Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/11800/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11 February 2021	**On 3 March 2021**
Extempore decision	

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

RAYMOND CLARKE
(NO ANONYMITY ORDER IN FORCE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Balroop, Counsel instructed by VH Law
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal of the Secretary of State, who appeals against a decision of First-tier Tribunal Judge Bibi promulgated on 9 January 2020. For convenience, I will refer to the parties as they were before the First-tier Tribunal, unless otherwise stated.

2. The judge allowed an appeal brought by the appellant, a citizen of Jamaica born on 23 March 1973, against a decision of the respondent dated 28 June 2019 to refuse his fresh claim seeking to resist her decision to deport him from the United Kingdom.

Factual Background

3. The appellant was granted indefinite leave to remain in 2000. On 15 August 2002 in the Crown Court at Southwark, he was convicted of four counts of supplying class A controlled drugs. On 3 September 2002, he was sentenced to three years' imprisonment for each count to run concurrently. The Secretary of State pursued his deportation.

4. The events that followed are complex. It is sufficient to say for present purposes that the appellant enjoyed an appeal before Judge Monson in the First-tier Tribunal, who, in a decision promulgated on 2 June 2015 allowed his appeal against the Secretary of State's decision to refuse his human rights claim made in an attempt, again, to resist deportation. By a Decision and Reasons promulgated on 7 December 2015, Upper Tribunal Judge Canavan dismissed an appeal brought by the Secretary of State against the decision of Judge Monson. The Secretary of State appealed to the Court of Appeal.

5. In an *extempore* decision given on 27 February 2018, Lady Justice Arden, as she then was, allowed the Secretary of State's appeal against the decision of the Upper Tribunal, adopting the findings of fact as set out by Judge Monson. She made her own decision to dismiss the appellant's appeal. Her judgment featured a detailed discussion about the then conflicting authorities of this Tribunal and the Court of Appeal concerning what amounted to "unduly harsh". At [22], Arden LJ found that the circumstances of the appellant's case did not meet the "unduly harsh" threshold set out in the Immigration Rules and dismissed the appeal.

6. In seeking to make representations on the basis of his family life against the Secretary of State's decision to deport him, the appellant relied on the relationship that he enjoyed with his two children and his stepson. They are all now over the age of 18, so no anonymity issues arise. Liah Clarke was born in January 2002. At the time the appellant made his further submissions to the Secretary of State in December 2018, she was 17 years old. Rayan Clarke was born on 5 April 2001. He was 18 years old. The appellant also had a stepson who was born in 1988. At that stage he was 31 years old.

7. The appellant's December 2018 further submissions were in response to the judgment of the Supreme Court in KO (Nigeria) v Secretary of State for the Home Department [2018] UKSC 53, given on 24 October 2018. Lord Carnwath held that the concept of "unduly harsh" was to be decided without reference to the relative severity of the offending conduct of the parent of the child concerned. It was a freestanding test. He added at [23] that: "One is looking for a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent."

8. The Secretary of State refused the fresh claim but did so in circumstances which, following judicial review proceedings, attracted a right of appeal. It was in those circumstances that the appellant again appealed to the First-tier Tribunal, leading to the decision of the judge under consideration in these proceedings.

The decision of the First-tier Tribunal

9. In a careful and detailed decision extending to fifteen pages, the judge outlined the immigration history of the appellant, starting with the attempts that he had made to regularise his status in the immediate aftermath of the Secretary of State informing him that he was to be the subject of a decision to deport him. She outlined the submissions that had been made by the appellant at various stages of that process. Having directed herself by reference to the relevant legal framework at [26] to [34], the judge approached the exceptions to deportation contained in paragraph 399A and section 117C(4) of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act").

10. The judge found that the appellant was not able to meet the requirements of Exception 1. He had not been lawfully resident in this country for most of his life and, at [44], she found that he was not socially and culturally integrated in the United Kingdom. That was a finding reached on the basis of the appellant's offending conduct and the prison sentence to which he had been subject. The judge noted that:

> "The supply and distribution of these drugs are considered to be highly damaging to the health and wellbeing of those who use them, and they also affect the wider community whose lives are adversely affected by the actions of those who use and trade in such drugs."

