Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/06090/2020

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11th April 2022	**On 30th June 2022**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

MR MD NAZMUL HAQUE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Biggs, Zyba Law
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge Ripley which dismissed the appellant's appeal from the refusal of his human rights claim made following an application for indefinite leave to remain pursuant to paragraph 276B of the Immigration Rules on 9th June 2020. The judge rejected the assertion that the appellant was entitled to Indefinite Leave to Remain and that he was a victim of poor service by earlier representatives or there was historical injustice.

2. The appeal centres on the appellant's assertion that he had not been validly notified of a decision letter in 2016 refusing further leave to remain.

Consequently he would be classified as an overstayer and could not avail himself of section 3C leave.

3. The basis for the judge's rejection was

(a) her findings [23] to [30] that the appellant was validly notified of a decision letter dated 14th March 2016 refusing his application for further leave to remain (dated 1st October 2015) because the appellant had provided an e-mail address in the October 2015 application form ("Nazmul1933@gmail.com") which the respondent had used to communicate the 14th March 2016 decision letter on 16th August 2016 as permitted by Article 8ZA of the Immigration (Leave to Enter and Remain) Order 2000 ("the 2000 Order) giving rise to a presumption of valid notice; it was found to be "the appellant's responsibility to check that e-mail address and if he was no longer able to access it himself to inform the respondent" so that the First-tier Tribunal was "not satisfied the appellant has rebutted the presumption of" notice pursuant to Article 8ZB;

(b) her findings at [31] that the appellant would in any event have become an overstayer in February 2019, this being the date the Court of Appeal was found to have determined an in-time application for permission to appeal; and

(c) her finding at [35] that

(1) the appellant had not been the victim of poor professional immigration advice or of historical injustice in that any detriment the appellant suffered was the result of his conduct because he was responsible for providing an e-mail address to the respondent in respect of the October 2015 application which the respondent was entitled to use so that "if there was any error, it was that of the appellant himself ([29])"; the appellant was aware that the Court of Appeal had dismissed his application for permission to appeal before he applied for ILR; and even if he was not aware of this, the appellant's immigration status was still precarious for the purposes of Article 8 and Section 117B of the Nationality, Immigration and Asylum Act.

The Grounds of Appeal

4. Essentially the judge had materially erred in law by

(i) failing correctly to apply article 8ZA of the 2000 Order at para 29,

(ii) failing to consider material evidence and or considered immaterial matters when finding the appellant was validly notified of the 14th of March 2016 decision. The judge did not understand the case that the then *representatives* had used the email address Nazmul1933@gmail.com as a contact email address for the 1 October 2015 application but not notified

the appellant of any email received at that address on the 14th March 2016 decision so presumption of notice could be rebutted.

(iii) finding that 'the file would have contained a copy of the decision letter dated 14th March 2016' was not supported by adequate evidence and thus open to her.

(iv) relying on matters not put to the appellant resulting in procedural unfairness.

(v) failing to appreciate at [35] that the appellant had a 'reasonable misapprehension' as to his immigration status because he had not been informed of the outcome of his application for permission to the Court of Appeal and this could strengthen what otherwise would be a weak private life in the light of section 117B(5) of the Nationality, Immigration and Asylum Act 2002. The judge failed to make an adequately reasoned finding as to whether the appellant might have had a reasonable misapprehension.

(vi) and further in the light of the above the judge's reasoning at [35] regarding article 8 'outside the rules' was undermined.

Ground (i)

5. It was submitted that the judge was required to decide that only the representatives at the time Success Consultancy Limited ('SFS') had access to the e-mail Nazmul1933@gmail.com as a contact e-mail address in respect of the 1st October 2015 application but had not notified the appellant of any e-mail received at that address in respect of the 14th March 2016 decision letter.

6. Properly interpreted article 8ZB permitted the appellant to rebut any presumption of notice of the 14th March 2016 decision by proving that he was not provided with a copy of the decision by SFS. The evidence established on balance he was not so provided. These points were not determined.

