



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: HU/02655/2019

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
On 4 March 2020**

**Decision & Reasons Promulgated  
On 20 March 2020**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE O'RYAN**

**Between**

**PARMVIR SINGH  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms K Joshi, Legal Representative, Joshi Advocates Ltd  
For the Respondent: Mr C Bates, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the Appellant's appeal against the decision of Judge of the First-tier Tribunal Meichen dated 28 August 2019 in which the judge dismissed the Appellant's appeal against the decision of the Respondent Entry Clearance Officer dated 30 January 2018 refusing him entry clearance and refusing his human rights claim. The Appellant is a national of India who had previously been present in the United Kingdom from 2012 when he entered with entry clearance as a Tier 4 Student valid until 22 February 2013. However, the Appellant remained beyond that date and became an overstayer. In July 2017 he was encountered working illegally at a Subway

restaurant and detained. He claimed asylum on 17 August 2017 but withdrew the application on 22 September 2017. Papers were served for his removal on 3 October 2017. It was said in the Respondent's decision that the Appellant became disruptive and refused to be transferred to an alternative detention centre but that on 9 October 2017 the Appellant voluntarily departed. The Appellant's evidence was that the cost of that departure was borne by the Appellant's partner.

2. Indeed, whilst in the United Kingdom the Appellant had entered into a relationship with Ms Sukhjinder Kaur Boora, a British national, that relationship commencing in around March 2016 at which time the Appellant had already been an overstayer in the UK for a significant period. The couple married in India in September 2018, i.e. after his removal, and the Appellant made an application for entry clearance on 5 October 2018 under Appendix FM of the Immigration Rules to enter the UK as Ms Boora's spouse.
3. In the decision of 30 January 2018 the Respondent accepted that the Appellant met the relevant relationship eligibility requirements, the financial eligibility requirements and the English language eligibility requirements (decision page 2) but the application for entry clearance was nonetheless refused on the grounds that the Appellant's application fell to be refused under paragraph 320(11) of the Immigration Rules which provides as follows:

“Where the applicant has previously contrived in a significant way to frustrate the intentions of the Rules by:

- (i) overstaying; or
- (ii) breaching a condition attached to his leave; or
- (iii) being an illegal entrant; or
- (iv) using deception in an application for entry clearance, leave to enter or remain or in order to obtain documents from the Secretary of State or a third party required in support of the application (whether successful or not);

and there are other aggravating circumstances such as absconding, not meeting temporary admission/reporting restrictions or bail conditions, using an assumed identity or multiple identities, switching nationality, making frivolous applications or not complying with the re-documentation process”.

4. The Respondent asserted that the Appellant had contrived in a significant way to frustrate the intentions of the Immigration Rules by overstaying, *and* that there were other aggravating circumstances, as the Appellant had (i) illegally worked in the UK and, (ii) had been disruptive in detention and had refused to be transferred to an alternate detention centre. It is to be noted that in an Entry Clearance Manager review of the Respondent's decision dated 29 April 2019 the Respondent also asserted as follows: “The Appellant's five year period of overstaying, arrested (*sic*) for illegal

working and making a frivolous application for international protection when he did not have a genuine fear of returning to India are all aggravating features". The Respondent there clearly raised a third potential aggravating factor, being the 'frivolous' asylum claim.

