IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000705
First-tier Tribunal No:
HU/07356/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 21 May 2023

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

SAMUEL AYOMIDE ADESINA
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mr C Mannan, of Counsel, instructed by Emmanuel Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 16 May 2023

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Nigeria born on 1st December 2004. He applied for entry clearance for settlement to join his mother, his sponsor, in the UK on 31st October 2019, and this was refused on 20th August 2020. His appeal against the refusal decision was dismissed by First-tier Tribunal Judge Seelhoff in a determination promulgated on the 4th August 2021.

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2. Permission to appeal was granted and a Panel of Upper Tribunal Judge Lindsley and Deputy Upper Tribunal Judge Froom found that the First-tier Tribunal had erred in law and the decision should be set aside for the reasons set out in our decision which is appended as Annex A to this decision.

3. The matter comes before me now pursuant to a transfer order to remake the appeal. No findings were preserved from the decision of the First-tier Tribunal so the appeal was remade de novo. At the start of the hearing Mr Mannan said that he wished to submit a further document namely the appellant's tax return for 2021-2022 so he attempted to email this to Ms Everett and I, although it did not appear in our email inboxes during the hearing it was emailed with other relevant financial documentation after the hearing. Ms Everett did not apply for an adjournment or make any other application in relation to the late service of this documentation.

Evidence & Submissions – Remaking

4. The evidence of the appellant from his written statement is, in short summary, as follows. He was born on 1st December 2004, and so is currently 18 years old. He has lived his entire life in Nigeria. He is currently a student at a polytechnic in Nigeria. Prior to his birth his father, Adewale Adesina, left Nigeria and his mother left him soon after his birth in 2005 in the care of her mother, his maternal grandmother, and went to the UK. Whilst in the UK his mother and father became a couple again and had two further children, his siblings: Emmanuel born on 12th May 2007 and Mercy born on 21st November 2008. The appellant has never met his father, who is no longer with his mother either as they split up in 2012, and he has not been heard of since by any family member.

5. The appellant's contact with his mother prior to 2018 was only on the telephone and over video calls. He saw his grandmother as his maternal figure, and loved her dearly as she was the one doing everything for him on a day to day basis. It was very painful for him not to have a regular father and mother like other children however. As time went on he became more and more desperate to be with his mother and siblings. His mother told him she would come immediately her immigration papers were sorted out, although he did not really understand what this meant. In December 2018 this was finally achieved, and he had his much awaited visit from his mother. She could not stay until Christmas however as she had left his siblings Emmanuel and Mercy with a friend but promised to be back soon.

6. The appellant's mother visited him again for three weeks in March/April 2019, three weeks in April/May 2020 and for four weeks including Christmas in December 2020. The appellant said with each visit he grew emotionally closer to his mother. With each visit his mother brought gifts and things he needed such as

clothes and also money for him. When he was younger he understood that his mother sent the money to his uncle to give to his grandmother to support him but as he grew older and could visit she gave him the money directly. When his mother was in Nigeria she would also go to his school to discuss his progress with his teachers. He desperately wants to be reunited on a day to day basis with his mother and siblings, and is afraid of his grandmother dying and having no care as he has only limited contact with his maternal aunt and two uncles.

7. The sponsor, Ms Deborah Bukola Anjorin, attended the Upper Tribunal and gave evidence in support of the appellant. In her statement and oral evidence she says, in summary, in addition to the above as follows. She had a brief relationship with the appellant's father in Nigeria, but he disappeared, apparently to Belgium, before the appellant was born. She came to the UK to work as a housekeeper to earn money to support her son in November 2005 at the suggestion of a friend who arranged the paperwork, leaving the appellant in the care of her mother. The friend assured her that she would be able to bring the appellant to join her but this did not happen and after a year she ceased this work. She met her son's father, Adewale Adesina, by chance in the UK on a bus in May 2006, and in November 2007 they resumed their relationship. Adewale took her to a lawyer and she made an application to remain in the UK. Their relationship was difficult however: they had very little money; two further children were born (Emmanuel and Mercy); and eventually in 2012 Adewale left for good.

