



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/01985/2017

THE IMMIGRATION ACTS

Heard at Birmingham
On 26th July 2018

Decision & Reasons Promulgated
On 6th August 2018

Before

UPPER TRIBUNAL JUDGE REEDS

Between

DAMANJEET KAUR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Malik, instructed on behalf of the Appellant

For the Respondent: Ms Aboni, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of India.
2. The Appellant, with permission, appeals against the decision of the First-tier Tribunal Judge Taylor, who, in a determination promulgated on the 19th December 2017, dismissed her appeal against the decision of the Respondent made on the 18th January 2017 to refuse her application for leave to remain on Article 8 grounds.

3. Permission to appeal was granted by the First-tier Tribunal (Judge Froom) on the 3rd May 2018 in the following terms:

“The Appellant could not succeed under paragraph 276 ADE (1)(v) because at the date of the application, she had not spent half her life in the UK. However, at the date of the hearing she had and she was still under 25.

It is arguable the FtTJ, when assessing the public interest, failed to grapple adequately with the tension between the effect of section 117B (5), which require little weight to be given to the appellant’s private life, and the effect of the respondent policy, expressed through the Rules, that spending more than half one’s life while still under the age of 25 should normally lead to a grant of leave.”

4. The Appellant’s immigration history is set out in the decision at a paragraph 1 and reference is made to a previous decision made by the FTT dismissing her earlier appeal at paragraph 11.
5. On 25 August 2004 the Appellant, her mother and elder sister entered the UK as visitors. The Appellant was aged 11 years and nine months. They were granted entry clearance valid until 9 February 2005.
6. At the conclusion of the period of leave, the Appellant, and her mother did not return to India but remained in United Kingdom. It was only on 22 August 2011 (6 ½ years later) that the family members made an application so as to regularise their stay in United Kingdom.
7. It is also a matter of record that between 25 October 2004 and 30 October 2006 the Appellant’s mother made four visits to India in order to see her elderly parents.
8. On 2 February 2012 the Appellant’s application was refused with no right of appeal. She was served with an IS15A on 5 November 2013. It appears that further submissions were lodged and on 9 January 2014 the further submissions were refused and was served with an IS151B as an over stayer with a right of appeal.
9. It was this application that came before the First-tier Tribunal on 19 May 2014. In a decision promulgated on 3 June 2014 the Tribunal dismissed her appeal. Permission to appeal that decision was refused by the First-tier Tribunal and also by the Upper Tribunal and from 27 August 2014 the Appellant was thus appeal rights exhausted.
10. The Appellant’s mother lodged an application for judicial review on 18 September 2014 which was refused on 21 November 2014.
11. Thereafter the Appellant submitted a further application on the basis that she had spent at least half of her life living continuously in United Kingdom (under paragraph 276 ADE (1) (v) of the Rules).
12. On 18 January 2017 the application for leave to remain on Article 8 grounds was refused with a right of appeal.

The decision made on 18 January 2017 to refuse the application:

