties going well beyond what is normally expected of an adult child/parental relationship. In our view, it is also important to keep well in mind the overall history of this case. The Appellant had lived with his parents in Afghanistan. Once his father was forced to leave, the Appellant continued to reside with his mother. They sought entry to the United Kingdom at the same time and had to endure a particularly long legal process before being reunited with the father. The family unit have lived together ever since.

32. We also find that the Appellant enjoys a private life in this country, established over the course time and with reference to employment and what we consider to be the likelihood of general social interaction.

33. The consequences of the Respondent's refusal of the Appellant's human rights claim would be sufficiently serious to constitute an interference with both his family and private lives. There has been no suggestion to the contrary by the Respondent.

34. The Respondent's decision was clearly in accordance with the law and it pursues the legitimate aim of maintaining effective immigration control (under the general umbrella of ensuring the economic well-being of the United Kingdom).

35. Thus, the central issue in this appeal is, as in many cases, that of proportionality. Inherent in this is the need to strike a "fair balance" between the protected rights of the Appellant on the one hand, and the public interest on the other (see Agyarko [2017] UKSC 11, at para 60).

36. In undertaking this balancing exercise, we have gained assistance from the distilled guidance set out by the Court of Appeal in GM (Sri Lanka) [2019] EWCA Civ 1630, in addition to other well-known authorities from the higher courts. We also take full account of the mandatory considerations set out in sections 117A-117B of the NIAA 2002.

37. We begin with a consideration of the relevant Rules.

38. In our view, para 276ADE(1)(vi) of the Rules does not assist the Appellant. In carrying out a broad evaluative judgment as to the question of reintegration into Afghan society, and applying the high threshold denoted by the "very significant obstacles" test, we conclude that the Appellant's particular circumstances preclude the satisfaction of this provision. Although he does suffer from a mental health condition, it is not of particular severity. He speaks Dari. He lived in Afghanistan until 2013 and there is nothing to suggest that he has discarded all meaningful appreciation of societal and cultural mores of that country. No issue of any risk on return has been raised. We see no reason why the Appellant would not be able to find reasonable employment of one sort or another. In summary, the Appellant would, within a reasonable timeframe, consider himself and be considered by others as an insider, and would be able to form sufficiently good social and economic links in his home country.

39. Paras 301 and 302 of the Rules bare greater relevance in the overall assessment of the Appellant's circumstances. We remind ourselves that he was granted entry clearance under para 301. This provision provides for leave to enter or remain "with a view to settlement". The Appellant was not only granted entry clearance (following protracted litigation in which he was successful at first instance, the Court of Appeal, and then again upon remittal), but was then granted an extension, once again "with a view to settlement", and on the basis that the age criterion under paragraph 301 was deliberately waived by the Respondent. The grant also meant that the Respondent must have been satisfied that the Appellant was not at that time leading an independent life.

40. The Rules-based path to settlement ended with the refusal of the application for indefinite leave to remain under para 298 and the subsequent unsuccessful appeal in

2018. The finding on dishonesty at that juncture is a matter that we take fully into account in our balancing exercise. Having said that, when refusing the latest application for leave to remain, the Respondent did not seek to rely on the previous dishonesty. Indeed, as mentioned earlier in our decision, there is an express statement that the application did not fall to be refused on suitability grounds. On the assumption that the Respondent gave careful consideration to that application, and in the absence of any specific submissions on the point from Mr Walker, we draw the inference that the finding of dishonesty was not deemed to enhance the public interest in this case.

41. The Respondent's reliance on what is said to be the lack of dependency by the Appellant upon his parents is, in our view, misconceived. Para 301 does not contain a dependency criterion. Para 301(iii) stipulates that the individual must not be "leading an independent life", not be in a formal relationship, and must not have "formed an independent family unit". However, although the Appellant may not be wholly financially dependent upon his parents (he has been earning an income, albeit at a fairly low-level), it does not follow that he is therefore "leading an independent life" (see, for example, NM ("leading an independent life") Zimbabwe [2007] UKAIT 00051 and MI (Paragraph 298 (iii): "independent life") Pakistan [2007] UKAIT 00052). This is particularly the case given that the appellant has always lived with his parents and has been dependent upon them in respect of accommodation at the very least.

42. We conclude that the Appellant has not been leading an independent life, nor has he formed an independent family unit. We also conclude that the Appellant has been adequately accommodated by his parents.