8. At this point Ms Anjorin changed lawyers, and managed to apply successfully for leave to remain: she was granted three years' discretionary leave to remain on 30th May 2012. She was desperate to be reunited with the appellant by this time. She was granted a further extension of discretionary leave, and then, in July 2018, indefinite leave to remain. She naturalised as a British citizen in 2019. She did not understand that she could travel abroad with discretionary leave as people told her she would not be allowed to re-enter the UK if she did this, but in any case she had insufficient money to buy tickets for herself and her two UK based children to visit the appellant in Nigeria, and had no family in the UK to leave the appellant's siblings with. However, once she had her indefinite leave, in 2018, she managed to leave Emmanuel and Mercy for a couple of weeks with a friend as they were a bit older. She then visited the appellant again for three weeks in 2019, five weeks in 2020 and three or four weeks in 2022.

9. Ms Anjorin explained that she had taken over a year to make the application for the appellant after getting her indefinite leave to remain because first she had to get DNA evidence showing she was the appellant's mother which took until December 2018 although she started the process before she travelled to Nigeria to

see the appellant. She had then waited until October 2019 as her legal representative had advised her to wait until she had her British passport.

10. Ms Anjorin maintains that she has made all of the education (he wants to be a footballer and study art but she thinks he should study IT to have better job security and she is in touch with his school about his progress), medical (for instance over vaccines) and spiritual decisions with respect of the appellant although he has been cared for by her mother all of his life, and this continues to be the case. She said that the appellant is currently finishing an OND in "office and management" at the Polytechnic, he has done his examinations and is currently doing a project so has basically finished his course. She explained that the appellant has no current plans for future studies in Nigeria as they are all desperate that he be allowed to join the family in the UK. If the appellant comes to the UK he will go back to school and then he wants to go to university and at the same time pursue playing football.

11. The sponsor has always had regular contact via telephone and WhatsApp and video calls with the appellant, currently these are twice or three times a week depending on her work schedule. The sponsor explained that the appellant is no longer taking medication for his mental health as she is able to provide support to him by talking to him, and she feels he knows that she and his siblings are fully there for him. The appellant's UK based brother would have come to court to express how desperate he is to have the appellant join them but he is currently doing his GCSE examinations.

12. The sponsor has always sent money to the appellant: in part in the past with people travelling and via her brother, but now more often by giving money directly to the appellant when she visits. She is currently sending around 100,000 Naira (£120) a month to pay for the appellant's needs including his schooling She is concerned that her mother is growing old, she is currently 69 years old, that her siblings are not in a position to take over care of the appellant, and that the appellant is now a young man who is angry and depressed about having been deprived of time with his mother and siblings, and that he needs to be with her in the UK.

13. The sponsor says that she has sufficient funds from her work as a childminder to support the appellant, and a three bedroom house so she will be able to properly accommodated as he will share a bedroom with his brother. She referred to her tax return for 2021 and 2022 and said that her earnings for that year were over £18,000, and she estimated for 2022 to 2023 they were between £23,000 and £25,000.

14. At the end of the witness evidence we attempted to address the issue of whether or not the sponsor has sufficient income so that

she could support the appellant adequately without recourse to public funds. The respondent's calculations, as set out in the refusal notice, show that the sponsor's income is less than she would receive on income support, so this aspect of the Immigration Rules is said not to be met by the respondent. Emmanuel Solicitors, the appellant's representatives, ought to have provided a schedule addressing this matter but had not, so we had a 30 minute adjournment of the hearing when Mr Mannon attempted to draw together the relevant information. At the end of this time Mr Mannon had managed to calculate that the weekly income of the sponsor was £718.32 from her work and universal credit using current documentary information for the sponsor from the Universal Credit system. It was then established that her weekly rent and council tax was £295.38. This gives her a net of housing/ council tax weekly income of £422.94. It was calculated, with input from both parties from government information, that the family would currently receive £417.32 per week if they were on income support. As this income support figure was less than the weekly income minus housing and council tax costs by some £5 it appeared that the sponsor's income was adequate and satisfied the Immigration Rules. Ms Everett agreed that if these figures were right she did not dispute there being currently sufficient income and accommodation to satisfy this aspect of the Immigration Rules, but reserved the position of the respondent in the sense that the information/ documentation had come through in a piecemeal manner at the hearing and so this point was not formally conceded.