13. The Secretary of State set out the nature of her application which was that she sought consideration under private life in the United Kingdom (10 year route). The Appellant had also raised that she had family and friends in the UK who supported financially and emotionally and that she would wish to continue her studies in United Kingdom and undertake a degree course. The Respondent considered her application for leave to remain on the basis of her family and private life contained within paragraphs 276 ADE (1)-CE of the immigration rules and outside the rules on the basis of "exceptional circumstances".
14. As to the decision under the 10 year private life route, the Secretary of State accepted that she met the suitability requirements and therefore met the requirements of paragraph 276 ADE (1) (i) of the Immigration Rules.
15. As to her circumstances, the Respondent took into account the date of entry on 25 August 2004 and that at the date of her application she was 23 years and two months old. The Respondent concluded that she had therefore lived in the UK for 11 years and five months but did not accept that she had lived in the United Kingdom continuously for at least 20 years and thus could not meet paragraph 276 ADE (1) (iii).
16. It was also accepted that she was aged between 18 and 25 years and had lived in the UK for 11 years and five months. However it was not accepted that she had spent at least half of her life living continuously in the UK and therefore failed to meet the requirements of paragraph 276 ADE (1) (v) of the Immigration Rules.
17. The Secretary of State also considered whether she could meet the requirements of paragraph 276 ADE (1) (vi) and whether they would be "very significant obstacles to her integration into the country to which she would have to go if required to leave the UK". In this regard it was not accepted that there would be "very significant obstacles to her integration" into India because she had lived there until the age of 11, she retained knowledge of life and culture there. She spoke Punjabi and that this would further assist her to adapt to life in India. She therefore failed to meet the requirements under paragraph 276 ADE (1) (VI) of the Immigration Rules. She therefore did not qualify for leave to remain under the 10 year private life route.
18. As to "exceptional circumstances", the Respondent considered whether the application gave rise to a grant of leave to remain in the UK outside of the requirements of the Immigration Rules. The Respondent considered a factual claim that she had family and friends in the UK and that they supported her financially. However the Respondent considered that she could remain in contact with friends and family via modern means of communication and such financial support could also be similarly continued. As to any wish to continue studies, it was stated that it was open to her to apply that the appropriate entry clearance to continue studies in United Kingdom or in the alternative could return to India and study their using the qualifications gained in the UK. Therefore it was decided that there were no such "exceptional circumstances" to warrant a grant of leave outside of the Rules.

The hearing before the First-tier Tribunal:

19. On 31 January 2017 the Appellant submitted a notice of appeal and the appeal came before the First-tier Tribunal on the 16th November 2017. In a determination promulgated on the 19th December 2017 the Judge dismissed the appeal.
20. At paragraph 5, the judge set out the issues that had been identified by the parties; they related to paragraph 276 ADE and whether there would be “very significant obstacles to the Appellant’s integration”. It was conceded that at the date of the application (the 22nd of February 2016) the Appellant had not been in United Kingdom for half of her life and thus fell short of this requirement by approximately three months but that she had met that requirement at the date of the hearing. It was submitted that as her birthday was the following Tuesday after the hearing and on that date she would be 25 years of age. There was no issue raised as to any “family life” established in United Kingdom.
21. At paragraph 12 the judge set out a summary of the relevant findings of fact made by the FTT in 2014.
22. The judge accepted that the passage of time since that decision was taken (approximately 3 ½ years) was, in the context of the case, a significant period of time which was “likely to enhance her claim to be integrated into UK society”. However having reviewed those findings, the judge was satisfied that they were relevant to the considerations before this Tribunal and that they were a full assessment of the Appellant’s status at the time that it was made. The judge therefore adopted those findings.
23. The judge’s own findings are set out at paragraphs 25 – 36 and can be summarised as follows:-
 - (1) the Appellant has become well integrated into UK society over the years that she has been in United Kingdom which now amounts to over half of her life. This was as a result of having been educated at secondary level through to college and had participated in various educational opportunities. She had made friends both British and Asian, wore Western clothes and Indian clothes and enjoyed Western films and Indian films and western music and Bollywood music. The judge found that she was “highly regarded amongst family members in United Kingdom friends, many of whom had written statements which the judge are taken into account [25],
 - (2) the Appellant never had paid employment nor could she pursue education at degree level because of the immigration status. In terms of financial support you relied upon three maternal aunts United Kingdom and other family members and friends [26]
 - (3) She had a poor immigration history; but she could not be blamed for that as her mother brought her to the United Kingdom and had remained after the expiry of her visa and there was a gap of approximately 6 ½ years before any application was made to regularise her immigration status. However those applications have

all been unsuccessful and both the Appellant, her mother and elder sister have at least twice resisted removal directions. Some of the time she had been an adult although the judge acknowledged it was not “as bad as mothers immigration history” [27].