5. The Respondent also stated in the decision letter that the Appellant's application for entry clearance was to be refused on grounds of suitability under Appendix FM as he had shown disregard for the law by overstaying his Tier 4 visa and there were aggravating factors in that he was working illegally in the UK and was disruptive as detailed previously. It was said that the application therefore fell for refusal under paragraph EC-P.1.1(c) of Appendix FM with reference to S-EC.1.5 relating to suitability. The decision also stated that there were no exceptional circumstances in which it would render the refusal of entry clearance a breach of Article 8 of the ECHR on the basis that it would result in unjustifiably harsh consequences for him or his partner.
6. The Appellant appealed that decision and the matter came before the judge at the Birmingham Hearing Centre on 14 August 2019. The Appellant was of course in India, but the Sponsor, Ms Boora, gave evidence in support of the appeal.
7. The judge's findings may be summarised as follows:
  - (i) The Appellant had worked illegally at Subway in July 2017 but had also been working at Subway for some time before he was caught and he had been paid to do so [24].
  - (ii) The explanation offered by the Appellant for making an asylum application (i.e. that his then solicitor had made the asylum application without his consent and contrary to his express instructions), was rejected [26]. The Appellant went along with the application knowing it to be false [25]. The making of the Appellant's asylum application was frivolous and should never have been made [26], and [35].
  - (iii) The Respondent had not provided sufficient evidence of the Appellant having behaved disruptively. That allegation by the Respondent was not made out [27].
  - (iv) The judge noted that the Appellant accepted that he had overstayed in the United Kingdom for a period of more than four and a half years and that the first limb of paragraph 320(11) was therefore satisfied [30].
  - (v) The judge noted at [32] that the application of 320(11) was a discretionary ground for refusal.
  - (vi) On the issue of whether the Appellant's illegal working was to be treated as an aggravating factor, I set out the content of the judge's findings at [33]-[34] in full:
 

"33. As first set out in the appeal grounds the Appellant relied upon ZH (a reference to ZH (Bangladesh) v SSHD [2009] EWCA Civ 8) to

the effect that illegally working was 'part and parcel' of overstaying and therefore did not constitute a separate aggravating circumstance. I should note however that ZH was not a case which was specifically concerned with the application of paragraph 320(11) and I do not think that that decision can be read as imposing a bar on illegal working ever being considered as an aggravating circumstance for the purposes of paragraph 320(11). Moreover I would observe that the Home Office guidance on paragraph 320(11) gives a further example of an aggravating circumstance, previous working in breach on visitor conditions within a short time of arrival in the UK (that is, premeditated intention to work). This would imply that there are least some cases in which illegal working should be considered as an aggravating circumstance. In my judgment it is important to take each case on its own facts. There may be cases where illegal working does not constitute an aggravating feature but the opposite may equally be true (as per the guidance).

34. In this case I think that the Appellant's illegal working was an aggravating circumstance. This is because I do not believe that the Appellant has been straightforward and honest about his illegal working. The Appellant in his witness statement made reference to covering a shift in his friend's shop (as a favour) but the Sponsor told me in evidence that in fact the Appellant had worked shifts at various different Subways. The Appellant's witness statement does not explain this. Similarly the Appellant in his witness statement gave no explanation as to how he had been paid for the work he did and the Appellant's Sponsor in her evidence was obviously reluctant to admit that he had in fact been paid (at least by way of his friends paying for him to go out). It is not credible to suggest that the Appellant would have worked at various different Subways unless he was being adequately remunerated for doing so. I would contrast the Appellant's case with the case of ZH where it is apparent from the judgment that the applicant there had been extremely candid about the extent and nature of his illegal working. Taking as a whole I think there has been a distinct lack of similar candour in this Appellant's evidence".

- (vii) The Respondent was justified in finding that there were aggravating circumstances and was therefore correct to exercise his discretion to refuse the Appellant's application under paragraph 320(11) [36].
- (viii) The term 'frivolous applications' was not to be constructed as requiring more than one frivolous application in order for paragraph 320(11) to be engaged [37].
- (ix) Regarding the application PS (paragraph 320(11) discretion: care needed) India [2010] UKUT 440 (IAC), the judge considered the timing and circumstances of the Appellant's voluntary departure from the UK and upheld at the end of [39] that were it not for the fact that the Appellant had been found to be illegally working and detained, he would not have made any voluntary departure and would have continued in employment.

