IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003638

First-tier Tribunal No: HU/04058/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 10th of January 2024

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

TRUNG HA PHAM
(NO ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer
For the Respondent: Mr L Yousefain of Counsel, instructed by Sabz Solicitors LLP

Heard at Field House on 7 November 2023

DECISION AND REASONS

1. In a decision promulgated on 27 July 2023, I found an error of law in the decision of First-tier Tribunal Judge Choudhary promulgated on 27 June 2022, in which Trung Ha Pham's appeal against the decision to refuse his application to revoke his Deportation Order date 18 June 2021 was allowed on human rights grounds. The decision of the First-tier Tribunal was set aside for the reasons given in the annexed decision. This hearing is the re-making of Trung Ha Pham's appeal on a de novo basis. For ease I continue to refer to the parties as they were before the First-tier Tribunal, with Trung Ha Pham as the Appellant and the Secretary of State as the Respondent.

2. The Appellant is a national of Vietnam, born on 7 July 1984, who claims for have first arrived in the United Kingdom unlawfully in 2004 or 2006. He was served with notice as an illegal entrant on 6 July 2007. The Appellant was convicted on 24 August 2007 for production of a class C drug (cannabis) and dishonestly using electricity, for which he was sentenced to 30 months' imprisonment and was Court recommended for deportation. On 23 May 2008 the Appellant made an

© CROWN COPYRIGHT 2024

asylum claim, to which the Respondent issued a section 72 certificate and refused the claim on 3 July 2008. The Appellant withdrew his appeal against that refusal and on 4 September 2008 a Deportation Order was signed against the Appellant, pursuant to which he was deported to Vietnam on 23 September 2008.

3. The Appellant claims to have re-entered the United Kingdom in breach of the Deportation Order in 2013 and subsequently made an application for leave to remain on 22 June 2016. That was refused by the Respondent on 10 December 2017 and two subsequent applications made on 6 March and 6 April 2018 were both refused. The Appellant was detained on 28 June 2018 and deported to Vietnam on 13 July 2018. Just prior to this, the Appellant sought to challenge his deportation by way of an application for Judicial Review, for which permission was refused.

4. A number of applications for leave to enter the United Kingdom as a spouse were made by the Appellant, on 29 April 2019 which was refused on 14 October 2019 and 2 July 2020 which was refused on 11 August 2020. The last decision was subject to a late appeal. On 4 December 2020, the Appellant made an application to revoke the Deportation Order, the refusal of which is the subject of this appeal.

The appeal

Applicable law

5. The relevant parts of the Immigration Rules (as they were for the decision under appeal in this case) for consideration of a revocation of a Deportation Order are in paragraphs 390 to 391A as follows:

> *390. An application for revocation of a deportation order will be considered in the light of all the circumstances including the following:*
>
> *(i) the grounds on which the order was made;*
>
> *(ii) any representations made in support of revocation;*
>
> *(iii) the interests of the community, including the maintenance of an effective immigration control;*
>
> *(iv) the interests of the applicant, including any compassionate circumstances.*
>
> *390A. Where paragraph 398 applies the Secretary of State will consider whether paragraph 399 or 399A applies and, if it does not, it will only be in exceptional circumstances that the public interest in maintaining the deportation order will be outweighed by other factors.*
>
> *391. In the case of a person who has been deported following conviction for criminal offence, the continuation of a deportation order against a person will be the proper course:*
>
> *(a) in the case of a conviction for an offence for which the person was sentenced to a period of imprisonment of less than four years, unless 10 years have elapsed since the making of the deportation order when, if an*

application for revocation is received, consideration will be given on a case-by-case basis with the deportation order should be maintained, or …

Unless, in either case, the continuation would be contrary to the Human Rights Convention or the Convention and Protocol Relating to the Status of Refugees, or there are other exceptional circumstances that mean the continuation is outweighed by compelling factors.

391A. In other cases, revocation of the order will not normally be authorised unless the situation has been materially altered, either by change of circumstances since the order was made, or by fresh information coming to light which was not before the appellate authorities or the Secretary of State. The passage of time since the person was deported may also in itself amount to such a change of circumstances as one revocation of the order."

6. The requirements where a person claims that their deportation would be contrary to the United Kingdom's obligations under Article 8 of the European convention on Human rights in so far as they are set out in the Immigration Rules and relate to this appeal were contained in paragraphs 398 to 399A at the relevant time, which are materially the same as those set out below in section 117C of the Nationality, Immigration and Asylum Act 2002 and are not therefore set out in full here.

7. By virtue of section 117A of the Nationality, Immigration and Asylum Act 2002, Part V of that Act applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts breaches Article 8 of the European Convention on Human Rights and as a result would be unlawful under section 6 of the Human Rights Act 1998.

8. Section 117A applies to the public interest considerations in all cases and section 117C applies additional considerations to cases involving foreign criminals. So far as relevant to this appeal, section 117B sets out factors to be considered in all cases and the additional consideration in cases involving foreign criminals, which are as follows:

*"**117C. Article 8: additional considerations in cases involving foreign criminals***

(1) The deportation of foreign criminals is in the public interest.
(2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
(3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
(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."