- (4) As to the argument that her case was a “near miss” with regard to paragraph 276 ADE (1) (v) the judge did not accept that it was a “mere technicality” but found that it was a requirement of the rules. The judge did not know if she was going to make a paid application in the future and did not attach any weight in this regard. However the judge stated “I do accept that under the Article 8 balancing exercise factor would be that she has spent over half her life in United Kingdom at the date of the hearing” (at[28]).
- (5) The Appellant’s mother and sister were in United Kingdom without any lawful leave and had made numerous applications to remain; all of which had been unsuccessful. Therefore they could return to India with the Appellant and any difficulty that she may have in re-establishing herself could be “lessened or resolved” [29].
- (6) The Appellant was well integrated into UK society. However the judge found that it did not necessarily follow that they would be “very significant obstacles” to her integration to India if required to leave the United Kingdom. The judge accepted that most of her family was in United Kingdom and although she did have family in India she was not in contact with them and they would be unlikely to supply her with financial support. The judge found that she was bound to suffer some sort of “culture shock” because of the long period of time she had been away from India but that she would still have some memories of India and the Indian way of life and culture which will be reinforced by the Indian relatives that she had lived with in United Kingdom. To remove her to India would be harsh but could be lessened if accompanied by mother and sister. The Appellant was described as “intelligent and resourceful” and would be provided with funds by those who have been prepared to fund in United Kingdom. The judge was satisfied that she would be able to find suitable accommodation and employment in India and any hardship she suffered would only be “temporary and significantly lessened” if accompanied by her mother and sister who had no lawful reason to remain in United Kingdom[30].
- (7) As to the “near miss” the judge concluded that there was no such thing as a near miss principle but that it might amount to relevant evidence and a specific fact to take into account together with many other factors in the balancing exercise that is required under Article 8 [30].
- (8) The judge concluded that it would not be unduly or unjustifiably harsh for her to be removed to India and that she could not succeed under the Immigration Rules as they would not be very significant obstacles to her integration [32].
- (9) As to Article 8 outside the rules, the judge stated the “Rules will not necessarily be determinative” [33].

- (10) The judge applied the Section 117 public interest considerations finding that the maintenance of effective immigration control is in the public interest and “deserving of great weight”. The judge found that the Appellant could speak English well but that she was not financially independent- she relied upon funding and support from family and friends and therefore there was a risk that she would become a burden on taxpayers and would not fully integrate into society. The judge however had found that she had in fact integrated into society to a significant degree if not completely. The judge noted that the weight should be given to a private life that was established by person at a time when in the country unlawfully – she had been in United Kingdom from the time leave expired of approximately six and half years although she was child at that time and therefore “no adverse weight can be attributed to the Appellant at the time when she was a child.” However the judge found little weight should be given to a private life established at the time when her immigration status was precarious and that was that the position post-2011 when the Appellant was an adult and that some blame could be treated to her for that immigration record which was poor [34].
- (11) At [35] the judge referred to the length of time spent in United Kingdom and the general level of integration into UK society. On the other side of the balance, the judge was satisfied that the maintenance of effective immigration controls in the public interest and deserved “considerable weight which outweighs the matters that relate to the Appellant individually”. The judge therefore concluded that the balance was in favour of the Respondent and that any removal would not be disproportionate.

The hearing before the Upper Tribunal:

24. At the hearing Mr Malik relied upon the grounds submitted. He accepted that it had been had conceded that in order for the applicant to succeed under paragraph 276 ADE the relevant date for the criteria had to be satisfied was the date of the application (see decision in Koorie and others v SSHD [2016] EWCA Civ 552). However at the date of the hearing the Appellant was 24 years and 11-month-old (and therefore was over 18 years and under 25 years) and also at the date of the hearing had spent at least half her life living continuously in the UK (see Paragraph 276ADE (1) (v)).
25. He submitted that the starting point to considering the Article 8 application are the Rules themselves (applying SSHD v SS (Congo) and others [2015] EWCA Civ 387) and that the consideration of whether to grant leave outside of the rules is necessary because the Article 8 provisions of the rules are evidence of the proportionality considerations under Article 8. Thus he submitted the Respondent in such cases should consider the position outside the rules unless such consideration would not add anything to the analysis.
26. He further submitted that the Article 8 related provisions of the Immigration Rules are relevant even in an assessment of proportionality outside of the Immigration Rules (relying on paragraph 32 of SS Congo and others). Similarly the applicant’s failure to meet the requirements of immigration rule by a narrow margin, although not in itself

sufficient to justify leave outside of the immigration rules, is a relevant consideration (see paragraph 56 of SS (Congo)). In the context of the post-2012 Article 8 provisions of the Immigration Rules provide evidence of the appropriate balance to be struck between the rights of the individual and the public interest in the maintenance of immigration control. Therefore, even where an applicant is not able to technically meet the requirements of the rules, the latter continue to be relevant to the proportionality consideration. When applied to this case, the applicant missed the qualification under the rules by only three months at the date of the application but she met the requirements of the criteria on the day of the Tribunal hearing.