11. The judge found at [45] that the appellant would not face "very significant" obstacles to his integration in Jamaica, observing that that threshold amounts to an "elevated" threshold which would not be met by "mere inconvenience or upheaval". In reaching those findings, the judge applied the decision of the Court of Appeal in Parveen v The Secretary of State for the Home Department [2018] EWCA Civ 932 at [9]. The concept of very significant obstacles represented a high threshold, the judge directed herself.

12. At [46], she found that the appellant's own circumstances when taken in isolation would not demonstrate that he would face very significant obstacles on his return to Jamaica. He was born, raised and educated there prior to coming to the UK. Although there would be teething difficulties upon his return, he would not be able to succeed pursuant to this limb of Exception 1.

13. It was in relation to Exception 2 set out in paragraph 399(a) and Exception 2 of section 117C(5) of the 2002 Act which led to the judge's operative reasoning in allowing the appeal.

14. The judge outlined the appellant's family circumstances. He lives with his partner and his son Rayan and stepson Akeem. Liah visited several times during the week and stayed at most weekends. The judge noted that the evidence provided by the appellant demonstrated a very close relationship between him and the children and observed that all the children had suffered as a direct consequence of the appellant's imprisonment and therefore absence from the family for a lengthy period. At [49] the judge considered the best interests of the children involved. The only child at the time of the application to the Secretary of State had been Liah. At [52] the judge recorded evidence given by Liah's mother concerning the relationship between the appellant and Liah. She described it as being extremely close, and opined that it would have a detrimental impact on Liah in the event that her father were deported. The thought of that was causing Liah anxiety and distress and she is at a crucial stage, said her mother, of transitioning into a being successful young lady due to the influence of her father.

15. At [54] the judge outlined at considerable length the report of an independent social worker commissioned by the appellant. At page 11 of the judge's decision, the independent social worker describes what had been reported to her by Liah during their consultations. Liah had said that she "never felt apart from her father while growing up" and later: "Both children clearly indicated they wanted their father to remain in the UK in order that he can continue being a father figure and provide them support." Subsequently the independent social worker outlined how both Liah and her elder brother underlined the importance of their father's presence and guidance to them as they navigated adolescence. The professional opinion of the social worker as recorded at the end of the extract quoted in the decision was that it would be detrimental to Rayan and Liah's emotional health and wellbeing for the appellant to be deported.

16. At [58], the judge found that the appellant plays "an essential role" in the lives of the children and that it would be "devastating" for them if he were to be deported. Specifically in relation to Liah, the judge found that the appellant is her "rock" and her source of guidance. They have a wonderful father to daughter relationship. If the appellant were required to leave the UK there would be no means by which Liah would be able to visit him regularly or maintain contact. At [59] the judge said as follows:

> "It was clear to me from the evidence of Ms Watson (Liah's mother) and Ms Russell (the appellant's partner with whom he has had a relationship on and off for some time) that they bore the brunt and repercussions of the appellant's imprisonment when they were left to care for the children on their own. I find in these circumstances, and the respondent has already accepted that it would be unduly harsh to expect Liah to go to live in Jamaica, that it would equally be unduly harsh for the Liah [sic] to remain in the UK without their father. In other words, it is imperative that the appellant is allowed to remain here with Liah and the rest of the family, so that he can continue to provide Liah with the support and care he has been giving since his release from prison."

17. At [60] the judge again noted that Liah is transitioning from being a teenager to being an adult and that she needs her father's support to help her through the teenage years. The judge at that point cited KO (Nigeria) and a range of other authorities. She concluded that the appellant satisfied the provisions of paragraph 399(a).

18. The judge then addressed the substantive requirements of the "very compelling circumstances" test contained in section 117C(6). The judge noted at [62] that the appellant committed the offence in question over eighteen years ago, and had not committed any other offences. He has a strong family network in this country and shares a strong bond with his children. Liah is a successful student due to her father's input, care and support and she has accelerated academically due to the support provided by her father. Thereafter she discussed Rayan's circumstances, which are of less relevance to this appeal, given her operative findings and Rayan's age at the time. It is necessary for me simply to note that the appellant's impact on Rayan was recorded in similarly glowin and positive terms.