9. In KO (Nigeria) v Secretary of State for the Home Department [2018] UKSC 53, the Supreme Court considered the test for and factors to be taken into account when assessing the meaning of 'unduly harsh' in paragraph 399A of the Immigration Rules and section 117C(5) of the Nationality, Immigration and Asylum Act 2002. In paragraph 23, Lord Carnworth held as follows:

> *"On the other hand the expression "unduly harsh" seems clearly intended to introduce a higher hurdle than that of "reasonableness" under section 117B(6), taking account of the public interest in the deportation of foreign criminals. Further the word "unduly" implies an element of comparison. It assumes that there is a "due" level of "harshness", that is a level which may be acceptable or justifiable in the relevant context. "Unduly" implies something going beyond that level. The relevant context is that set by section 117C(1), that is the public interest in the deportation of foreign criminals. 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. What it does not require in my view (and subject to the discussion of the cases in the next section) is a balancing of the relative levels of severity of the parent's offence, other than is inherent in the distinction drawn by the section itself by reference to length of sentence. Nor (contrary to the view of the Court of Appeal in IT (Jamaica) v Secretary of State for the Home Department [2016] EWCA Civ 932, [2017] 1 WLR 240, paras 55, 64) can it be equated with the requirement to show "very compelling reasons". That would be in effect to replicate the additional test applied by section 117C(6) with respect to sentences of four years or more."*

10. Within the Supreme Court's consideration of the specific appeal in KO, further reference is made to the authoritative guidance on the meaning of unduly harsh given in MK (Sierra Leone) v Secretary of State for the Home Department [2015] UKUT 223 (IAC), which held in paragraph 46:

> *"By way of self-direction, we are mindful that 'unduly harsh' does not equate with uncomfortable, inconvenient, undesirable or merely difficult. Rather, it poses a considerably more elevated threshold. 'Harsh' in this context, denotes something more severe, or bleak. It is the antithesis of pleasant and comfortable. Furthermore, the addition of the adverb 'unduly' raises an already elevated standard still higher."*

11. The Supreme Court further considered the "unduly harsh" test in HA (Iraq v Secretary of State for the Home Department [2022] UKSC 22 in which the self-direction set out above from MK was approved as the correct approach and confirmed that there is no notional comparator test to be applied.

Respondent's reasons for refusal

12. The Respondent refused the application the basis that although it was accepted that the Appellant had family relationships with his wife and two children, it would not be unduly harsh for any of them to remain in the United Kingdom without the Appellant. It was noted that the Appellant had re-entered the United Kingdom in breach of the Deportation Order and rekindled his relationship with his wife during that time, such that little weight was given to that relationship and it would also not be unduly harsh for the Appellant's wife to join him in Vietnam. However, the best interests of the children would be to remain in the United Kingdom such that their mother would need to remain here as well as their primary carer. The family life exception was not met, nor was the private

life exception and there were no very compelling circumstances to outweigh the public interest in deportation. Further, paragraph 390 of the Immigration Rules had not been met for revocation as ten years had not passed since the Deportation Order had been made (the period being broken by the Appellant re-entering in breach on two occasions and remaining in the United Kingdom between 2013 and 2018).

The Appellant's evidence

13. In his written statement signed and dated 12 April 2022, the Appellant gave details of his family in the United Kingdom and states that he is in permanent employment in the construction industry in Vietnam. The Appellant confirms his immigration history up to his deportation in September 2008 and stated that he found his way back to the United Kingdom in 2013 to find his wife and son, unaware of the Deportation Order against him. The Appellant regained contact with his wife in December 2013, who had in the interim since his deportation married, had a child and was later divorced from another man. The Appellant rekindled his relationship and they started living together as a family from April 2014, looking after both children and developing a bond with his step-son. The Appellant was deported again on 13 July 2018 after attending a reporting appointment and has not re-entered the United Kingdom since.

14. The Appellant describes a negative impact on his wife and children since his deportation, particularly as his wife is now a single mother working long hours in her own business. The Appellant feels that he is unable to fulfil his role as a father or husband and he has not been honest with his children that he is not permitted to enter the United Kingdom as that may lead to confusion and poor behaviour.

15. In 2018, the Appellant saw his family for five and a half weeks and in 2019 for five weeks. In November 2019 the Appellant saw his wife in Vietnam for 5 days. The Appellant's family have been restricted in travelling since due to the Covid-19 pandemic and social media communication has not been enough to replace them physically being together.

16. The Appellant understood that his Deportation Order would expire after ten years, so he applied for a spouse visa to re-join family in the United Kingdom. He acknowledges that he returned to the United Kingdom during that time, for which he is sorry, but he did not engage in any criminal behaviour during that time and attempted to regularise his status. The Appellant has no criminal convictions in Vietnam, has learnt from his past mistakes and is remorseful as well as being rehabilitated within the community.

The Appellant's wife's evidence

17. In her written statement signed and dated 21 April 2022, Thi Dieu Diep (the Appellant's wife) confirmed that she is a British ctizien, self-employed in the United Kingdom with one son, born in 2007 and one in 2010 (from a previous relationship); both of whom are British citizens. She married the Appellant in Vietnam on 6 August 2018. The Appellant's wife was not initially aware that the Appellant had been deoported in 2008 and reconnected with him in December 2013, when they decided to get back together. She described the Appellant as the missing piece of the family to give her the support needed as she was struggling to look after two children by herself. The couple lived together from

April 2014, with the Appellant caring for the children while she was working and they would spend time together as a family at the weekend.

18. The Appellant's wife has struggled looking after the two children herself since the Appellant was deported again in 2018 given the long hours she worked and this has affected her emotional wellbeing. The children are in need of fatherly guidance so that they do not misbehave, so there is someone else helping in looking after them and the Appellant's presence would help the children's social development.

19. In a further written statement, signed and dated 2 November 2023, the Appellant's wife reiterates that it has become extremely difficult for her to look after her children by herself and needs the Appellant's presence in the United Kingdom. She experienced difficulties due to the Covid-19 restrictions because she was not eligible for government support as a self-employed person and could no longer afford her rented property, such that she moved to her old home in Birmingham. From there, the younger son had to move schools, be driven to his new school before the Appellant's wife went to work and then had to wait at work with her after school to go home. The older son, now 16, has been in trouble at school, fighting, following which he would have to leave school early and the Appellant's wife was invited to school many times because of this. The police have also been to the Appellant's wife's home because her eldest son had been playing with bad friends and knocking on doors. There was also difficulty with his attendance at school, going in late or not at all and the school would often contact the Appellant's wife about this as well. On another occasion, the family had to hide due to a threat from someone the eldest son 'had friction with' but the police were not involved.