7. The judge concluded that it was the appellant's responsibility to check that the Nazmul1933@gmail.com address and if he were no longer able to access it to inform the respondent [29]. Thus the judge was not satisfied the appellant had rebutted the presumption. However Article 8ZB did not impose a responsibility on the applicant to check a correspondence address provided in an application form.

Ground (ii)

8. The judge failed to appreciate that the appellant's case as supported by the oral and documentary evidence was that SFS had used the e-mail address Nazmul1933@gmail.com as a contact e-mail address in respect of the 1st October 2015 application but had not notified the appellant of any e-mail received at that address in respect of the 14th March 2016 decision,

so that any presumption of notice of that decision could be rebutted pursuant to Article 8ZB of the Order. This was supported by Counsel's note of the appellant's evidence.

9. The appellant's evidence was that he stated in oral evidence was that the appellant's representative "told me that the e-mail on the form [ABp 21] is a contact e-mail for himself".

10. The appellant's case was not that this was per se improper or an error or that this caused problems, but it was instead that only SFS had access to the e-mail address Nazmul1933@gmail.com but they failed to inform the appellant of the 14th March 2016 e-mail if it was indeed, as the respondent claims, sent to that address in August 2016.

11. This is supported by documentary materials in the appellant's bundle, including the correspondence and the WhatsApp messages.

12. It was no part of the appellant's case that the SFS inexplicably made up, [12], [24] and [26], the e-mail address of Nazmul1933@gmail.com in error, resulting in a problem and difficulties with the e-mail.

13. The result of the judge's erroneous and unreasonable understanding of the appellant's case in evidence was that she failed to reasonably evaluate the appellant's case. Once it was understood that the appellant's case was that his representative deliberately used the e-mail Nazmul1933gmail.com but failed to inform the appellant of any decision letter communicated via that e-mail address. The judge's reasoning at [23] to [29] loses its force and was irrational.

14. Although the judge's observations at [24] and at [25], [28] do relate to the appellant's true case. This reasoning alone is insufficient to justify the wholesale rejection of the appellant's oral and documentary evidence which supported the proposition that he was unaware of the 14th March 2016 decision before he applied for asylum in 2017.

15. Turning to the judge's reasoning at [25] to [29] this is seriously flawed when considering against the backdrop of the appellant's true case and evidence.

16. On his evidence there was no obvious reason for the appellant to make inquiries of his representative or to complain about their choice of e-mail address or to contact the respondent in order to provide a new contact e-mail address at least not before the respondent had complained the 14th March 2016 e-mail was sent to Nazmul1933@gmail.com in August 2016, a matter that the judge does not address in her findings. Despite this the judge's analysis at [25] to [27] is heavily dependent on these matters.

17. Overall the judge considered immaterial matters and failed to consider material evidence.

Ground (iii)

18. The judge materially erred at [30] by speculating about the contents of materials disclosed by the respondent to the appellant but which is not in evidence before the judge as to which the appellant did not give oral evidence.

19. To Counsel's knowledge the materials referred to by the judge did not include a copy of the 14th March 2016 refusal letter. The CID note does record that the e-mail was successfully sent to the Nazmul1933@gmail.com e-mail address on 16th August.

Ground (iv)

20. The appellant did not have a fair chance of assessing a series of important features of the judge's reasoning and the concerns underpinning the reasoning were not put to the appellant. For example,

    (i) that it was considered to damage the appellant's case that he did not make inquiries with SFS about the e-mail address when the applicant received a copy of his application form;

    (ii) there was a lack of evidence of complaint in writing and this was thought to damage the appellant's case;

    (iii) it was considered to damage his case that the appellant did not chase for an update in respect of his October 2015 application, see [26];

    (iv) that the appellant's failure to inform the respondent of a problem indicated the appellant did not want to alert the respondent to any alleged difficulties with that e-mail;

    (v) that the January 2007 disclosure meant the appellant would have known the respondent claims to have sent an e-mail copy of the 14th March letter to him, August 2016 which is inconsistent with his only learning of the August 2016 e-mail via the letter refusing his application for ILR;

    (vi) that the January 2017 disclosure would have contained a copy of the 14th March 2016 letter.