8. The Appellant's appeal was dismissed.
9. The Appellant appealed against that decision in grounds dated 3 September 2019. Under the heading 'Undisputed matters - identifying issues' was the following passage within the grounds at [5]:

"5. During the appeal hearing the Respondent accepted that:

- (i) there was no record of the Appellant's disruptive behaviour which the FtT IJ records at paragraph 27,
- (ii) the Appellant's legal representative submitted that working illegally is part and parcel of illegal residence in the UK applying ZH (Bangladesh), paragraph 10 of the grounds of appeal.

The FtT IJ asked the Respondent whether she agreed this was the case and that working illegally did not amount to an aggravating factor. The Respondent agreed that it did not amount to an aggravating factor - however this is not recorded on the determination. Note of proceedings is requested from the court as a result".

10. The actual grounds of appeal are set out at [7] onwards and argue that the judge erred in law, in summary, as follows:
  - (1) The judge misdirected himself in law as to the application of ZH (Bangladesh), in which it was said that the Court of Appeal noted that working illegally was part and parcel of illegal residence in the United Kingdom and did not exclude success under a Rule designed to regularise such persons, therefore it did not amount to an aggravating factor under the Immigration Rules 320(11). Further, the judge failed to make any reference to the concession said to have been made by the Respondent agreeing with that proposition [7].
  - (2) In purporting to distinguish at [34] within the decision the behaviour of the Appellant in ZH and the present Appellant, the judge failed to take into account the assertion that the present Appellant had admitted from the outset that he had worked in the United Kingdom illegally [10].
  - (3) The judge erred in purporting to attach little weight to the private and family life developed by the Appellant in the United Kingdom. The judge had failed to appreciate that the relationship was not disputed in the present case and that the Appellant had returned to India and did not marry the Sponsor in the UK when he was unlawfully resident [14].
  - (4) The judge erred in finding that one frivolous application was sufficient to engage the terms of paragraph 320(11) [15].
11. Permission to appeal was given by First-tier Tribunal Judge Kelly in a decision of 11 December 2011, finding that it was arguable for the reasons given in the application that the Tribunal had misinterpreted what

constituted an aggravating factor for the purposes of exercising discretion to refuse entry clearance under paragraph 320(11) of the Immigration Rules.

12. Upon considering the papers prior to the hearing I issued certain directions to the parties which were, in summary, to remind the parties that any allegation of procedural irregularity (Grounds, paras [5] and [7]) must be supported by evidence and the Appellant was reminded of the guidance in the case of HA (Conduct of hearing: evidence required) Somalia [2009] UKAIT 00018.
13. I further directed that the parties be prepared to address the Tribunal on the following matters:
  - (1) the actual ratio of ZH (Bangladesh);
  - (2) the proper construction to be given to the term 'frivolous applications' in paragraph 320(11); and
  - (3) in relation to (2) above the role, if any, bearing in mind paragraph 47 of Odelola v Secretary of State [2009] UKHL, of Section 6C of the Interpretation Act 1978; and
  - (4) the relevance, if any, of the following two unreported decisions of the Upper Tribunal: HU/08282/2017 and HU/14094/2016.

### **Submissions**

14. It was apparent that the Appellant's request made within the grounds of appeal that the judge's Record of Proceedings be provided to the parties had been complied with by the Upper Tribunal administrative staff. Ms Joshi at least had been provided with a photocopy of the judge's handwritten note of proceedings. Unfortunately Mr Bates did not seem to have a copy but one was provided to him. Mr Bates also provided a copy of a hearing minute prepared by Ms Venables, Home Office Presenting Officer before the judge, and prepared at the conclusion of the hearing before the judge.
15. The parties addressed me first of all on the potential procedural fairness point as to whether or not Ms Venables had made a concession that illegal working was not in the present case to be treated as an aggravating factor. It appears from the judge's handwritten note that Ms Venables argued in her own submissions that the refusal could be sustained under paragraph 320(11), and that she did rely upon the Appellant's illegal working as representing an aggravating circumstance. The judge's note includes the following when recording the Respondent's submissions:
 

"... Refused under 320(11)  
Overstayed, worked illegally, false asylum claim.  
No med evidence produced ...  
Heard worked on numerous occasions.