15. It is submitted, in summary, by Ms Everett, for the respondent, in relation to the other issues as follows. She placed reliance on the refusal notice. When the appeal is looked at through the prism of the Immigration Rules at paragraph 297, it is disputed that the sponsor, Mrs Anjorin, has sole responsibility for the appellant and that his exclusion is undesirable. It is argued that there is insufficient evidence that the sponsor has exercised parental responsibility making the key decisions for the appellant whom she did not see between 2005 and 2018. Clearly the appellant's grandmother has had significant input in the appellant's upbringing. The sponsor's understanding of the appellant's education was vague, although it is appreciated that the appellant is now a young adult and her degree of involvement might be commensurate with his age. The respondent is not satisfied that the appellant's exclusion is undesirable as he can continue to live with his grandmother who has cared for him all of his life and the appellant is no longer taking medication for depression. It is argued that when looked at more widely outside of the Immigration Rules the exclusion of the appellant, now a young adult, would not be a disproportionate breach of Article 8 ECHR particularly as the sponsor is in a position to continue their relationship via visits.

16. It is submitted, in summary, by Mr Mannan for the appellant as follows. It is argued that in accordance with TD (Paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049 that Ms Anjorin, the sponsor, has sole responsibility for the appellant as the appellant's father has disappeared, with no contact with him since his birth and further no contact with the sponsor since he left her and the appellant's siblings in the UK in 2012. The sponsor has provided for the appellant financially since 2012 sending money for his schooling and upkeep to her mother, although lately those funds have been given directly to the appellant. She has also kept constantly in touch via phone, video call, and since 2018 via significant visits. The appellant's grandmother is old and unwell and is no longer able to provide day to day care. Further the exclusion of the appellant is undesirable as it is in the best interests of him as a young person to be allowed to come to the UK to join his siblings and mother, with whom he has family life relationships, and not to have to remain in Nigeria with his aging and unwell grandmother where there is no one else who is willing to step in the role as parent. This is particularly the case as this is his wish and the current situation is making him depressed, even if he no longer needs medication for this condition as the sponsor and siblings provide him with psychological support via visits and telephone/video calls instead.

17. At the end of the hearing I told the parties that I reserved my decision. I asked that Mr Mannon send a schedule relating to the financial aspects of the case, which he agreed to email to myself and Ms Everett that afternoon. This was duly received.

18. A representative from Emmanuel Solicitors was present at the hearing before the Upper Tribunal so I addressed him and explained that the appeal had not been adequately prepared, which had led to it taking more court time than was necessary and if both I and Ms Everett had not been prepared to be flexible would have led to an adjournment of the hearing which would have added to the expenses for the sponsor. The sponsor said that she had paid a total of £12,000 in legal fees to date, which is clearly a very large sum of money, it was also clear that the sponsor had provided both her universal credit summaries and her last tax return to her solicitors in advance of the hearing (as they were available in the solicitors' electronic systems), and so there was no good reason why a schedule with the documents attached on the issue of whether there were adequate funds to support the appellant without recourse to public funds had not been produced in advance of the hearing given this was a key issue in dispute. I made it clear that this quality of representation was not acceptable, and should not repeat itself. I assured the sponsor however that issues with the quality of her representatives would have no bearing on my ultimate decision.

Conclusions – Remaking

19. The primary contention for the appellant is that he is entitled to succeed in his appeal because he can satisfy the Immigration Rules at paragraph 297(i)(e), or in the alternative 297(f), and because he can be maintained adequately without recourse to public funds and thus fulfil paragraph 297(v). These matters are disputed by the respondent.

20. It is not disputed by the respondent before the Upper Tribunal that the appellant has presented a valid tuberculosis certificate; that he was under the age of 18 years at the time of application; and it is not argued that he is married or leading an independent life or has formed an independent family unit. These aspects of the Immigration Rules at paragraph 297 are found to be met.

21. Ms Everett did not make any submissions that there would not be sufficient accommodation in the UK, and I am satisfied that the three bedroom property occupied by the sponsor and her two British children would not be overcrowded if the appellant were permitted to join them in the UK, and so the appellant could be accommodated adequately if permitted to come to the UK.