20. The Appellant's wife thinks things would be different if the boys' father was here, for example he could take the younger son to and from school and the boys would have to listen to him rather than just hang up the phone as they can now. The Appellant could also help take the older son to a college further away as he currently does not have a place and is on a waiting list. With two parents, one could work full-time and the other part-time to share the family duties, at the moment, the Appellant's wife has no free time or day off. She is very stressed and would sometimes cry all day or want to end her life, suffering from depression. The children have been misbehaving every day since the Appellant was deported, but would be better and happier with both parents here.

21. At the oral hearing, the Appellant's wife confirmed her details (including a new address), adopted her written statements, and gave oral evidence through a court appointed Vietnamese interpreter. She confirmed that she last saw the Appellant in Vietnam in 2019 and has not been able to visit since. The last contact she and the children had with him was just before the hearing and the day before. The Appellant speaks to his children three to four times per week, for 20 to 30 minutes and chats through whatsapp. The Appellant was in the United Kingdom between September or October 2013 and July 2018, he did not return after that.

22. In cross-examination, the Appellant's wife stated that neither she nor her eldest son had any contact at all with the Appellant from his deportation in 2008 to the end of 2013. There were visits to the Appellant in 2018 and 2019.

23. The Appellant's wife stated that her eldest son has had behavioural issues which have affected him at school, including being naughty, fighting and poor

attendance for which the school has contacted her mostly by phone and sometimes by email. The younger son sees his biological father often and he does not want his son to relocate to Vietnam.

24. I asked the Appellant's wife some further questions, particularly around the impact of the Appellant's deportation on their eldest son. The Appellant's wife stated that his behaviour was getting worse, especially at the end of the last academic year when he was really naughty, around July 2023 but it started in October 2022. She was called a number of times to collect him early to avoid fights at school. The Appellant's wife said that the poor behaviour started after the Appellant went back to Vietnam as he would have kept an eye on the boys if he was here and she does not have enough time ot care for him because of the hours worked. The eldest son finished school in the summer of 2023 but is not currently studying, he had a place in a sixth form college but the family moved house in mid-October 2023 and he didn't have enough points and there wasn't any spaces in a college in Birmingham, so he is not currently studying.

25. At this point, the Appellant's wife wished to adduce further documents in relation to the eldest son's education; which I turn to later.

Documentary evidence

26. There is an Independent Social Worker report dated 26 November 2020 by Ophelia Mangono. In summary, the author finds that it is in the best interests of the Appellant's family for him to be permitted to re-enter the United Kingdom. The views of the Appellant's wife and both children are set out in the report; all of which show good family relationships when the Appellant was in the United Kingdom between 2014 and 2018 and ongoing communication since, albeit all have expressed a desire for the Appellant to be in the United Kingdom to support the family like he used to and in particular as a male role model to the boys. The boys miss the activites that they used to do with the Appellant such as playing football, eating out, going to the park and so on. The report concluded that the Appellant remaining in Vietnam will have a significant impact on the children's emotional and behavioural development.

27. A strong attachment was found between the Appellant and the two children, with concerns as to the impact of his removal on their emotional development as they continue in to adulthood. A number of pieces of research are quotes as to possible consequences of the removal of a parent and impact of single parent families, particularly the removal of a father from the family and the risk of exploitation by gangs; as well as the need for stable routines. The report identifies the separate impact on the Appellant's wife and her struggles as a single parent, particularly during the Covid-19 pandemic, with greater emotional and financial burdens on her.

28. The report refers to both children being settled in school in the United Kingdom, with no attendance or behavioural issues and both making good or excellent academic and personal progress.

29. The report concludes with the opinion that the Appellant's ongoing and long-term absence from the family until *"will have a devasting effect on the family dynamics and functions, as these children age, which will in turn impact negatively on Tommy and Anthony's developing confidence, staility, emotional wellbeing and prevent them from reaching their full potential. In addition, Ms*

Diep, who has already stated that she is struggling with parenting these children as a single parent."

30. In breach of directions and with no reason as to why the evidence was produced only during the hearing; the Appellant's wife sought to rely on three further documents. Given their brevity, these were able to be dealt with at the hearing by Mr Tufan such that I permitted them to be taken into account. The first was an email dated 14 October 2022 about a fight involving the elder son and him leaving early that day, followed by an exchange of emails dated 16 November 2022 to and from Netherstowe school and the Appellant's wife. The latter describe the Appellant's wife's report of her and her son being bullied by another child and his family, who had also threatened her and were racist towards them. The school response was that the boys were no longer in the same form and did not have the same break times to avoid interaction and for the next week, the Appellant's son would leave school five minutes early to avoid any issues after school.

31. The second document is what appears to be a proforma attendance letter dated 20 June 2022 to invite the Appellant's wife to a meeting at school because her elder son's attendance had dropped to 91%.

32. The third document is a copy of an email on 7 February 2020 to explain why the Appellant's elder son was removed from his RE lesson, which was because he was talking loudly three times during periods of silent working. He is said to be an able student who makes valuable contributions, but must follow instructions promptly.

33. There were in addition a wide range of other documents, including identity documents, letters from both children, school letters and reports, letters of support (including a letter from the younger son's biological father), untranslated messages, travel details, photographs, bank statements and employment/business documents which I have taken in to account but which do not need to be individually referred to in this decision.