43. There are, however, other criteria under para 301 which the Appellant cannot meet. First, he was undoubtedly an adult when the latest application was made. Whereas in the previous extension application the Respondent had waived the age criterion, this has not occurred in respect of the application with which we are now concerned. Second, para 301(iva) stipulates that an applicant must be adequately maintained "by the parent or parents without recourse to public funds". Here, the Appellant has been earning an income of sorts. It cannot be said that he has been maintained by his parents from their earnings (leaving aside income derived from benefits).

44. There has been no suggestion that the applicant can satisfy any of the provisions under Appendix FM to the Rules.

45. Although not pursued by Mr Jorro before us (and for good reason), we note that the covering letter accompanying the Appellant's latest application sought to rely on para 197 of the Rules as a basis for success in the Article 8 claim. This is misconceived. That provision relates specifically to the children of a parent or parents with limited leave to enter or remain in the United Kingdom under paras 128-193. Those provisions are concerned with a range of categories including employment, domestic workers, and ministers of religion. The Appellant's parents clearly do not fall into any of those.

46. The upshot of our consideration of the Rules is that Appellant is unable to satisfy relevant requirements thereof. It follows that the Appellant cannot succeed under Article 8 on the basis that specific provisions of the Rules are favourably determinative of his claim (see TZ (Pakistan) [2018] EWCA Civ 1109).

47. We now proceed to consider the Article 8 claim on a wider basis, with the focus firmly on the Appellant's family life.

48. The first relevant factor here is the undoubted importance of the general public interest in maintaining effective immigration control. As stated earlier, we do take the Appellant's previous dishonesty into account, but do so in the context of the Respondent's express stance that suitability does not play a material particular in this case.

49. The second factor relates once more to the Rules. The Respondent assessed the Appellant's circumstances outside the specific provisions of paras 276ADE and 301-302 of the Rules with reference to "exceptional circumstances". This phrase appears in GEN 3.2 of Appendix FM, and arguably might represent a codification of Article 8 within the Rules in certain cases. However, the Appellant's application for leave to remain was not made under Appendix FM, nor is it considered under these provisions by the Respondent. Therefore, our wider consideration takes place outwith context of the Rules.

50. The inability to currently meet the Rules is a relevant factor weighing against the Appellant. We do, however, take account of the fact that, at least in respect of paras 301 and 302, that inability carries with it certain nuances, as set out in paras 39-42, above. Furthermore, in the previous extension application, the Respondent had waived at least one criterion under para 301. The inference we draw from the Respondent's past consideration of the Appellant's circumstances is that she had taken the view that there was a genuine family unit involving inter-dependency, an important element of which had clearly been the assistance provided by the Appellant to his parents (both of whom had required assistance at the time of the extension application in 2015). These considerations go to counterweigh, at least to an extent, the adverse impact on the Appellant's claim arising from his inability to meet the Rules now.

51. Third, we have found that the Appellant speaks English to a reasonable standard. In consequence, nothing adverse arises from section 117B(2).

52. Fourth, the Appellant has not been relying directly on public funds and is "financially independent", as that phrase has been interpreted by the Supreme Court in Rhuppiah [2018] UKSC 58. As with the issue of language, this consideration is of neutral value to our overall assessment. Even if any indirect reliance on public funds arising from the use of accommodation subsidised by Housing Benefit received by the father was relevant, it would not affect our overall conclusion in this appeal.

53. The fifth factor is that of the Appellant's status in the United Kingdom. Focusing as we are on the family life issue, the "little weight" considerations under section

117B(4) and (5) do not come into play (see GM (Sri Lanka), at para 35). In any event, the particular circumstances of this case would lead us to conclude that there should not be a reduction in the weight attributable to family life. The Appellant, like his mother, entered this country "with a view to settlement". Similarly, the grant of the extension in 2015 was also based upon a provision of the Rules which was expressly directed at "a view to settlement". Thus, the Appellant and his mother were on the pathway to settled status and their "precariousness" was not of a similar nature to that of, for example, visitors or students. Further, following the unsuccessful appeal in 2018, the Applicant made his latest application prior to the expiry of the deadline for making an onward appeal and within the 14-day "grace period" provided for in paragraph 39E of the Rules. The appellant has not resided in the United Kingdom in breach of immigration law.

54. Sixth, we consider the circumstances of the Appellant's parents. It is quite clear that they would be significantly affected by the Appellant's departure from this country. We have found that they are heavily reliant upon him for important aspects of their day to day lives. We have also found that they have a strong emotional bond with their son and that their daughter would be unlikely to provide anything approaching a relatively similar level of assistance (if indeed she would provide any at all).