It is likely he got a financial reward.”

16. Ms Joshi’s submissions are recorded on the next page of the judge’s record and include the following:

“... Nothing in this case is an aggravating factor.

Not enough weight is being placed on him leaving voluntarily.

He can’t make a fresh application in 2/3 yrs, here its not limited.

Accept illegal working not agg circ..

No partics of disruptive conduct (?)

So boils down to frivolous application”.

17. The typed minute prepared by Ms Venables after the hearing provides as follows:

“I argue 320(11) - contrived prev in a signiff way to frustrate immig rules.

1 - overstaying - applt accepted (...)

2 - working illegally - why believe applt that he did this work at different subway restaurants w o pay - not just a one-off - rep relied on ZH - cannot say illegal working aggravating fact but I said when challenged by lj - look at all evidence not just that to look at.

3 - disruptive (...)

4 - false claim (frivolous applications) (...)”

18. Ms Joshi also sought to rely on a witness statement prepared by the Sponsor, Ms Boora, in this matter dated 4 March 2020, i.e. the date of the hearing before me. This, no doubt, was prepared in response to my reminder to the Appellant that any allegation of procedural fairness needed to be properly evidenced. That statement provides, insofar as relevant, as follows:

“(3) I attended the appeal hearing on 14 August 2019 at IAC Birmingham and gave oral evidence for this appeal before Immigration Judge Meichen.

(4) I distinctly remember that when my oral evidence finished the Home Office officer lady talked and then my lawyer Ms Khyati Joshi spoke.

(5) When my lawyer said that my husband had lived in the UK illegally and had worked in the UK illegally she added that working in the UK illegally is not an aggravating factor as it is part of living in the UK illegally and then she mentioned a case. At this exact point the judge turned to the Home Officer lady and

asked her 'do you agree with that?' The Home Office lady said 'yes that it a correct'(sic) so my lawyer said that the only point in this appeal was whether the asylum claim my husband made and withdrew as soon as he found out what it was not frivolous claim (sic) because it was only one and she pointed out to the papers where it said more than one or plural".

19. Mr Bates did not object to this new evidence being admitted into evidence. It was not evidence as to matters postdating the hearing or matters on which evidence could have been adduced before the judge, but rather, evidence which relates to the manner in which the appeal proceeded before the judge.
20. I observed to Ms Joshi that the usual way for a party wishing to adduce evidence of alleged procedural irregularity would be for the irregularity to be asserted within grounds of appeal, and for the grounds of appeal to be signed with a statement of truth by the advocate, exhibiting a copy of any contemporaneous note taken by the advocate. I pointed out to Ms Joshi that although I agreed to admit Ms Boora's statement into evidence as evidence which spoke to the issue of whether there was any procedural irregularity before the judge, it was more usual for a statement of truth to be given by the advocate, who is much more likely to have taken a verbatim and contemporaneous minute of the proceedings than would any witness sitting at the back of the court. Indeed, it was not asserted that Ms Boora had taken any note of the hearing at all.
21. Ms Joshi submitted that evidence of a concession having been made by the respondent was therefore contained in the three documents:
  - (1) the judge's own Record of Proceedings,
  - (2) the Presenting Officer's minute of the hearing, and
  - (3) the Sponsor's witness statement.
22. Ms Joshi argued that such evidence established that the Presenting Officer did make a discrete concession that working illegally was not a factor which was to be treated as an aggravating factor for the purposes of 320(11). Ms Joshi argued that the judge erred in law in not only failing to make any reference to this concession, but also to rule to the contrary, that the Appellant's illegal working in the UK did represent an aggravating circumstance, and the judge proceeded unfairly and contrary to the law.
23. Further and in any event, even if there was no concession, Ms Joshi argued that the ratio of ZH was that illegal working should not defeat an application such as the present.
24. For his part Mr Bates argued that the evidence, such as it was, did not establish with any degree of clarity that Ms Venables had made a discrete concession before the judge. Mr Bates argued that the manner in which the observations had been recorded in the judge's Record of Proceedings could equally have represented simply what Ms Joshi had been arguing, as



they appeared within the body of the judge's note of Ms Joshi's submissions, rather than representing any specific concession made by Ms Venables.