Closing Submissions

34. In closing on behalf of the Respondent, Mr Tufan opposed the appeal on the basis that it would not be unduly harsh for the Appellant's wife and children to remain in the United Kingdom without him; although it was accepted that it would be unduly harsh for them to relocate to Vietnam. Further, that there were no very compelling circumstances to outweigh the public interest in deportation and no basis for revoking the Deportation Order.

35. In relation to the further documents submitted during the hearing, Mr Tufan submitted that that they added little of substance to the appeal. There were letters from school in February 2020 and October 2020 referring to generally good behaviour and excellent progress (in relation the eldest son) and 100% attendance (in relation to the younger son). There was then a proforma letter in June 2022 as to the elder son's attendance which does not identify anything of substance linked to his father's deportation in 2018 and emails in November 2022 referring to one particular incident in school which show more of a one off issue rather than any link to generally poor or deteriorating behaviour.

36. Mr Tufan accepted that there has now been a period of more than 10 years which has elapsed since the Appellant's deportation, but the Appellant's breach of his

Deportation Order by re-entering in 2013 until deported again in 2018 was likely to be a strong public policy reason for maintaining the deportation order as per the case of Smith v Secretary of State for the Home Department [2017] UKUT 00166 (IAC). Mr Tufan submitted that when considering whether a period of ten years had elapsed since deportation, that should be a continuous, rather than an aggregate or total period.

37. The Respondent did not dispute that the Appellant was in a genuine and subsisting relationship with his wife and at least his biological son; but not initially accepting the same with his step-son who he hasn't seen for years and who has an ongoing relationship with his biological father such that the Appellant has not, in accordance with R (on the application of RK) v Secretary of State for the Home Department (s.177B(6); "parental relationship" (IJR) [2016] UKUT 31, stepped into the shoes of a parent. However it was accepted that there was some sort of relationship and that it had been accepted there was a genuine and subsisting relationship in the reasons for refusal letter.

38. In accordance with HA (Iraq), Mr Tufan submitted that there was nothing of a sufficiently high threshold on the facts of this case to suggest that the continuation of the Appellant's Deportation Order would be unduly harsh. There is nothing out of the ordinary in this case. The Independent Social Worker report from 2020 only went so far as to state that it would be in the children's best interests for the Appellant to be in the United Kingdom but did not evidence the much higher threshold of unduly harsh as met. Further, there was nothing to show the even higher requirement of very compelling circumstances was met either and there was no evidence of any scenario being unduly harsh on the Appellant's wife.

39. Mr Tufan acknowledged in the Appellant's favour that he had perhaps rehabilitated with no further offending, other than re-entering the United Kingdom in breach of a Deportation Order and remaining here unlawfully for five years. However, if the only evidence is that of no further offending, that is likely to be of little or no material weight in accordance with HA (Iraq).

40. On behalf of the Appellant, Mr Yousefain submitted that the Appellant's continued deportation would be unduly harsh on his children and in any event there were very compelling circumstances which outweighed the public interest. It is accepted in this case that the Appellant has a genuine and subsisting relationship with two qualifying children and that it would be unduly harsh for them to relocate to Vietnam. The only issue is whether it would also be unduly harsh for them to remain in the United Kingdom without the Appellant.

41. In terms of the family situation, it was accepted that the Independent Social Worker report is now three years old and has not been updated, but the Appellant's wife's evidence has done so and there has been no improvement in the situation. The Appellant was a hands-on father for the four years that the family lived together between 2014 and 2018 and the Independent Social Worker report sets out the views of both children as to their relationship and involvement with the Appellant. The Appellant's wife's views are also represented in the report and it records that she has started to encounter challenging behaviour from the elder son. An adverse emotional impact is identified as observed by the Appellant's wife with evidence of changes in behaviour. These changes correlate with the Appellant's deportation, albeit some years later rather than immediate. The Appellant's wife's evidence has been credible and cogent, without exaggeration or embellishment, describing a general deterioration in the elder

son's behaviour over time since deportation and worsening throughout. She attributes this to the Appellant's deportation, even though there was no sudden deterioration of behaviour in 2018. The identified adverse emotional impact on the elder son is consistent with even isolated incicdents of poor behaviour.

42. It was submitted that the adverse impact on the children has been compounded by the Appellant's wife's struggles managing without the Appellant, which is separate to the impact on the children and there is a greater need for a father figure.

43. Overall, the Independent Social Worker found that the Appellant's deportation had had a devastating effect on the family and the behaviour of the children is consistent with that. It was submitted that the ongoing impact was unduly harsh, particularly on the elder child and neither child should be punished for the wrongdoing of an adult by extending a period of separation as a broken family.

44. Mr Yousefain recognised the difficulty in any submission that the continued Deportation Order would be unduly harsh on the Appellant's wife, albeit the personal, financial and parenting consequences would be harsh for her. In the circumstances, there was no positive submission in respect of the Appellant's wife as an exception to deportation.

45. In any event, it was submitted that there were very compelling circumstances that outweigh the public interest in continuing the Deportation Order. These include the seriousness of the offence for which the Appellant received a relatively short sentence of 30 months and in the absence of any sentencing remarks, there was nothing to indicate he had a leading role in the cannabis production. The Appellant has expressed remorse for his offending and has not committed any further offences since 2007, which is a significant period such that weight can be attached to rehabilitation. It was submitted that given there was no further offending, it could be considered that the Appellant did not now pose any risk of future offending and if he succeeds in his appeal there would be no risk of a further entry in breach of a Deportation Order. These factors all reduce the public interest in the continuation of the Deportation Order, although it was accepted that the re-entry to the United Kingdom in 2013 could increase the public interest; but overall, there is a substantial reduction.