21. Given that the appellant was not cross-examined as there was no appearance by the respondent, the above points were not raised by the respondent in the 9th June letter under appeal and that the judge asked questions during the hearing it was procedurally unfair that the matters were not put to the appellant.

Ground (v)

22. If the appellant was as he claims reasonably unaware that his application for permission to appeal had been dismissed by the Court of Appeal when he applied for ILR, this strengthened his position in relation to his private life, at least when the point is added to the appellant's case that he should

have been informed by his then representatives at the Court of Appeal's decision. Failure to do so constituted their negligence or indicated that the Court of Appeal had erred in failing to serve the order, see **Rhuppiah** at [36] and [49] and **Agyarko** at [53].

23. The judge erred at [35] in holding that the appellant's private life was precarious, and the grounds stated, '*it was irrelevant whether he was reasonably unaware of his immigration status after February 2019'*. As Lord Reed stated in **Agyarko** at [53] "one can for example envisage circumstances in which people might be under a reasonable misapprehension as to their ability to maintain a family life in the UK and in which a less stringent approach might therefore be appropriate".

24. The judge was required to make an adequately reasoned finding as to whether if the appellant was unaware *'the First-tier Tribunal'* (sic) had determined the application for permission to appeal as to why he was unaware of this.

25. Although the judge found at [35] that she was not "satisfied that [the appellant] did believe the Court of Appeal was still ongoing" when he applied for Indefinite Leave to Remain, the judge did not provide legally adequate reasons for this contrary to **MK (duty to give reasons) Pakistan** [2013] UKUT 641 (IAC).

Ground (vi)

26. The materiality, it is submitted that the errors of law identified were sufficient to demonstrate a material legal error in the First-tier Tribunal's evaluation of the appellant's Article 8 rights.

27. Had the appellant been found to have applied for asylum in April 2017 at a time when he had leave, the only reason he would not be eligible for ILR pursuant to paragraph 276B of the Immigration Rules could be the First-tier Tribunal's finding at [31] that the Court of Appeal refused permission to appeal in February 2019 by ending the appellant's leave to remain.

28. In respect of that point the appellants can rely on the matters identified by ground 5 to argue there are exceptional circumstances requiring the respondent to grant a period of leave to comply with the Article 8 of the ECHR.

29. In addition to the extensive grounds a further skeleton argument was submitted by Mr Biggs.

Analysis

30. A brief history indicates the appellant arrived in the UK in September 2009. His leave was initially extended twice to 2017 but then curtailed to expire in October 2015. He made a further in time application on 1st October 2015. That decision was refused on 14th March 2016 without a

right of appeal and served to Nazmul1933@gmail.com on 16th August 2016.

31. Mr Biggs submitted that the appellant should be considered to have twice had his leave extended by Section 3C leave. On the first occasion when making an asylum claim on 27th April 2017, his leave had remained extended because he had no knowledge of the contents of the Secretary of State's email in March 2016 refusing his Tier 4 2015 application and which was served to the email address Nazmul1933@hotmail.com when served on 16th August 2016. Secondly, following the refusal of his asylum claim made on 20th April 2017 and his subsequent appeals he states he had no knowledge of service of refusal of permission to appeal from the Court of Appeal. In fact that had been refused in February 2019.

32. The respondent as the judge noted considered that the appellant's Section 3C leave had terminated in August 2016 with the service of his refusal to the email address given in his application.

33. The appellant maintained that the first he learned of the fate of his 2015 application was in June 2020 when he received the refusal in this application see[5] of the First-tier Tribunal decision. He argued that his then representatives had provided the email address and failed to update him, and those representatives had closed down and additionally the respondent could have emailed him on the address used before.

34. The judge rightly noted at [12] that Nazmul1933@gmail.com was the email address in the appellant's Tier 4 2015 application form. It was the appellant's contention that he did not read it before submission and that the firm helping him 'SFS' had been shut down in April 2017. The judge noted that the *appellant* stated that 'the email on the 2015 application form had been given by the agent and the form itself had not been signed by the appellant'. The difficulty with that assertion is that is not what was specifically represented by the appellant in the application form. That wholly undermines the assertion that the email address Namul1933@gmail.com was only accessed by SFS. The contact email address for service in the application form was specifically given as a direct correspondence address in a signed declaration by the appellant in his application form. I address the grounds in turn but as grounds (i) (ii) and (iii) are interlinked I shall deal with them together.