19. At [68] and [69] the judge said:

> "This is not one of those cases where the appellant's two children could turn to other family members in the same way they rely on their father. The appellant has raised two highly successful children who would be impacted detrimentally if their father is deported from the UK. Further, the bond between Rayan and Liah would also be impacted as their father is responsible for keeping the family unit together and creating that close bond. Without their father their whole support network would be impacted and would have an immense impact on both the two teenagers. This was also clearly stated in the social worker's report.
>
> I find that the unique circumstances of this case, is one in which there are very compelling circumstances and the appeal should succeed on this ground."

The judge allowed the appeal.

Grounds of Appeal

20. There are four grounds of appeal advanced by the Secretary of State. Ground 1 contends that, pursuant to the authority of Devaseelan (Second Appeals – ECHR – Extra-Territorial Effect) Sri Lanka* [2002] UKIAT 702, the judge should have taken the decision of the Court of Appeal given by Lady Justice Arden as her starting point. She failed to do so, thereby making an error of law.

21. Secondly, the judge is said to have failed to direct herself concerning the "unduly harsh" threshold by reference to the leading authorities on the topic, for example The Secretary of State for the Home Department v PG (Jamaica) [2019] EWCA Civ 1213 and Secretary of State for the Home Department v KF (Nigeria) [2019] EWCA Civ 2051. The judge failed to have regard to the elevated threshold at the heart of what amounts to unduly harsh and so fell into error.

22. Pursuant to ground 3 the judge is said to have failed to provide adequate reasons on a material matter. The substance of this ground of appeal seeks to engage with a

range of the findings of fact reached by the judge and focusses having done so on [59] of the judge's decision where she said, "it was clear to me from the evidence of Ms Watson and Ms Russell that they bore the brunt and repercussions of the appellant's imprisonment …". The grounds of appeal contend that Judge Bibi failed to set out what those repercussions were and according failed to give sufficient reasons for why it would be unduly harsh for Liah to remain in the UK without the appellant.

23. In relation to ground 4, the Secretary of State submits that it was a misdirection of law on a material matter for the judge to find that there were very compelling circumstances on the facts and evidence in this case. For example, at subparagraph 2 of that ground it is said that the judge made findings concerning what is unduly harsh by reference merely to the "commonplace effects of deportation".

24. Finally, it is said that the judge makes no references to section 117B of the Nationality, Immigration and Asylum Act 2002 and in doing so fails to take into account material considerations.

25. The respondent to these proceedings who was the appellant before the First-tier Tribunal served a Rule 24 response on 16 November 2020. In it Mr Balroop, who also appeared before me, submits that the judge did direct herself by reference to the authority of Devaseelan. She stated at [40] that she had referred to all the previous decisions and taken the relevant ones into account. The only decision of any significance, submits Mr Balroop, was that of the Court of Appeal dismissing the appellant's appeal in the course of remaking it, having found an error of law in the judgment of the Upper Tribunal. It was not necessary for the judge expressly to set out any further detail than that, submits Mr Balroop. The Court of Appeal judgment had been crafted by reference to the understanding of the authorities then in force relating to what amounts to "unduly harsh". The Court of Appeal's approach was premised on the previous understanding of that phrase and, he submits, sought to take into account the relative severity of the appellant's offending when calibrating what amounts to "unduly harsh".

26. Thirdly, Mr Balroop submits that it was not necessary for the judge expressly to address the authorities cited within the Secretary of State's grounds of appeal, pursuant to AA (Nigeria) v The Secretary of State for the Home Department [2020] EWCA Civ 1296. The Court of Appeal held at [9]:

> "Judges who are experienced in these specialist courts should be assumed by any appellate court or tribunal to be well familiar with the principles and to be applying them without the need for extensive citation, unless it is clear from what they say that they have not done so ...".