46. Further, the passage of time in this case is relevant as the presumption of maintaining the Deportation Order has now been displaced as more than 10 years has elapsed since the making of the Deportation Order and the Appellant has now spent more than 10 years outside of the United Kingdom on aggregate. There is no requirement for a continuous period, that is not within the rules which specifically refer only to the making of a Deportation Order, not even the actual deportation. The passage of time itself may amount to a change of circumstances sufficient for the revocation of a Deportation Order in accordance with paragraph 391A of the Immigration Rules.

47. For the avoidance of doubt, the solicitors letter which stated that the Appellant had also re-entered the United Kingdom in 2018 was not correct and is inconsistent with all of the other evidence.

Findings and reasons

48. This appeal is in the context of an application to revoke a Deportation Order made in 2008 and therefore must be considered within the framework of

paragraphs 390 to 391A of the Immigration Rules (as they were at the time of the decision under appeal). The appropriate starting point for that consideration is whether paragraphs 398 to 399A of the Immigration Rules/the exceptions to deportation in section 117C of the Nationality, Immigration and Asylum Act 2002 are met. If they are, then revocation of the deportation order would be appropriate and the appeal would succeed on human rights grounds. If not, in the absence of a breach of human rights (or the Refugee Convention, although not relevant to this appeal), the continutation of the Deportation Order would be appropriate unless there are other exceptional circumstances that mean the continuation is outweighted by compelling factors.

49. In relation to exceptions to deportation, it is not suggested that the Appellant meets the private life exception, nor the family life exception in relation to his wife and it is accepted that it would be unduly harsh on the Appellant's children to relocate to Vietnam with him. The only two issues therefore are whether the Appellant's continued deportation to Vietnam would be unduly harsh on his children remaining in the United Kingdom and whether there are in any event very compelling circumstances to outweigh the public interest in deportation.

50. I start by considering the position of both children, in turn and their best intersests. Much of what is said in relation to the elder son applies equally to the younger son. The elder son is the Appellant's biological child, now aged 16, who is a British citizen. It is said that the Appellant was a hands on father when his son was first born, although that was realistically only for a matter of months before the Appellant was imprisoned and then deported to Vietnam. For the following five years or more, there was no contact at all between the Appellant and his son, this only resuming in very late 2013 or early 2014 when the elder son was nearly seven years old. From April 2014 to late 2018, the Appellant and his son lived together as part of a family unit and there is no dispute that they then had and continue to have a genuine and subsisting, close relationship. The Appellant during that time undertook much of the childcare responsibilities while his wife was working, taking the children to school, taking them out to activites and so on.

51. Since 2018, the Appellant has seen his elder son in Vietnam twice, for five and a half weeks in 2018 and five weeks in 2019. They maintain regular contact by phone or whatsapp messages several times a week.

52. Although both the Appellant and his wife have stated that they have not been honest with the children that the Appellant is not allowed to return to the United Kingdom; they of course know that their father is absent and there were letters from them submitted with the original bundle (undated but would have been from around 2018 as the elder son refers to being in year 6 at school) about how much they miss him and asking for him to be let back in to the country. I find that both children have some understanding of the situation, but there is nothing up to date from either as to their current situation or thoughts.

53. I have taken into account the Independent Social Worker report in terms of the views of all members of the family and the best interests of the children to have the Appellant with them in the United Kingdom. However, at that point, in November 2020, there was no indication of any specific detriment to either child from the Appellant's absence other than that the children missed him and the activities they used to do together. Both children were at that stage doing well in school with no behavioural or attendance issues. There is nothing of substance to support the overall statement that deportation has been devastating to the

family, although I acknowledge it must have been very upsetting for all of them. The report referred to generic research as to potential future impact and harms but has not been updated in over three years to assess the current or ongoing impact on the family of the Appellant remaining in Vietnam. It would be reasonable to expect that even by November 2020, more than two years after the Appellant's deportation to Vietnam, that some specific negative impacts would have been identified from this if there were any. It would also be reasonable to expect the evidence to be updated as to the current situation.

54. The only evidence as to the current position is from the Appellant's wife, who I accept has found the last few years challenging both as a single parent and because of the restrictions imposed by the Covid-19 pandemic which have brought their own financial pressures. These will also undoubtedly have had a knock on effect on the two children, although no specific impact has been suggested or identified. The Appellant's wife has referred to increased difficulties managing the behaviour of her elder son in particular, with deterioration in his behaviour and attendance at school from late 2022 specifically. However, the evidence of this is incredibly limited. There are relatively few examples of this from the Appellant's wife herself. There are only three documents from school which refer to one isolated and minor incident (in February 2020, prior to other school documents showing good progress and attendance), one lower attendance letter with no indication as to cause or whether this improved and a resolved incident with another boy from school which the Appellant's mother referred to as bullying rather than poor behaviour on the part of her son; both from late 2022. There is nothing in relation to any of these isolated incidents to link them to any general deterioration in behaviour or to the Appellant's absence in the preceding four years. There is no rational explanation as to why after such a lengthy absence of the Appellant, that this would suddenly have a direct impact on his elder son's behaviour or attendance at school. In any event, thee evidence of behaviour and attendance is so limited that it does not support any general finding that there has been a deterioration or difficulty in relation to either, even in the last year.

55. Although the Appellant's wife's oral evidence referred to wider examples, there was no supporting evidence from the school, no up to date evidence of, for example, exam results and the fact that the elder son is not currently in college seems to be more to do with a lack of places in the location where the family moved to mid-way through the start of the first term in 2023 than anything that could be directly related to the Appellant's deportation.