22. In relation to the issue of maintenance I have reviewed the schedule and attachments provided by Mr Mannon, and I am satisfied that the figures provided during the hearing for the sponsor's income from work and from universal credit, as set out above, correspond with the supporting documents relating to the earnings of the sponsor and her universal credit as set out in the recent universal credit documentation. In these circumstances I find that the appellant has shown on the balance of probabilities that he can be adequately maintained without recourse to public funds if he is permitted to come to the UK, and thus that the provision at paragraph 297(v) of the Immigration Rules is met.

23. I therefore move on to consider whether the sponsor has sole responsibility for the appellant. In accordance with TD (Paragraph 297(i)(e): "sole responsibility") Yemen I direct myself that this test involves the sponsor showing that she has been the person ultimately responsible for making all the major decisions in the appellant's life, and thus making the decisions on key matters such as his education, religion, welfare and healthcare. Whilst the sponsor need not have been responsible for the appellant's day to day care she must show she has exercised the ultimate care and control over the appellant and is thus the sole person exercising parental responsibility for the appellant.

24. There was no submission that the sponsor's evidence was not credible, although it was submitted that her evidence with respect to the appellant's education was vague. I find the sponsor to be a credible witness. She was clearly nervous and emotional at the hearing and found it hard to project her voice, but she gave answers to all the questions put to her, and, I find, attempted to

assist the Upper Tribunal to the best of her ability. Her evidence was also generally plausible and did not seek to exaggerate the situation of the appellant: for instance the amount she stated for her current rent showed a small increase on the amount she was paying when she made her application and the amount set out in her bank statements for last year; and she gave evidence that the appellant no longer takes antidepressant medication as he had been, and as is evidenced by a medical letter submitted with the First-tier Tribunal bundle.

25. The sponsor's evidence, which is consistent with the written statements of the appellant and his grandmother, is that the appellant's father has played absolutely no part in his upbringing, and indeed he has never met him and last separated from the sponsor in the UK in 2012. This was not challenged by the respondent, and I find that it is the case based on the totality of the evidence which all points to this being a correct account.

26. The question that remains to be answered is whether the appellant's maternal grandmother has provided and continues to provide simple day to day care, or whether she also has taken on responsibility for the appellant. The evidence, in a sworn affidavit from the appellant's grandmother, Mrs Anjorin Caroline Badejoko, is that she has provided care to her grandson, but this has been at the expense of her health, and the sponsor has overseen the decisions on his upbringing; has provided regular money to support the appellant and her; has sent clothes for the appellant; emotionally supports the appellant and is in regular contact with him; and pays his school fees. Whilst the sponsor did not get the name of the appellant's course entirely correct she was able to give the type of course (OND), name the institution, explain that the appellant had done his final exams and was now completing a project and that he had no further educational plans in Nigeria due to hoping to be able to come to the UK. I find that the information she gave with respect to the appellant's education was therefore fairly detailed, and that her evidence is consistent with the position as set out in her statement of a year ago, namely that the sponsor has steered the appellant into studying a vocationally orientated IT type course in office technology and management in line with what she feels is in the appellant's best long-term interests, rather than courses which might be more in line with the appellant's own current interests, namely art and football. I am satisfied in addition that the sponsor has evidenced making regular transfers of funds via WorldRemit Support, Azimo and Zenith to the appellant or to her mother for him for his living expenses and schooling, as are reflected in the transfer receipts, and has been financially responsible for the appellant throughout his life. I find from the statements of the appellant, sponsor, grandmother and siblings that the appellant has emotionally bonded with his mother, particularly as a result of her visits over

the past five years since 2018, and that they are in now in very regular contact several times a week via phone and media such as WhatsApp. I find credible the evidence that she provides regular important psychological guidance and support, such that he no longer takes antidepressants despite still feeling sad and resentful at his situation separated from the rest of his mother and siblings.

27. When looked at in the round I am satisfied that the sponsor has shown on the balance of probabilities that she is and has been solely responsible for the appellant, and find that her mother, the appellant's grandmother, has simply provided day to day care, at least from the time when the sponsor return to Nigeria in 2018 to spend face to face time with the appellant. I find that the main reason for this is the sponsor's strong sense of duty and responsibility to the appellant as his mother which comes across as a constant in her statement and other evidence, and which has led to her exercising parental responsibility in the key areas of ensuring his psychological well-being and deciding upon the course of his education, as well as providing for him financially. I find that there is a strong family life bond between them. I also find that as she has aged the appellant's grandmother has lost enthusiasm and energy for providing day to day care for the adolescent appellant, and ceased any role she might have had in parenting the appellant as a young child since his mother, the sponsor, became actively involved with him in 2018.