27. In relation to the judge's operative application of the "unduly harsh" threshold, Mr Balroop submits that the approach adopted by the judge was consistent with that which the Court of Appeal in HA (Iraq) v Secretary of State for the Home Department (Rev 1) [2020] EWCA Civ 1176 would later declare it to be. The Court of Appeal held at [44] that the *dicta* of Lord Carnwath in KO at [23] when he said, "one

is looking for a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent" cannot be read literally. The Court of Appeal said that it is "hard to see how one would define the level of harshness that would 'necessarily' be suffered by 'any' child …". In addition, the factors considered by the judge were entirely consistent with those set out by the Court of Appeal in HA (Iraq) at [56]. It follows, therefore, that the judge took into account the relevant factors, submits Mr Balroop, applied the concept of "unduly harsh" by reference to the now clarified correct understanding of what unduly harsh is, and reached a conclusion that was open to her on the facts of the case.

Legal Framework

28. Under section 32(5) of the UK Borders Act 2007, the Secretary of State must make a deportation order in respect of a "foreign criminal". The principle does not apply if the removal of the foreign criminal in pursuance of the deportation order would breach that person's rights under the European Convention on Human Rights ("ECHR").

29. Section 117C(1) of the 2002 Act provides that the deportation of "foreign criminals" is in the public interest for the purposes of determining the proportionality of deportation under Article 8(2) ECHR. The appellant satisfies the definition of foreign criminal as he is not a British citizen, and has been convicted of an offence which led to a period of imprisonment of at least 12 months: see section 117D(2) of the 2002 Act.

30. The appellant's convictions fall into section 117C(3) of the 2002 Act; he has not been sentenced to a period of imprisonment of four years or more, with the effect that, if Exception 1 or 2 applies, his deportation will not be in the public interest. Those exceptions are:

> "(4) Exception 1 applies where—
>
> (a) C has been lawfully resident in the United Kingdom for most of C's life,
> (b) C is socially and culturally integrated in the United Kingdom, and
> (c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.
>
> (5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.
>
> (6) In the case of a foreign criminal who has been sentenced to a period of imprisonment of at least four years, the public interest requires deportation unless there are very compelling circumstances, over and above those described in Exceptions 1 and 2."

31. Subsection (6) also applies to foreign criminals sentenced to less than four years' imprisonment, it has been held. The extent to which an individual satisfies the criteria in Exceptions 1 and 2, even if not meeting their requirements fully, is relevant to the assessment of "very compelling circumstances…" See NA (Pakistan) v Secretary of State for the Home Department [2016] EWCA Civ 662.

Discussion

32. It is important to recall that an appeal to this Tribunal may only lie where there is an error of law. It is trite law that many judges will approach the same set of facts very differently. The mere fact that one judge adopts a relatively favourable interpretation of evidence they have heard does not necessarily render that finding irrational, simply on the basis that other judges, even many other judges, may have approached the same question in a different manner. It is against that background that it is necessary to engage with the detail of the Secretary of State's submissions.

33. It is true that the judge did not expressly consider the specific findings reached by Lady Justice Arden in the Court of Appeal decision. However, I consider this submission and ground of appeal to be one that is more of form than substance. The judge did address the need to consider the previous decision as the starting point, and specifically referred to the case of Devaseelan. She then said at [41] that she had been provided with the previous appeal decisions in the respondent's bundle. I have viewed that bundle, it features the Court of Appeal's decision.

34. In addition, the judgment of Lady Justice Arden did not reach findings of fact as such, but rather focussed on the the findings of fact that had been reached some five years before Judge Bibi was to engage with the evidence in this case, namely those as they were found to be by Judge Monson in 2015. Lady Justice Arden's operative analysis was to view those facts through the lens of the then prevailing understanding of the concept of what amounted to unduly harsh.

35. At [17] Lady Justice Arden criticised the approach taken by the First-tier Tribunal and the Upper Tribunal to calibrating what was "unduly harsh" without considering the seriousness of the offending. It is clear that the approach taken by the Court of Appeal was to import into its consideration of what was "unduly harsh" a reference to the relative seriousness of the offences in question. Then, at [22], the Court of Appeal concluded that there was "no doubt about the conclusion to be made in this case on the basis of the correct test", referring to the then prevailing understanding of the "unduly harsh" test. It is clear that the Court of Appeal's approach to what amounts to "unduly harsh" was materially altered by the judgment of the Supreme Court in KO (Nigeria) which was handed down some eight months after the Court of Appeal's decision. At [23], as I have already referred, the Supreme Court said:

> "What [the unduly harsh test] does not require in my view … is a balancing of relative levels of severity of the parent's offence other than is inherent in the distinction drawn by the section itself by reference to the length of sentence".