27. Thus the thrust of the grounds are that the Tribunal omitted to engage with that point within its decision. Whilst the Tribunal appeared to address the point at paragraph 28 of the determination and stated that the date of the application the inability to meet paragraph 276 ADE was not a “mere technicality”, the statement overlooked the point being made on behalf of the applicant, namely the combination of the applicant only having missed qualification by three months of the date of the application taken with the fact that she met the criteria and the date of the hearing, showed substantial compliance with the Rules which should be taken into account in the Article 8 balancing act in the applicants favour.
28. He submitted that at paragraph [28] of the determination clearly indicated that she had spent half of the life in the UK and it was implicit in that acceptance that she was under 25 at the date of the hearing and met the suitability criteria. However the judge appeared to have held against the Appellant that no application had been made but given the substantive requirements having been met, the judge did not factor that into the balancing exercise.
29. As to the public interest, Mr Malik relied upon the decision of Kaur (as cited) and at paragraphs 25 onwards of that decision, when considering section 117B (5) he submitted that it was not a disqualifying provision and therefore it has to be a matter of statutory construction that a case can succeed under the private life provisions notwithstanding the application of section 117B. As the Appellant substantively complied with the Immigration Rules at the date of the hearing it must therefore follow that there is little or no public interest in her removal and to construe section 117B provisions through that lense.
30. Ms Aboni on behalf of the Respondent relied upon the Rule 24 response dated 28th June 2018 in which it was stated that the judge directed himself appropriately and produced a thorough and legally sound decision. As to the chronology the judge recorded at [5] that the Appellant had conceded that she could not meet the terms of paragraph 276 ADE (1) (v) and at [23] acknowledges her argument that she should benefit on the basis of being a “near miss”. Importantly at [28] and [35] the judge expressly stated that he had taken into account the Appellant “near miss” into the balancing exercise which was what the judge was required to do. Consequently the challenge made on the grounds was no more than a disagreement with the decision reached.

31. In her oral submissions Ms Aboni submitted that the judge was aware of the length of time that should spend in United Kingdom at [28] and at [35]. The judge had given adequate consideration as to her circumstances and returning India and the findings of fact that whilst to remove out to India on her own would be harsh, it could be lessened if she were accompanied by her mother and sister. The judge found that any hardship would be temporary and the Appellant was "intelligent and resourceful" (see [30]). The judge considered the section 117B public interest factors and that there should be little weight attached to her private life even taking into account that she was a child in the UK at the earlier part of her residence. The judge applied a balancing act and it was open to the judge to find that it would not be disproportionate for her removal.

Discussion:

32. There can be no dispute as to the legal context of the appeal. Section 82 (Right of appeal to the Tribunal) provides as follows:-

“(1) A person (“P”) may appeal to the Tribunal where-

(b) the Secretary of State has decided to refuse a human rights claim made by P,.....

So far as is relevant, section 84 (Grounds of appeal) provides:-

“(2) An appeal under section 82 (1) (b) 9 refusal of a human rights claim) must be brought on the ground that the decision is unlawful under section 6 of the Human Rights Act 1998.”