35. At ground (i) of the application, it is asserted that the judge failed to apply correctly article 8ZA of the 2000 Order at para 29 and in particular failed to appreciate the appellant's case, failed to consider material evidence and matters or considered the evaluate the information irrationally. Perversity or rationality has a very high threshold, and I am not satisfied that it is met here. As set out in **R (Iran) [2005]** EWCA Civ 982 at [12] '*far too often practitioners use the word "irrational" or "perverse" when these epithets are completely inappropriate*.' It was the appellant's case that it was SFS which had used the email address Nazumul1933@gmail.com for the 2015 application but failed to notify the

appellant of any email received at that address and he could not access this email address and thus the presumption of notice of that notice could be rebutted pursuant to 8ZB of the 2000 Order. It was not that SFS 'made up' the address 'in error' resulting in a 'problem'.

36. The judge set out paragraphs 8ZA and para 276ADE(1) of the Immigration Rules in the decision correctly. In response to the assertion that the judge failed to consider relevant material, the judge specifically at [21] set out that she had 'considered all of the documentary evidence even if not specifically mentioned'.

37. As the judge properly recorded at [23] Article 8ZA and 8ZB provide for email service and '*the evidence of that email service is a screenshot of the CID record identifying that a decision was successfully emailed to Nazmul1933@gmail.com, the email address given on the appellant's 2015 application form*'. That is correct. No other email address was given.

38. From the file it is evident that the appellant's 'Tier 4' 2015 application confirmed that the appellant *himself* was completing the application and under the personal details he gave the email address of Nazmul1933@gmail.com and in response to the question '*who is completing this application'* ? he responded on the application form *'I am'*. He thus declared that he personally was making the application.

39. The appellant signed a declaration at the close of his application confirming that the information was '*true to the best of my knowledge and belief*' and further

'*If there is a material change in my circumstances or any new information relevant to my application becomes available before it is decided, I will inform UK Visas and Immigration*'.

He added

'*I confirm that I have read that that I understand and agree the above declarations.*

I confirm that the information I have given in this application is complete and is true to the best of my knowledge and belief'.

There was no mention of SFS on the application form.

40. The judge identified service as being on 16th August 2016. That was a correct application by the judge of Article 8ZA in view of the contents of the application form.

41. The judge then moved on, in accordance with article 8ZB, to consider the rebuttal. The position of Article 8ZB(i) was properly set out by the judge at the opening of [24] of the decision. The judge identified that the appellant maintained the said communication with SFS and himself was in fact via a *different* email address (Nazmul.haque2@gmail.com) and clearly did not

accept that SFS would have made up another email address. However the judge at the close of that paragraph rejected that the representative would have 'made up the email address Nazmul1933@gmail.com . That term 'made up' was used in the context of 'creating' not fabricating and does not suggest that the judge misunderstood the appellant's case. At the close of that paragraph the judge stated, 'to create another separate email would mean that they would have to keep checking that email just to see if the response had used it for this appellant'. It is not evident the judge misunderstood the appellant's case and indeed that would be most surprising bearing in mind the very detailed and extensive legal submissions which were no doubt made before the First-tier Tribunal.

42. Clearly the judge rejected the assertion that the email address Nazmul1933@gmail.com came from the said representative. On the evidence that was open to the judge and far from irrational.

43. Nor do I find the judge has erred in her understanding of the appellant's case in her exploration from [25] to [27]. She merely asks why, (particularly as the appellant was clearly in correspondence with the respondent as to the Capita communication with him), when he claims he received the file and his application form, the appellant did not make enquiries. That is a legitimate query. In his witness statement the appellant records that he was in direct contact with the respondent from April/May 2016 onwards. (He knew at that point that he had no leave because he was told by Capita that he was in the UK illegally. He also confirmed that on 27th August 2016 he received a letter from the respondent containing the copy of the IS96. He also maintained that on detention by an enforcement team he was not served with the refusal letter).