36. It follows, therefore, that the approach taken by the Court of Appeal to finding that the decisions of the First-tier Tribunal and the Upper Tribunal could not possibly have amounted to unduly harsh was pursuant to an understanding of the legal framework which was subsequently overturned by the Supreme Court in KO (Nigeria). For that reason there is no merit to ground 1. Not only did the judge consider the impact of the previous decisions, but there was no need expressly to address the impact of the Court of Appeal having found that the unduly harsh test was satisfied by reference to the evidence as it stood in 2015 for the simple reason that that test had been amended or, more accurately clarified, by the Supreme Court in KO (Nigeria). There is no merit to ground 1.

37. Turning to ground 2, Mr Walker readily accepted in submissions that this was not the Secretary of State's strongest point. It is true that the judge did not address the authorities referred to by the Secretary of State in the grounds of appeal. However, a degree of caution is required before concluding that it is incumbent upon a judge to refer to all authorities in an appeal in this jurisdiction.

38. At [9] of AA (Nigeria), the Court of Appeal said it would usually be unnecessary to refer to anything outside the four authorities it had identified in that paragraph. They were KO (Nigeria), R (on the application of Byndloss) v Secretary of State for the Home Department [2017] 1 WLR 2380, NA (Pakistan) v Secretary of State for the Home Department [2017] 1WLR 207 and HA (Iraq) v Secretary of State for the Home Department [2020] EWCA Civ 117.

39. The judge of course did refer to KO (Nigeria). The case of Byndloss addressed the concept of "very compelling circumstances" for the purposes of section 117C(6), to which I will return. The question addressed in NA (Pakistan) was the extent to which the concept of "very compelling circumstances over and above" contained in section 117C(6) should be informed by the extent to which an appellant was able to satisfy part of the preceding exceptions contained in the earlier subsections of section 117C. HA (Iraq) had not been handed down by the time of this judge's decision. In relation to NA (Pakistan) and the judge's findings that Exception 2 had been met, it was not necessary to engage in any further discussion as, by definition, whether there are "very compelling circumstances" is a matter that is relevant only in the event that one of the two exceptions is not met. Therefore, nothing turns on the fact the judge did not express reliance on Byndloss or NA (Pakistan).

40. Mr Balroop submits that the import of the Court of Appeal's decision in HA (Iraq) is such that the analysis conducted by the judge was consistent with the Court of Appeal's approach. In HA (Iraq) the Court of Appeal held at [56]:

> "There is no reason in principle why cases of 'undue' harshness may not occur quite commonly. Secondly, if Tribunals treat the essential question as being 'is this level of harshness out of the ordinary?' they may be tempted to find that Exception 2 does not apply simply on the basis that the situation fits into some commonly encountered pattern."

The Court of Appeal went on to say that the factors that are relevant were the child's age, whether the child's parent lives with them and adding in brackets that (a divorced or separated father may still have a genuine and subsisting relationship with a child who lives with the mother), by the degree of the child's emotional dependence on the parent, by the financial consequences of his deportation, by the availability of emotional and financial support from a remaining parent and other family members and by the practicability of maintaining a relationship with the deported parent and of course by reference to all individual characteristics of the child.

41. Mr Balroop submits that those are precisely the considerations this judge took into account. I agree. The judge outlined the degree of emotional dependence between Liah and her father. She looked at the ability that the appellant would have to maintain his relationship with Liah in the event of his deportation to Jamaica. The fact that Liah does not live with her father full-time is not a factor which is of great significance, given the Court of Appeal itself emphasised the fact that a divorced or separated father may still have a genuine and subsisting relationship with a child who lives with the mother. I pause to add that the Secretary of State accepted in the refusal letter in this case that there was a genuine and subsisting relationship.