33. Section 6(1) of the 1998 Act provides that it “is unlawful for a public authority to act in a way which is incompatible with the Convention rights.” Therefore in a human rights appeal, such as this, the task of the Tribunal is to decide whether such removal or requirement would violate any of the provisions of the ECHR and as here, the issue the judge had to decide was whether the removal or requirement to leave the United Kingdom, would be contrary to Article 8 (private life).
34. The Supreme Court in Hesham Ali v SSHD [2016] UKSC 60 considered the proper approach to Article 8 in the context of deportation, however general principles in that case are equally applicable to other cases.
35. A Tribunal must decide whether removal is proportionate balancing the strength of the public interest in maintaining an effective system of immigration control against the impact on private and family life. In doing so, the Tribunal must give appropriate weight to parliaments and the Secretary of State assessment of the strength of the general public interest, which is in practice reflected in the relevant Rules and Statutes.
36. Section 117A (2) of the 2002 Act provides that where a Tribunal is required to determine whether a decision made under the Immigration Acts would be unlawful under section 6 of the Human Rights Act 1998 it must, in considering 'the public interest question', have regard in all cases to the considerations listed in section 117B of

the Nationality, Immigration and Asylum Act 2002 (as amended by the Immigration Act 2014). Section 117 (3) provides that the 'public interest question' means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2).

37. 117B - Article 8: public interest considerations applicable in all cases

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English –

(a) are less of a burden on taxpayers, and

(b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons –

(a) are not a burden on taxpayers, and

(b) are better able to integrate into society.

(4) Little weight should be given to –

(a) a private life, or

(b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.

(6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where –

(a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom.

38. The judge was required to consider whether there were any "sufficiently compelling" circumstances to outweigh the public interest because the refusal of leave would result in "unjustifiably harsh consequences" (see decision in *Agyarko* at [48]).

39. It was against this background that the factual circumstances of the Appellant were important. The facts that were not in dispute were that the Appellant arrived in United Kingdom with her mother on 25 August 2004 aged 11 years and nine months. It was accepted by the judge that unlike her mother she had not returned to India and had remained in the United Kingdom since that date.

40. When she had made her application for leave to remain on 22 May 2016 she had been in the UK for 11 years and six months and was aged 23 years and two months and therefore had not lived in the UK for over half of her life. However there is also no dispute that at the date of the hearing she was aged 24 years and 11 months and had spent more than half of her life in United Kingdom. The judge recognised her level of integration by reason of the length of residence and the years which that private life integration had occurred. In the findings of fact made by the judge he found that the Appellant had become “well integrated into UK society over the years that she’d been in United Kingdom” (see [25]) this was because she had been educated at secondary level through to college, she participated in various educational opportunities, and made friends both British and Asian, or Western clothes and enjoyed Western films. The judge was satisfied that she had “integrated in society to a significant degree if not completely” (see [34]).
41. The decision letter that was under challenge accepted that the Appellant met the suitability criteria set out in paragraph 276 ADE (1) (i) that she had made a valid application and was between the ages of 18 and 25 years. She had not spent over half of her life in the UK at that stage being approximately short by three months. As set out above, by the date of the hearing the Appellant had met that substantive requirement (see [25] and [28]).
42. Whilst the judge considered the relevant rule (Paragraph 276 ADE (1) (v) as Mr Malik set out he did not dispute that the Appellant could meet the Rules at the date of the application because the necessary period had not accrued. Therefore the judge was required to consider whether there were good reasons to proceed to consider Article 8 outside of the rules, which is a process properly followed by the judge (see [33]).
43. It is that process which Mr Malik seeks to challenge in his submissions. The judge properly noted that Article 8 was engaged and that the decision to refuse leave would amount to an interference with Article 8 rights. The question the judge had to resolve was whether the decision was a lawful one taken in pursuit of a legitimate aim and proportionate to that aim taking into account all the relevant factors.
44. I accept the submission made by Mr Malik that it is in that assessment the judge failed to properly take into account the powerful and weighty factor that she had met the substantive requirements set out in the Rules at the date of the hearing. It had been accepted that she met the specific age range (18 – 25), and that spent over half of the life in the UK and had met all of the suitability requirements. They were the “substantive requirements” of the rules rather than the procedural requirement of a “valid application”.
45. The judge had already reached findings of fact as to the level of her integration in the UK during her period of residence (more than half of her life) and which were indicative of a young woman who had significantly integrated in the UK which is the underlying rationale which underpins the rule in question. The judge had found at [34] that she had integrated into society “to a significant degree if not completely”. The judge accepted that most of the family was in United Kingdom and although she did

have family in India she was not in contact with them and that they would be unlikely to support financially (see [30]). That being so, given that she met the requirements as at the date of the hearing it is difficult to see what in fact remained in the balance on the Respondents side. Ms Aboni makes reference to the “little weight” that the judge attached to her private life given that it was established at a time when she was in the UK either unlawfully or at a time when it was precarious and thus had a poor immigration history (see [27] and [34]). By way of reply Mr Malik relies on the decision in Kaur (Children’s best interest/public interest interface) [2017] UKUT 00014(IAC) and paragraphs 25 onwards.