56. Whist it is not doubted that it would be in the best interests of the Appellant's elder son for his father to be in the United Kingdom and living with him as part of the family; I do not find that the Appellant's continued deportation is having or has had any specific detriment on him beyond the fact that he misses his physical presence and the activities they used to do together. It is also likely that the Appellant's presence would be of practical assistance to the family unit. However, there is a lack of upto date evidence as to the current position and a lack of evidence linking a small number of isolated incidents relating to school to any wider pattern or family circumstances. It is trite to consider that there are a whole range of possible reasons why a teenager is in trouble at school from time to time, or has poor attendance (regularly reported to be a more common issue since the Covid-19 pandemic across schools nationwide) and although the Appellant's wife attributes these to the Appellant's deportation, there is nothing of substance that makes that link more than four years after deportation. In

these circumstances and in accordance with the direction in MK, it is difficult to find that the impact of the Appellant's deportation on his elder son is even harsh, let alone unduly harsh and I do not find that the high threshold is met in this case.

57. In relation to the younger son, he is also a British citizen, currently aged 13 and although not the Appellant's biological son, sees him as a father figure. The younger son is still in regular contact with his biological father as well. The Appellant's relationship with the younger son could only have started at the earliest in late 2013 and more likely in early 2014 when the Appellant started living with the family. As with his brother, the younger son lived with the Appellant as part of the family unit for approximately four years between April 2014 and late 2018 and in the reasons for refusal letter, there was no dispute that this was not a genuine and subsisting relationship; nor was there any substantive challenge to the evidence that they have since maintained contacted and have a close relationship. The same visits and ongoing contact have taken place for both children.

58. The situation up to late 2020 is that no specific impact was identified on the younger son of the Appellant's deporation in the two preceding years, beyond that he misses the physical contact with him and the activities they did. There is also a letter from the younger son, presumably from around the same time in 2018 as his borther's letter setting out a request for the Appellant to be let back in to England as he misses him and he doesn't see his mum as much as she works hard. The information from the school and Independent Social Worker report is consistent that the younger son is progressing well at school with no behavioural or attendance issues.

59. Again there is no upto date information in relation to the younger son, from school or otherwise and no further information from him directly. The Appellant's wife's more recent evidence makes no specific mention of the younger son and she does not claim to have any concerns as to his progress or behaviour. It it is reasonable to infer therefore that he continues to make good progress in school, with no specific concerns or identifiable problems or adverse impact of the Appellant's continued absence due to deportation.

60. Whilst the younger son continues to have regular contact with his biological father, it is still likely to be in his best interests for the Appellant to be in the United Kingdom as part of the family unit as he was between 2014 and 2018. However, the position as to the unduly harsh test in relation to the younger son is even weaker still than that in relation to the older son; with no specific detriment or negative impact identified at all in the five years since the Appellant's deportation beyond the expected missing his physical presence. The circumstances fall very far short of being unduly harsh for him to remain in the United Kingdom without the Appellant, particularly where he also has an ongoing relationship with his biological father.

61. In these circumstances, I do not find that the Appellant meets the family life exception to deportation as his continued absence from the United Kingdom is not unduly harsh on either of his children or his wife.

62. The second issue is whether in all of the circumstances, there are very compelling reasons to outweigh the public interest in deportation in this case. The Appellant arrived illegally in either 2004 or 2006 and has not at any point had any lawful leave to remain in the United Kingdom. On 24 August 2007 he

was convictd of being concerned in production of a control drug – Class C – cannabis and dishonestly using electricity for which he received an aggregate sentence of 30 months; imprisonment and was court recommended for deportation. Although not at the most serious end of the spectrum, that is still a serious offence for which a not insignificant sentence was passed and the adverse effects of drugs are widely recognised in society. In these circumstances, there is a strong public interest in the Appellant's deportation.

63. The public interest is also increased in accordance with Smith by the Appellant re-entering the United Kingdom in breach of the extant Deportation Order in 2013 and remaining here until he was deported again by the Respondent in 2018. I note there were some attempts to regularise his status from 2016, but no formal application for revocation of the Deportation Order was made and the Appellant did not voluntarily leave the United Kingdom to seek to do so. There is a single suggestion that the Appellant re-entered the United Kingdom again in 2018 and left voluntarily in a solicitors letter, but this is disputed as a mistake and there is nothing else supporting the suggestion that this happened. In any event, it makes little difference to the earlier accepted re-entry in breach and the increase in the public interest occasioned by that.

64. I accept that some weight can be attached to the Appellant's rehabilitation since 2008 in that no further offences have been committed either in the United Kingdom (albeit re-entry in breach is a criminal offence, the Appellant was not charged with or convicted of this) or in Vietnam. The period is significantly long to be of some weight and indicative of a low risk of further reoffending. The public interest in deportation is reduced as a result, but I do not find that there is a substantial reduction for this reason alone or in combination with the passage of time given the public interest is also increased by the re-entry in breach.

65. There are no other factors identified on behalf of the Appellant to amount to very compelling circumstances on his side of the balancing exercise to outweigh the public interest in deportation. In circumstances where neither the private nor family life exceptions are made out and there remains a strong public interest in deportation, I do not find that the Appellant has established very compelling circumstances to outweigh what remains a significant public interest in his deportation.

66. For these reasons, the Appellant has not established that he meets any of the exceptions to deporation in paragraphs 398 to 399A of the Immigration Rules/section 117C of the Nationality, Immigration and Asylum Act 2002. The final issue is therefore whether he otherwise meets the requirements in paragraph 390 and following of the Immigration Rules for revocation of the Deportation Order.