55. In the reasons for refusal letter, the Respondent suggests that one or both of the parents could receive support from the NHS or social services. A similar point was made by the First-tier Tribunal. As a simple matter of fact, the parents are entitled to NHS treatment and would, depending on the outcome of appropriate assessments, probably be able to receive certain assistance from social services. On the face of it, this is a factor weighing in the Respondent's favour in the sense that the Appellant's departure from the United Kingdom would not leave the parents without any form of practical assistance whatsoever.

56. Having said that, Mr Walker has not emphasised this point, nor has he sought to argue against the significance attached by Mr Jorro to the emotional aspect of the relationship between the Appellant and his parents. Two additional considerations come into play here. The first is that the Appellant's presence in this country is, on a very practical level, in fact avoiding (or at least mitigating) a burden on the public purse. But for his day to day care, the parents would inevitably need relatively significant input from social services, at an obvious cost to its budget. Applying a common-sense approach, it is highly unlikely that any social services input would be at an equivalent (or near-equivalent) level of assistance to that currently provided by the Appellant. In turn, there is a distinct possibility that the parents would then require additional NHS services, with consequent financial implications.

57. The second consideration is our conclusion that the parents could not, on any view, be able to return to Afghanistan with the Appellant without experiencing unjustifiably harsh consequences. Both have significant health problems, and the father is a British citizen and has resided in this country for close to two decades. Neither the reasons for refusal letter nor Mr Walker have suggested that a joint return to Afghanistan should be contemplated. It follows that the Appellant's

departure from the United Kingdom would entail a separation of the family unit and the effective rupturing of both emotional and practical support. This would have a significant adverse impact on both the Appellant and his parents.

58. The combination of these two considerations acts as a significant counterweight to the availability of NHS and social services support.

59. Having set out our consideration of the various relevant factors, we now bring everything together and state our ultimate conclusion on the question of proportionality.

60. On the particular facts of this case (which include certain unusual features relating to the immigration history such as the waiving of requirements of the Rules and the protracted efforts to achieve family reunification), we conclude that the Respondent's refusal of the Appellant's human rights claim does not strike a fair balance between the protected family life of the former on the one hand and the public interest on the other. Whilst the margin of success for the Appellant may not be wide, the cumulative effect of the factors weighing in his favour are sufficient to tip the scales. In summary form:

    i. there is a strong family life;

    ii. the weight attributable to that family life is not reduced simply because the Appellant's status in the United Kingdom has been precarious;

    iii. the inability to meet the Rules, whilst clearly relevant, is not as weighty a factor against the Appellant as it otherwise might have been, given the specific facts of this case;

    iv. the Appellant plays a very significant role in the support of his parents and alternative sources of assistance would not only fail to reach a near-equivalent level, but would also be a drain on the public purse;

    v. the parents cannot return to Afghanistan and therefore the Appellant's departure from the United Kingdom will split the family unit;

    vi. the Appellant's Article 8 claim is sufficiently strong in order to succeed, notwithstanding the weighty consideration of the general public interest.

61. It follows from what is said above that the Appellant's appeal falls to be allowed.

62. As we have made clear, the focus has been on the family life claim. In respect of the Appellant's private life, we are firmly of the view that this cannot succeed. The

"precariousness" issue does come into play and acts to reduce the weight attributable to that aspect of the Article 8 claim. The Appellant cannot meet any of the private life-related Rules and there are no additional considerations that mitigate that failure. Finally, there are no other exceptional or compelling circumstances present.

Anonymity

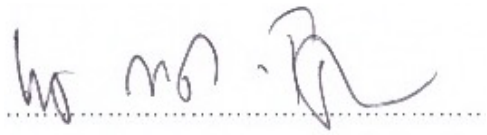
63. The First-tier Tribunal did not make an anonymity direction. We see no reason to make such a direction at this stage, and we do not do so.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

We set aside the decision of the First-tier Tribunal.

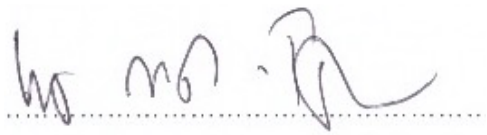
We re-make the decision by allowing the Appellant's appeal on the ground that the Respondent's refusal of his human rights claim was unlawful under section 6 of the Human Rights Act 1998, with reference to Article 8 ECHR.



Signed Date: 16 December 2019
Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT
FEE AWARD

As we have allowed the appeal and because a fee has been paid or is payable, we have considered making a fee award and have decided to make a reduced fee award of £100. We have reduced the fee because though the Appellant has succeeded in his appeal, this has not been by virtue of the primary basis put forward, namely the satisfaction of the relevant Rules.



Signed Date: 16 December 2019
Upper Tribunal Judge Norton-Taylor