46. In that decision it makes it plain that “little weight” does not mean “no weight” and given that the Appellant met the requirements which were intended to justify a grant of leave when someone had been in the UK for a recognised period of time (even if unlawfully) that meant that the person concerned was likely to have become integrated into UK society (in the light of the person’s age range 18 – 25 and the length of their residence which was over half of their lives and that she had met and continued to meet the suitability requirements. Thus the “little weight” requirement should have been assessed in that context.
47. As there was little else identified on the Respondents side of the balance save that it was stated that making a fresh application was not a “mere technicality” it appears that this was not a point that the judge felt able to take into account (see [28]). However against that background it is difficult to see what benefit they would be or why it would be necessary to take the step of making a fresh application given that nothing had changed as regards the suitability requirements, she was still within the necessary age range and had lived in the UK over half of her life.
48. For those reasons I am of the view that if that factor, whilst identified at [28], had been considered and analysed in that way the judge would have reached the opposite view and would have reached a different view when applying S117B and when considering the public interest question. The Immigration Rules are relevant to a proper assessment of where the Secretary State considers the balance is struck with reference to the proportionality exercise under Article 8 (2) and given that the public interest was lessened considerably by the fact that the Appellant met the substantive requirements this was a weighty factor if not the decisive factor in the proportionality balance.
49. For those reasons, I am satisfied that the decision of the First-tier Tribunal judge involved the making of an error of law and therefore the decision cannot stand and shall be set aside.
50. As to the remaking of the decision, it is submitted by Ms Aboni that she is now over 25 years of age and therefore is out with the age range necessary to succeed under the Rules and in the light of the provisions of section 117B, little weight should be attached to the private life established in the UK and that as she cannot meet the Rules it would not be disproportionate for her to leave the United Kingdom. Ms Aboni relied upon the findings of fact made that whilst she was integrated into the United Kingdom, she

had some memory of India and of life and culture and any hardship that would be suffered would be temporary and will be significantly lessened if she were accompanied by her mother and sister (see [30]).

51. By way of reply, Mr Malik submitted that whilst she is now over 25 years of age it would not be proportionate to expect her to leave the UK and that there were “sufficiently compelling” circumstances to outweigh the public interest because the refusal of leave would result in “unjustifiably harsh consequences” (see decision in *Agyarko* at [48]). She had met the substantive requirements of the rules at the date of the hearing and would have succeeded but for that error of approach. The recent evidence demonstrates that she had made a fresh application before she attained the age of 25 years and in the light of the Respondents past acceptance that she met the suitability requirements, and there was no evidence to suggest that that view had changed, that she had spent over half of her life in United Kingdom at the date of that fresh application and was within the requisite age range, there was no or little public interest in her removal.
52. I agree with the submissions made by Mr Malik. Given the findings of fact made by the judge as to the Appellant’s level of integration in United Kingdom which was underscored by her age, length of residence and the nature of her private life and the lack of meaningful ties in India, where she had no close family who would be able to supply her with financial support, were weighty factors that would make such removal to be disproportionate even taking into account that she was not financially independent, and that her private life had been established at a time when she was in the UK unlawfully. Whilst “little weight” is to be so attributed, as the decision in *Kaur* (as cited) makes plain, it does not equate with “no weight” and against the particular factual circumstances of the Appellant, in which she has since made a valid application, which was likely to succeed, the overall balance would demonstrate that removal would be disproportionate.

Decision:

The decision of the First-tier Tribunal did involve the making of an error on a point of law; it is set aside and the appeal is re-made; the appeal is allowed.

SM Reeds

Signed

Date: 31st July 2018

Upper Tribunal Judge Reeds