28. As I have found that the appellant can show that he meets the requirements of the Immigration Rules at paragraph 297, taking his age as that when he made his application for entry clearance, I find that there is no public interest in his being refused entry clearance, and therefore I find that the refusal of entry clearance is a disproportionate interference with the appellant's right to respect for family life with his mother and two full siblings in the UK, all of whom are British citizens. I acknowledge the strength of the family life bond with the appellant's siblings as this is evidenced by their own statement and the letter from the Harris Garrard Academy which they attend in Erith. I find that the appellant can speak English and that he will be financially independent, as he can be adequately supported by the sponsor, and that these are neutral matters.

Decision:

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

2. We set aside the decision and all of the findings of the First-tier Tribunal.

3. I remake the appeal by allowing it under Article 8 ECHR.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

17th May 2023

Annex A: Error of Law Decision:

DECISION AND REASONS

Introduction

1. The appellant is a citizen of Nigeria born on 1st December 2004. He applied for entry clearance for settlement to join his mother, his sponsor, in the UK on 31st October 2019, and this was refused on 20th August 2020. His appeal against the refusal decision was dismissed by First-tier Tribunal Judge Seelhoff in a determination promulgated on the 4th August 2021.

2. Permission to appeal was granted by Judge of the First-tier Tribunal Andrews on 12th October 2021 on the basis that it was arguable that the First-tier judge had erred in law in failing to make findings on the current state of sole responsibility; in failing to make findings on the issue of whether there were serious and compelling family or other circumstances; and failing to consider the best interests of the appellant.

3. The matter came before us to determine whether the First-tier Tribunal had erred in law, and if so to consider if any such errors are material and whether the decision needs to be set aside and remade.

Submissions – Error of Law

4. In the grounds of appeal it is argued for the appellant, in summary, as follows.

5. Firstly, it is argued, the First-tier Tribunal errs in law because in the findings with respect to sole responsibility, at paragraph 31 of the decision, it is found that the appellant's mother could not have had parental responsibility for him in the first eight years of his life, when it is found that the grandmother had all responsibility, as she did not provide for him financially, when financial provision is not equivalent to parental responsibility as per the authority of TD (paragraph 297(i)(e): "sole responsibility") Yemen [2006] UKAIT 00049. At paragraph 34 of the decision the First-tier Tribunal errs in focusing on whether the grandmother still has any parental responsibility rather than whether the appellant's mother/ sponsor has control and direction of the appellant's life, and in failing to consider that as per TD that there is no period of duration of sole responsibility that is required by the Immigration Rules, and further ignored the five visits the appellant's mother has made since 2018, her contact on social media and the evidence of financial

support by her. It is argued at paragraph 37 of the decision the First-tier Tribunal erred as it was unfairly found that there was a lack of evidence of financial support since 2020 without this point having been put to the appellant's mother.

6. Secondly, it is argued, that the First-tier Tribunal erred in the consideration of serious and compelling family or other considerations making the appellant's exclusion undesirable at paragraphs 40 to 42 of the decision by applying the wrong test (exceptional and compassionate circumstances) and treating the medical evidence irrationally.

7. Thirdly, it is argued, the First-tier Tribunal erred in the consideration of whether the financial requirements are met at paragraphs 27, and then 43 to 45 of the decision, in not accepting the bank statement evidence of the four months of payments of universal credit into the appellant's mother's bank account and requiring further evidence on this point, and/or not giving the sponsor the opportunity to provide the confirmatory print outs from the Universal Credit Portal.

8. Fourthly, it is argued, that the First-tier Tribunal erred in law in failing to consider the best interests of the child as a primary consideration in accordance with Mundeba (s.55 and para 297(i)(f)) [2013] UKUT 00088 (IAC) and fails to fully consider the psychiatrist's letter at paragraph 46 of the decision.