67. In accordance with paragraph 391 of the Immigration Rules, the continuation of the Deportion Order would be the proper course unless ten years have elapsed since the making of the Deportation Order. In the present case, more than ten years have elapsed, although the Appellant's re-entry in breach needs to be taken off that in accordance with Smith, there has now still been more than ten years' cumulative absence from the United Kingdom since the Deportation Order was made in 2008. I do not accept Mr Tufan's submission that this needs to be a continuous period, rather than an aggregate one in circumstances where that is not set out on the face of the Immigration Rules or in Smith. As such, there would need to be consideration in every case as to whether the Deportation Order should be maintained and in accordance with paragraph 391 the

Deportation Order would not normally be revoked unless the situation has materially changed or fresh information is available. The passage of time may of itself be sufficient to amount to a change of circumstances.

68. There are no different or separate factors to consider for these purposes beyond those that have already been outlined above, which include all of those factors listed in paragraph 390 of the Immigration Rules. In all of the circumstances, although there has been a sufficient passage of time since the Deportation order; there remains a strong public interest in deportation given the original offence and the re-entry in breach for a significant period of time; the exceptions to deportation are not met and there are no very compelling circumstances to outweigh the public interest in deportation. For the purposes of paragraph 390A of the Immigration rules, there are no exceptional circumstances here. As such, the requirements of the Immigration Rules are not met and the Appellant's continued deportation would not breach his right to respect for private and family life pursuant to Article 8 of the European Convention on Human Rights.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it was set aside the decision.

The appeal is remade as follows:

The appeal is dismissed on human rights grounds.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

3rd January 2023

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-003638

First-tier Tribunal No: HU/04058/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

.....

Before

UPPER TRIBUNAL JUDGE JACKSON

Between

TRUNG HA PHAM
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Sowerby of Counsel, instructed by Sabz Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House by remote video means on 11 July 2023

DECISION AND REASONS

1. This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was by video, using Teams. There were no technical difficulties for the hearing itself and the papers were all available electronically.

2. The Respondent appeals with permission against the decision of First-tier Tribunal Judge Choudhury promulgated on 27 June 2022, in which Trung Ha Pham's appeal against the decision to refuse his application to revoke his Deportation Order dated 18 June 2021 was allowed on human rights grounds. For ease I continue to refer to the parties as they were before the First-tier Tribunal, with Trung Ha Pham as the Appellant and the Secretary of State as the Respondent.

3. The Appellant is a national of Vietnam, born on 7 July 1984, who claims for have first arrived in the United Kingdom unlawfully in 2004 or 2006. He was served with notice as an illegal entrant on 6 July 2007. The Appellant was convicted on 24 August 2007 for production of a class C drug (cannabis) and dishonestly using electricity, for which he was sentenced to 30 months' imprisonment and was Court recommended for deportation. On 23 May 2008 the Appellant made an asylum claim, to which the Respondent issued a section 72 certificate and refused the claim on 3 July 2008. The Appellant withdrew his appeal against that refusal and on 4 September 2008 a Deportation Order was signed against the Appellant, pursuant to which he was deported to Vietnam on 23 September 2008.

4. The Appellant claims to have re-entered the United Kingdom in breach of the Deportation Order in 2016 and subsequently made an application for leave to remain on 22 June 2016. That was refused by the Respondent on 10 December 2017 and two subsequent applications made on 6 March and 6 April 2018 were both refused. The Appellant was detained on 28 June 2018 and deported to Vietnam on 13 July 2018. Just prior to this, the Appellant sought to challenge his deportation by way of an application for Judicial Review, for which permission was refused.

5. The Appellant claims to have again re-entered the United Kingdom in breach of the Deportation Order in December 2018 but returned to Vietnam before being encountered and deported by the authorities.

6. A number of applications for leave to enter the United Kingdom as a spouse were made by the Appellant, on 29 April 2019 which was refused on 14 October 2019 and 2 July 2020 which was refused on 11 August 2020. The last decision was subject to a late appeal. On 4 December 2020, the Appellant made an application to revoke the Deportation Order, the refusal of which is the subject of this appeal.

7. The Respondent refused the application the basis that although it was accepted that the Appellant had family relationships with his wife and two children, it would not be unduly harsh for any of them to remain in the United Kingdom without the Appellant. It was noted that the Appellant had re-entered the United Kingdom in breach of the Deportation Order and rekindled his relationship with his wife during that time, such that little weight was given to that relationship and it would also not be unduly harsh for the Appellant's wife to join him in Vietnam. However, the best interests of the children would be to remain in the United Kingdom such that their mother would need to remain here as well as their primary carer. The family life exception was not met, nor was the private life exception and there were no very compelling circumstances to outweigh the public interest in deportation. Further, paragraph 390 of the Immigration Rules had not been met for revocation as ten years had not passed since the Deportation Order had been made (the period being broken by the Appellant re-entering in breach on two occasions and remaining in the United Kingdom between 2013 and 2018).

8. Judge Choudhury allowed the appeal in a decision promulgated on on 27 June 2022 on human rights grounds. In summary, even though the First-tier Tribunal acknowledged that the Appellant had re-entered in breach of the Deportation Order on two occasions and there was a great weight to be attached to the public interest in this case; it was considered that the Appellant had otherwise been law abiding and showed remorse. It was found that there was consistent evidence of the Appellant being an integral part of family life, whose absence is detrimental

and his wife was struggling as a single parent. For these reasons it was considered that the Appellant's continued deportation would be unduly harsh on the family to remain in the United Kingdom without him, such that the family life exception applied and the Appellant's right to respect for private and family life outweighed the public interest for that reason.