44. The application form as set out above clearly represents the details as the appellant's *own personal details* (with an additional declaration as to the veracity), which the appellant, before the judge, maintained he could not access because it was in fact controlled by SFS of which there was no mention on the form. As pointed out the Secretary of State had previously served the appellant personally by email with a curtailment notice and so he would understand the Secretary of State would serve by email. There was no reason why the Secretary of State should have used any email address other than the one given in the said application form and there is no reason for the Secretary of State to suppose that the appellant did not have access to that email address.

45. At [26] the judge addressed the evidence including the oral evidence of the appellant which presumably was advanced to show that he had made enquiries of the said representatives. The judge is merely at this point identifying what action the appellant might have taken once he had had sight of the application form bearing in mind the appellant claimed the form was 'done in a rush' and 'he did not sign it'. It was the appellant who had raised issues as to difficulties with the said email address at [26]. It was submitted by Mr Biggs before me that SFS were unregulated. There is

no information about this person Mr Sadat, from SFS, his role or his relationship with the appellant. It was open to the judge, even if the firm were unregulated, to observe that the appellant, at the very least failed to ask about the outcome of his application. But as the judge stated, '*this was because he was expecting the decision to be served on him and not on his representative'*, [26]. Clearly the judge rejected the appellant's account.

46. The judge correctly notes at [27] analysing the evidence further that when the appellant wrote to the respondent on 6th September 2016, despite having clearly seen the 2015 application form (as he signed it) and being aware (as evident from his witness statement) that he was in the UK illegally, he still did not explain the change of circumstances. That has to be seen in the context of the declaration as cited above in the application form.

47. In answer to the challenge in ground (i) the judge did make the relevant findings. It is the conclusion at [29] which is correct that being that it was *the appellant himself* who provided the email address in his 2015 application form, and it is clear the judge does not accept that it was translated via the said representatives. Indeed at [28] the judge makes reference to the email addresses relating to the appellant's own first name. It was not found to be a contact address for his representatives and thus, accordingly, as the judge reasons, *'it was therefore the appellant's responsibility to check that email address and, if he was no longer able to access it himself to inform the respondent this was the case'*.

48. As set out by the Court of Appeal in **R (Alam) and R (Rana) v SSHD** [2020] EEWCA Civ 1527 [29]-[30] a person must 'receive' a notice of a decision to give or refuse leave if it is to be effective but that receipt 'does not require that the intended recipient should have read and absorbed the contents of the notice in writing nor does it require that the 'the recipient must be made aware of the notice' [29]. As stated at [30] of **Alam**

> '*Receipt of an email, for example, will be effected by the arrival of the email in the Inbox of the person affected. Likewise, documents arriving by post will normally be received if they arrive, addressed to the person affected at the dwelling where he or she is living, at least in the absence of positive evidence that mail which so arrives is intercepted. A document received at an address provided to the SSHD for correspondence is received by the applicant, even if he does not bother to take steps to collect it'.*

49. However Mr Biggs relied on **R (D4) v SSHD** [2022] EWCA Civ 33 at [47] such that the concept of receipt adopted in **Alam** included '… that the person receiving the notice should have an opportunity to inform him or herself about the contents of the notice'. The judge had not appreciated that the appellant had not had that opportunity.

50. Overall the judge did address the issue under article 8Zb of whether the appellant, had, in the sense of having an opportunity, to inform himself. I raised with Mr Biggs the definition of 'opportunity'. In my view as the appellant had clearly and knowingly, from the findings of the First-tier Tribunal decision, given his own personal details, and any arrangement between him and his said representatives was unknown to the respondent as evident from the face of the application form, he had every occasion and opportunity to inform himself about the fact of and contents of the 2015 decision. He had control of the email address supplied. He also had the opportunity to select a recognised immigration adviser but chose to be advised by an unregulated person.