25. Mr Bates argued in any event that even if Ms Venables had made a concession, the judge gave cogent reasons at [33] and [34] of the decision for finding that in the present case illegal working *did* represent an aggravating circumstance capable of engaging paragraph 320(11) of the Immigration Rules.
26. The parties also made submissions on the other matters in the appeal including the construction to be given to the question of whether a single frivolous application satisfied the definition of frivolous applications within paragraph 320(11). The parties addressed me on the unreported decisions which I had drawn to their attention.
27. I had also prior to the hearing provided the parties with a further unreported decision on this issue, that being the case of HU/13634/2016 by Deputy Immigration Judge Woodcraft decided on 5 January 2018. Judge Woodcraft had considered an appeal brought by an applicant whose appeal had been dismissed by a First-tier Judge on the basis that paragraph 320(11) was invoked in their application. One of the arguments that Judge Woodcraft contended with was that whilst the Appellant in that case had overstayed in the UK, there were not 'other aggravating circumstances' including making 'frivolous applications' (plural) because only *one* application which had been deemed to be frivolous had been made.
28. Judge Woodcraft dealt with this argument at paragraph [23] of his decision as follows:

"23. A further argument made in the Rule 24 response to the grant of permission was that the paragraph appeared to acknowledge that more than one frivolous application would have to be made before the paragraph could be engaged. It is correct that the paragraph refers to making frivolous applications in the plural but it cannot have been the intention of the drafter of the Rules that every applicant should be entitled to make one frivolous application without adverse consequences. That would plainly be an absurd result. To give efficacy to the Rules it must be intended that the paragraph should be read as making 'one or more' frivolous applications".
29. It transpired upon more detailed consideration of the other two unreported decisions which I had brought to the parties' attention that no ruling had been given by the judges of the Upper Tribunal in those matters as to the issue of the construction of the expression 'frivolous applications'.
30. Ms Joshi maintained, notwithstanding the reasoning applied by Judge Woodcraft, that the term 'frivolous applications' clearly meant applications in the plural, and that one frivolous application would not suffice to engage the rule. Mr Bates argued to the contrary.

31. It is to be recalled that I had drawn the parties' attention to the provision in s.6 Interpretation Act 1978, which provides as follows:

"6. Gender and number.

In any Act, unless the contrary intention appears, —

- (a) words importing the masculine gender include the feminine;
- (b) words importing the feminine gender include the masculine;
- (c) **words in the singular include the plural and words in the plural include the singular.**"

Both parties submitted that the provision applied to the construction of Acts of Parliament, but did not apply to the interpretation of immigration rules, which were not an Act of parliament. However, Mr Bates had already argued that the ordinary meaning of 'frivolous applications' included a single frivolous application, even without the assistance of section 6 of the Act.