42. Mr Walker submits that the age of Liah, namely 17 and nearly 18 at the time of the application, places the appellant's relationship with her in significantly different territory to that which would be occupied by for example a child of 8 or 9 or 10 or 11. That is undoubtedly true. However, disagreeing with the judge as to the weight to be ascribed to that factor as part of this limb of her analysis is not a legitimate ground of appeal to this Tribunal, and the Secretary of State's submission in that respect does not demonstrate that the judge made an error of law by reaching her findings on that basis. It is clear that the operative analysis conducted by the judge in relation to the application of the unduly harsh threshold was entirely consistent with that which the Court of Appeal would subsequently declare it to be. For those reasons there is no merit to ground 2.

43. I must confess to having had some difficulty in attempting to distinguish the contents of grounds 3 and 4 from mere disagreements of fact and weight. If one takes a closer look at the substance of ground 3, it is in essence a series of disagreements with the findings of the judge. There are queries as to the weight which has been ascribed. There is a the suggestion that the judge should have approached the assessment of unduly harsh with a degree of "necessary realism and attention to fact". Wisely in submissions, Mr Walker did not seek to contend that the decision of the First-tier Tribunal had erred in any factual sense, or that there were factual matters in the chronology of the appellant's immigration or criminal history, looking back to what took place in 2002, which the judge had failed to consider.

44. In relation to ground 4, as I understand it, the grounds of appeal contended that the judge erred by finding that there were "very compelling circumstances over and above the exceptions". In my judgment that is simply a disagreement of weight. While it is true that the judge did not expressly consider section 117B of the 2002 Act,

nothing turns on that. Her task was to consider whether the exceptions were satisfied. She found Exception 2 to be satisfied on the basis of the appellant's relationship with Liah. That was entirely open to her. In those circumstances, it was not necessary for the judge expressly to engage in a consideration of whether there were "very compelling circumstances over and above…" However, having done so, the judge featured reasons which were entirely open to her on the evidence. The opening analysis at [62] records that this was an offence that was committed over eighteen years before the hearing before the First-tier Tribunal. The judge noted that the appellant had not offended since, and that the family network enjoyed by the appellant in this country was strong. She went on to observe the impact of his deportation on Rayan as well as Liah and then considered the levels of support available to the appellant in this country.

45. In my judgment, those are factors which were entirely consistent with the approach that the Supreme Court held must be taken to the concept of "very compelling circumstances" in Byndloss. Mr Balroop highlighted the criteria listed at [55] of the Supreme Court's judgment in that matter. They included:

> "(a) The depth of the claimant's integration in the United Kingdom in terms of family, employment and otherwise;
>
> (b) the quality of his relationship with any child, partner or other family member in the United Kingdom;
>
> (c) the extent to which any relationship with family members might reasonably be sustained even after deportation, whether by their joining him abroad or otherwise;
>
> (d) the impact of his deportation on the need to safeguard and promote the welfare of any child in the United Kingdom;
>
> (e) the likely strength of the obstacles to integration in the society of the country of his nationality; and, surely in every case
>
> (f) any significant risk of his reoffending in the United Kingdom judged no doubt with difficulty in the light of his criminal record set against the credibility of his probable assertions of remorse and reform."

46. Those were the very factors which the judge considered. Again, there may be points in relation to which another judge would have taken a different approach, for example in relation to the weight to be ascribed to the claimant's integration in the United Kingdom. I consider the Supreme Court in that subparagraph to have been addressing family integration and employment integration, rather than the wider societal integration which is addressed by Exception 1 in 117C of the 2002 Act. The judge did consider the quality of the relationship between the appellant and Liah as well as the remaining members of his family here. The judge also considered the impact of the appellant's deportation on Liah and of course the Secretary of State had accepted in the decision letter that it would be unduly harsh to expect Liah to relocate to Jamaica on her own with the appellant.

47. In relation to the final criterion, the risk of reoffending, it was entirely rational for the judge to approach her analysis by ascribing significance to the fact that the appellant committed a single albeit very serious offence over eighteen years previously. The judge addressed all relevant considerations and reached a decision that was open to her on the facts. Properly understood, the Secretary of State's appeal in these proceedings may be categorised as a series of extensive disagreements of fact and weight which do not demonstrate that there is an error of law.

48. This appeal is dismissed.

Notice of Decision

The appeal is dismissed. The decision of Judge Bibi did not involve the making of an error of law.

No anonymity direction is made.

Signed *Stephen H Smith* Date 22 February 2021

Upper Tribunal Judge Stephen Smith