51. Effectively the judge correctly interpreted article 8ZB, appreciated the arguments made and did not accept that the appellant had shown by rebuttal because he did not have access to the relevant email address at the material time. I note at [26] the judge refers to an undated screen shot of the appellant asking his representative if he can access the email. That would have no evidential weight. The further contention that 'SFS' did not provide a copy of the decision before it was varied thus falls away. The judge did in effect resolve these points.

52. At [30] the judge found the appellant's account lacked credibility by observing that the appellant accepted that he received a copy of his file from the respondent in January 2017 and the CID note would have recorded service on the appellant of that decision of 2016. His claim in essence that he was not aware of the decision refusing his decision until 9th June 2020 was contradicted. Not least the judge considered that would have contained a copy of the decision. That however, speculation or otherwise, is not material bearing in mind the judge had already found that the appellant had been properly served with the decision of 2015 via his own personal email address.

53. Having surveyed the context of the decision, in my view, the judge properly understood the appellant's case in relation to the 2016 decision and rejected it for cogent reasons. The application contained no reference to representatives and gave a personal email address for service. It was entirely open to the judge to reject the claimed rebuttal of denial of the receipt of a decision. The said failure of opportunity here comes nowhere near rebuttal evidence. Moreover the judge addressed the case in the alternative. Overall, she took into account relevant evidence and bearing in mind the fundamental difficulty with the appellant's case, as found, having properly appreciated his case, I do not accept that the judge strayed into considering matters which were not relevant.

54. In the light of the foregoing, in relation to ground (ii), the issues advanced on grounds of perversity or irrationality, do not meet the high threshold. It is clear what the judge made of the appellant's claimed case in relation to his said representatives and the reasoning is when read carefully, adequate. The grounds refer to the judge's reasoning as being inadequate to found the 'wholesale rejection of the oral and documentary evidence'

but on examination of that evidence the judge's reasoning was entirely adequate. There was insufficient information about the company SFS. The emails and messages with that company were opaque and uninformative to say the least. Perhaps it is unsurprising that there was little correspondence. The appellant's correspondence referred to in the grounds underlines the fact that he was himself corresponding with the Home Office without the assistance of representatives. Again **R (Iran)** at [13] observed that '*complaints by practitioners that are based on an alleged failure to give reasons, or adequate reasons, are seen far too often'*. Not every factor which weighed with the judge in her appraisal of the evidence has to be identified and explained. The critical points were addressed.

55. **Ground (iii)** asserts that the judge made a perverse finding at [30] when speculating about the contents of materials disclosed by the respondent to the appellant but which were not before the judge. The grounds however themselves confirm that the judge was correct that the CID did record that the email was 'successfully sent to Nazmul1933@gmail.com'. How the judge's observation is a material error of law, in view of the content of the ground, is not made out bearing in mind the CID note identified that service was successfully effected and the judge clearly considered it had been (see above), but moreover it is not material in the light of my findings on grounds (i) and (ii).

56. **Ground (iv)** asserts a procedural unfairness in that important features of the reasoning were not put to the appellant by the Judge. Not every aspect of the evidence needs to be explored. However, the procedural errors consisting of the reasoning of the judge not being put to the appellant suggests that every point should be canvassed. The appellant was represented, and counsel would have known the state of the evidence in terms of failing to chase for an update [26], failure to inform the respondent of a problem with the email [27], and contradiction in the evidence [30] and that the January 2017 disclosure would have contained a copy of the decision. Again, this needs to be seen in the light of the findings on grounds (i) and (ii) that there was no error in the judge's approach because the fundamental issue was that the appellant himself had submitted the application form and given his own email address for service. Effectively the Secretary of State had shown service of the decision by email as found at [23] and the appellant had had the opportunity to inform himself of the contents by himself providing the email [29]. These points therefore fall away. I am not persuaded there was any procedural unfairness as per **AM (fair hearing) Sudan** [2015] UKUT 656 (IAC). What is fair depends on the circumstances and the appellant was represented before the First-tier Tribunal by experienced counsel who was fully apprised of the content of the evidence presented.