9. The respondent argues in a Rule 24 notice, in summary, as follows. That the First-tier Tribunal properly directed itself by reference to TD, referring directly to TD in the decision. It is argued that on the facts that the First-tier Tribunal was entitled to find that the grandmother had parental responsibility for the appellant and not the sponsor, and that the appellant did not have to be given the opportunity by the First-tier Tribunal Judge to provide further financial evidence for the decision to be fair as it was obviously an issue in the appeal and the appellant's representative did not seek an adjournment. It is argued that the medical evidence relating to the appellant was inconsistent with his own statement, and insufficient, so the First-tier Tribunal did not err in its treatment of that evidence.

10. We asked Ms Everett to address our main concerns with the decision: that firstly the First-tier Tribunal had become distracted by the fact that the grandmother was well enough to have continued to be the person with sole responsibility and had thereby failed to determine whether she had that responsibility particularly after the sponsor had acquired indefinite leave to remain and was able to travel and thus had failed to consider the responsibility of the sponsor for the appellant on a consideration of all of the evidence in the round; and secondly whether the First-tier Tribunal had failed to give reasons for not giving the oral evidence

of the sponsor and appellant weight given that they had not been found to be non-credible witnesses, and thus appeared to have proceeded on the basis that documentary evidence was required when oral evidence was lawfully capable, if credible, of being sufficient.

11. Ms Everett said whilst she did not disagree with mostly of what was said in the Rule 24 notice she accepted that the decision was materially flawed for failing to actually look at the issue of sole responsibility in the round rather than simply make findings on the grandmother's capabilities. She therefore conceded that the appeal should be allowed.

12. We informed the parties that we would set aside the decision of the First-tier Tribunal and all of the findings. We expressed some concern that the appellant may have given evidence via CVP from Nigeria which is not permissible without the consent of the Nigerian government which, in turn, has not been given. Neither representative had represented the appellant before the First-tier Tribunal and neither had notes which assisted on this issue, and so where the appellant was when he gave evidence to the First-tier Tribunal was not known to us. This was not a matter which affected the appeal but clearly is one which must be given proper consideration for the rehearing.

Conclusions – Error of Law

13. At paragraph 12 of the decision the First-tier Tribunal correctly directs itself as to the meaning of sole responsibility by citing TD. However, the approach then taken is to find that the grandmother had had sole responsibility and then question whether it had ceased, and in effect to have decided the issue simply on evidence relating to the grandmother, by paragraph 34 of the decision, instead of on the evidence in the round making the examination and consideration of evidence relating to the sponsor, which is set out at paragraphs 35 to 39, essentially irrelevant. We find that the approach is unlawful and insufficiently reasoned. It is not reasoned why the sponsor did not have responsibility even if the grandmother had day to day care and the appellant thought she was his mother as clearly it would have been possible that the key decisions were in fact being made by the sponsor. Further simply because the grandmother is not sufficiently old and unwell to be unable to be playing a parental role does not mean that she still has this role or that the sponsor has not taken over the role particularly after she started visiting the appellant from 2018.

14. The First-tier Tribunal also errs when stating that the oral evidence with respect to financial transfers to the appellant (when considering sole responsibility) has to be "taken on trust" at paragraph 37 of the decision, as, we find, this strongly implies that documentary evidence must be provided. The correct position is

that oral evidence can suffice as evidence of any fact before the Tribunal depending if it is found to be credible or not. There is no finding that the sponsor is not a credible witness. This same error arises at paragraph 43 of the decision with the consideration of the financial situation and whether there are adequate funds so that the appellant would have not have recourse to public funds. It is found that the appellant cannot meet this requirement because full documentation is not provided but the First-tier Tribunal ought to have considered whether the bank statement evidence together with the oral evidence sufficed, and if it was not considered sufficient there needed to be reasoning for this position.

15. The consideration of serious and compelling family or other considerations making the appellant's exclusion undesirable is very short at paragraphs 41 and 42 of the decision, and does apply a different test, although ultimately we find that the wording is not as important as the inadequate consideration of the evidence. There is no consideration of the weight to be given to the best interests of the child and the appellant's expressed wishes to be with his mother and siblings, which should properly have been considered at this point, and also should have been considered in the Article 8 ECHR proportionality exercise.

Decision:

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

2. We set aside the decision and all of the findings of the First-tier Tribunal.

3. We adjourn the remaking of the appeal.

Directions:

1. Any further evidence in relation to the remaking of the appeal will be filed with the Upper Tribunal and served on the other party ten days prior to the hearing date.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

25th January 2023