## **Discussion**

### **Procedural irregularity issue**

32. I do not find that it is made out to a balance of probabilities that any specific concession was made by Ms Venables as to the relevance of illegal working to the application of paragraph 320(11) immigration rules. The judge's note of Ms Venables' submissions appears to establish that she continued to rely upon illegal working as a relevant factor in the application of the rule. I do not find that it is made out that where the judge records, during Ms Joshi's submissions, the words 'Accept illegal working no agg circ', that this represents anything said by Ms Venables, when questioned about her position in the middle of Ms Joshi submissions. There is nothing within the way that that expression is set out within the judge's note of Ms Joshi's submissions that establishes at the note represented the position adopted by the respondent, as opposed to the submission being made by the Appellant.
33. Ms Venables' note does appear to confirm that there was an exchange between the judge and Ms Venables on this issue in submissions. It was Ms Joshi's assertion that within the section of Ms Venables' note which read: 'rep relied on ZH - cannot say illegal working aggravating fact ...', the words 'cannot say illegal working aggravating fact' represented the position taken by Ms Venables. However, I do not find that point is made out. The whole expression 'rep relied on ZH - cannot say illegal working aggravating fact ...' could easily represent Ms Venables' note of Ms Joshi's submission. Further, it is not at all clear from what follows; '...but I said when challenged by Ij - look at all evidence not just that to look at...', that Ms Venables was there making any concession in the law that illegal working could not amount to aggravating circumstances.

34. The final piece of evidence is the recent witness statement by the sponsor. Whatever impression the sponsor may have been left with listening to the submissions of the parties, there is no suggestion that she took a contemporaneous note. There are also typing errors in the most relevant part of her statement representing the alleged exchange between the judge and Ms Venables: "... 'do you agree with that?' The Home Office lady said 'yes that it a correct'(sic)". I am not satisfied, considering the quality of that evidence, that it represents clear evidence of a concession in law having been made by the respondent during submissions.
35. There remains, then, the assertion within the grounds of appeal that Ms Venables made a concession on the law. The assertion is not accompanied by any statement of truth by Ms Joshi in the grounds of appeal, and Ms Joshi has not attempted to adduce any contemporaneous note that she may or may not have taken at the time. The Appellant was reminded as to the requirement for evidence to establish any allegation of procedural irregularity, and the Appellant has chosen to evidence that allegation in the manner that he has, i.e. by way of a witness statement from the sponsor.
36. I do not find that it has been established that the respondent made a concession in law before the judge.

### **Relevance of illegal working**

37. The Appellant also argued that the authority of ZH establishes that illegal working was not to be treated as an aggravating circumstance under 320(11) in any event.
38. I do not find that such an argument is made out by the Appellant. In ZH, the Court of Appeal was considering the application of former paragraph 276B of the rules, as it related to a person who had remained in United Kingdom unlawfully for 14 years. One requirement of the rule was that having regard to the public interest there are no reasons why it would be undesirable for him to be given indefinite leave to remain on the ground of long residence, taking into account his:
- (a) age; and
  - (b) strength of connections in the United Kingdom; and
  - (c) personal history, including character, conduct, associations and employment record; and
  - (d) domestic circumstances; and
  - (e) previous criminal record and the nature of any offence of which the person has been convicted; and
  - (f) compassionate circumstances; and
  - (g) any representations received on the person's behalf;

39. The Court of Appeal allowed ZH's appeal on the basis that the Tribunal had made findings of fact which were unsustainable on the basis of the evidence [14], and that the Tribunal had not taken into account the reason offered by ZH as to his use of a false identity [16]. Further, 'the practical question for the immigration judge is whether there are any reasons in the public interest why the Appellant, despite his prolonged evasion of immigration controls, should not now be allowed to stay. To use the evasion itself as a reason is to defeat the purpose of the rule.' [18]. Further, in every r.276B case, the relevant nature of the Appellant's stay was that it was unlawful, and its extent was by definition 14 years or more. Since those were treated by the rule as neutral gateway factors, they could not be double-counted by then placing them in the public interest debit column [20]. The public interest in an unlawful stay which had lasted 14 years or more was treated by the rule as met by a grant of indefinite leave to remain provided there were no countervailing factors which tilted the public interest balance the other way [20]. The use of a false identity might be a relevant factor in gauging where the public interest lay, but nothing in the rule accorded it any given weight, much less made it decisive [23].
40. The 'gateway factors' for potential entitlement to leave to remain under 276B of the rules for that Appellant, which the Court of Appeal described as being 'neutral' factors, were that his residence had been unlawful, and was of 14 years. (In fact, the 14 years did not all have to have been unlawful - under 276B, a person may have relied on a period of lawful leave followed by a period of overstaying.) The Court held that to count *evasion of immigration control* itself as a reason why leave to remain should not be granted was to defeat the purpose of the rule. But in so finding, the Court was not, I find, finding that any and all forms of *illegal working* were not relevant to the application of that rule, which in any event is a different rule to paragraph 320(11).
41. I find that the judge directed himself appropriately in law at [33]-[34] and gave reasons in those paragraphs for finding that the Appellant's working amounted to an aggravating circumstance, which are sustainable in law.
42. My finding in this particular case should not be taken as a suggestion that illegal working will always amount to an aggravating circumstance when considering the application of paragraph 320(11); rather, I find that in the particular circumstances of this case, the reasoning approached by the judge does not disclose any material error of law, and the judge was entitled in the present case to treat the Appellant's illegal working as an aggravating circumstance.