57. In relation to ground (v) the judge at [30] found in 'even if the appellant did have 3C leave when he made his asylum claim in 2017, that would have come to an end in February 2019, if not before'. That finding was made in the alternative and entirely open to the judge. It was noted in the

judge's decision at [15] that 'Mr Biggs accepted that if the Court of Appeal's order had been served on his former solicitors, then that was adequate service for the purposes of the CPR'.

58. The judge addressed briefly the contention that the appellant had no evidence confirming that he had become appeal rights exhausted in February 2019 following the Court of Appeal decision. His old solicitors had apparently never told him that he was appeal rights exhausted when the file was transferred from Hamlet Solicitors to his new solicitors Hubers Law. It was entirely open to the judge to find that there was no evidence provided by the appellant from Hamlet Solicitors stating they understood his appeal was still outstanding or any correspondence enquiring as to the same and see [31] of the First-tier Tribunal decision.

59. At the date of the hearing before the First-tier Tribunal on 8th April 2021, there was no evidence from Hamlet solicitors or Hubers solicitors as to refusal of permission to appeal by the Court of Appeal. Bearing in mind the paucity of evidence before the First-tier Tribunal, it was entirely open to the judge to conclude as she did and that, in effect, the appellant's bare assertions would not suffice, or that 'there was any irregularity with the notification to his then solicitors of that outcome' by the Court of Appeal. As noted at [14] if the Court of Appeal's order had been served on his former solicitors, then that was adequate service for the purposes of the CPR. Nothing was produced from the Court of Appeal.

60. The judge stated finally at [31] that she made findings in the alternative, and I have found that the judge did not err in her approach to the notice of the refusal decision dated March 2016. The judge had thus proceeded on the basis that she did not believe or accept that the appellant had not received notification of his decision in 2016 and found for entirely justified reasons, that the appellant had failed to show that he had not been notified of the Court of Appeal decision. There was no 'reasonable misapprehension'. The appellant came nowhere near showing that decision had not been drawn to the appellant's attention. On the evidence that was before the judge this matter was wholly adequately reasoned. Contrary to Mr Biggs assertions that the decision was fundamentally flawed it was not so. The judge proceeded on the basis that the appellant had been in the UK for less than 20 years, and at [32] appreciated that he had entered the UK in 2009 but overall considered that there was no evidence that he could not reintegrate into Pakistan. **The Secretary of State v R (Kaur)** [2018] EWCA Civ 1423 para [57] again underlines that a bare assertion as to inability to reintegrate will not suffice.

61. Thus there was no evidence that the Court of Appeal had failed to serve notice of the application or that the solicitors had failed to advise on his application to the Court of Appeal and there was no indication that those solicitors had been reported for negligence. The judge made a specific finding at [35] that the appellant had not been found to suffer on account of poor professional immigration advice. This is not a case of historic

injustice. It is the appellant who has chosen to instruct numerous firms of solicitors, Hamlet, Hubers, Zyba and apparently initially Universal Solicitors. That is his choice, but communication will be less efficient. Moreover the judge identified that the appellant had not set out how the respondent had failed in exercising her immigration functions.

62. The judge also pointed out that the appellant had been aware since April May 2016 that his 2015 application had been refused. Indeed that is correct because he was conversing with the Home Office directly at that stage. He had no solicitors at that point. It was open to the judge to find in the circumstances that his leave was precarious and to apply Section 117 of the Nationality, Immigration and Asylum Act 2002 . Simply there were no unjustifiably harsh circumstances to show the refusal decision was disproportionate. Reasons were adequately given as explored above. The issue as to 'reasonable misapprehension' as to his immigration status is not made out.

63. In relation to ground (vi), there has been no error in the judge's decision as to the service and rebuttal of the 2016 decision and thus the appellant did not have section 3C leave either when he made his asylum or Indefinite Leave to Remain application. Evidence produced after the event does not point to legal error in the First-tier Tribunal's decision. The reasoning thus in relation to 'outside the rules' was not flawed.

Notice of Decision

There is no material error in the decision of the First-tier Tribunal and that decision will stand. The appellant's appeal remains dismissed.

Signed Helen Rimington Date 7th June 2022

Upper Tribunal Judge Rimington