### **Construction of 'frivolous applications'**

- 43 The Interpretation Act 1978 indicates that in any Act, unless the contrary intention appears, words in the singular include the plural and words in the plural include the singular. Applying that rule of construction, any requirement of the existence of 'frivolous applications' would clearly be

satisfied by the existence of one frivolous application. However, the parties did not agree that the act applied to immigration rules.

44. However, even if it is the case that the Act does not apply directly to the construction of the immigration rules, the Act provides commonsense approach to the construction of legal terms involving the use of the singular, or plural, and that one should be taken as a reference to the other, unless the contrary intention appears. I note that there is no contrary intention expressed under 320(11); there is nothing within the rule which explicitly requires two or more frivolous applications.
45. Further, the Immigration Rules should be read sensibly recognising that they are statements of the Secretary of State's administrative policy (see the observations of Lord Brown, Justice of the Supreme Court in the case of Mahad v Entry Clearance Officer [2009] UKSC 16). I am of the view that the words 'frivolous applications' can include a single application, if deemed frivolous. I adopt the reasoning of Judge Woodcraft in his decision in HU/13634/2016, that 'it cannot have been the intention of the drafter of the Rules that every applicant should be entitled to make one frivolous application without adverse consequences. That would plainly be an absurd result. To give efficacy to the Rules it must be intended that the paragraph should be read as making 'one or more' frivolous applications".
46. Although Ms Joshi attempted to address me on numerous occasions about the seriousness and circumstances of the Appellant's application for asylum, and whether as a matter of fact the application amounted to a 'frivolous application', I pointed out to her that there was not in fact any challenge in the Appellant's grounds of appeal to the judge's finding that the Appellant's application for asylum represented a frivolous application. That finding therefore remains extant and I reject any proposition that there needed to be more than one frivolous application for that part of 320(11) to be engaged.

### **Other matters**

47. The judge was aware that the application of 320(11) was discretionary, and gave reasons at [38]-[39] for finding that the discretion to exclude the Appellant should be exercised in the present case. The judge was fully aware that the Appellant had made a voluntary departure, but the judge considered the circumstances in which that had taken place, and held that had the Appellant not been found working unlawfully, he would have remained at large in United Kingdom.
48. Addressing paragraph 14 of the Appellant's grounds of appeal, the judge was manifestly aware that the application had been one for leave to enter from abroad, and had been aware that the relationship had formed whilst the Appellant had previously been present in United Kingdom. The grounds do not represent any form of cogent challenge to the judge's decision as to the proportionality of the decision to refuse the human rights claim.

49. I find no error in the judge's decision

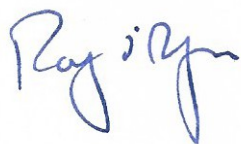
**Notice of Decision**

The decision did not involve the making of any error of law

The Appellant's appeal is dismissed

Signed

Date 16.3.20

A handwritten signature in blue ink, appearing to read 'P. Ryan', is written over a faint circular stamp.

Deputy Upper Tribunal Judge O'Ryan