The appeal

9. The Respondent appeals on four grounds as follows. First, that the First-tier Tribunal made findings contrary to Secretary of State for the Home Department v ZP (India) [2015] EWCA Civ 1197 and Smith v Secretary of State for the Home Department [2017] UKUT 00166 (IAC) that the Appellant had served the prescribed ten year period since deportation by failing to take into account the periods of time he was in the United Kingdom having re-entered in breach. Secondly, that the First-tier Tribunal materially erred in law in failing to engage with the refusal of the Appellant's application for Judicial Review just prior to his deportation in 2018 as a starting point for findings in this appeal. Thirdly, that the First-tier Tribunal materially erred in law in failing to give adequate reasons for finding that the high threshold of unduly harsh is met in this case, describing only the commonplace effects of deportation. Finally, that the First-tier Tribunal materially erred in law in failing to consider the mandatory provisions in section 117B of the Nationality, Immigration and Asylum Act 2002. At the hearing, I added two further points which I considered to be *Robinson obvious* as errors in the First-tier Tribunal decision, first that the assessment of whether the family life exception applied included a balancing of wider factors relating to the public interest, albeit not ultimately of any detriment to the Appellant, it was contrary to the Supreme Court decision in KO (Nigeria) v Secretary of State for the Home Department [2018] UKSC 53. Secondly, that the First-tier Tribunal had failed to consider or apply the specific provisions in paragraph 390 and following of the Immigation Rules relating to an application to revoke the Deportation Order.

10. At the oral hearing, on behalf of the Respondent, Mr Melvin relied on the grounds of appeal and points I raised separately. As to the first ground of appeal, it was submitted that there were no findings by the First-tier Tribunal on the length of time the Appellant had actually spent in Vietnam and the United Kingdom since the Deportation Order, nor that the period during which he returned to the United Kingdom meant that the required ten years had not yet been completed such that there would be a further extended period before any revocation would be considered. On the second ground of appeal, Mr Melvin accepted that this was not strictly a *Devaseelan* point given that it related to an application for Judicial Review, but it was a judicial finding in the Respondent's favour which should have been taken into account, or reasons given as to why it was not material. In relation to the third ground of appeal, Mr Melvin reiterated the absence of any actual findings as to the impact on the Appellant's family of his deportation, going little further than an assessment of the children's best interests. There was no specific issue of credibility and no specific attack on the Indepenent Social Worker's report, but in any event the Judge went no further than finding that the Appellant's wife was dependent on him to raise the children, with no real explanation and no consideration of the maintenance of their relationship since he returned to Vietnam around 2018.

11. On behalf of the Appellant, Mr Sowerby submitted in relation to the first ground of appeal that the Judge clearly had the issue of the ten year period in the forefront of her mind as it was referred to in paragraphs 37 (including with direct

reference to the case of Smith), 38, 43 and 54 in which great weight was added to the public interest because the Appellant had re-entered twice in breach of the Deportation Order. The issues are further addressed in paragraphs 67 to 70. When I asked if these matters focused on the re-entry, rather than period of time in the United Kingdom, Mr Sowerby submitted only that it was open to the Judge to allow the appeal in all of the circumstances.

12. In relation to the second ground of appeal, this was an application for Judicial Review in which no findings of fact were made and the case was assessed to a different standard. As such, the principles in *Devaseelan* do not apply and in any event, matters have moved on and the Appellant's claim has strengthened since 2018.

13. In relation to the third ground of appeal, it was submitted that the Judge had properly directed herself to the correct test in KO (Nigeria) in paragraph 56 of the decision and the elevated threshold. In the findings, the Judge made extensive reference to the Independent Social Worker's report which the Respondent made no challenge to. That report included reference to the Appellant's active role in the children's early development, the impact of his absence on the support available to his wife and the family finances as well as the need for a male role model. The conclusion was that it was in the children's best interests for the Appellant to be in the United Kingdom and the long-term impact of his absence would be devastating on the family. Mr Sowerby submitted that the conclusion that the impact would be devastating was alone sufficient for the Judge to find that continuation of the Deportation Order would be unduly harsh. Although the report set out the close knit nature of the family in which the Appellant played a pivotal role, it was accepted that neither the report nor the First-tier Tribunal decision identified any specific adverse impact on the family since the Appellant last left the United Kingdom around 2018.

14. The final ground of appeal was submitted to be simply immaterial to the outcome of the appeal.

Findings and reasons

15. The first ground of appeal concerns the issue of whether the Appellant's period(s) in the United Kingdom in breach of the Deportation Order were properly considered in the First-tier Tribunla decision and linked to that is whether there was any specific consideration of the requirements of the Immigration Rules for revocation of a Deportation Order. Whilst in paragraphs 36 to 38 the Respondent's position is recorded in relation to both of these points, I do not find that the Judge then at any point in her decision addresses either point nor applies the case of Smith quoted.

16. In terms of the findings in the decision, reference is only made to the Appellant's re-entry to the United Kingdom in breach of the Deportation Order in 2013 and 2018 as adding weight to the public interest (paragraphs 54 and 67). In paragraph 69 there is reference to more than 10 years having elapsed since the Deportation Order, but no consideration that a significant part of that period was not spent outside of the United Kingdom due to the re-entry in breach of the Deportation Order and remaining here for some five years between 2013 and 2018.

17. At no point in the decision (other than when setting out the Respondent's position) is there any reference at all to paragraphs 390 and following of the

Immigration Rules dealing with revocation of Deportation Orders nor any application of relevant case law such as Smith. On the facts of this appeal, those matters were directly raised by the Respondent, directly relevant and it was an error of law to fail to consider or make any findings on the same. The finding in paragraph 69 of the decision that ten years have elapsed since the Deportation Order was insufficient alone to deal with these points and if binding authority was followed, the Judge would have been bound to consider, as quoted in paragraph 37 of the decision, that the fact that a person has spent a significant portion of the ten year period living in the United Kingdom should not benefit from a clear breach (in this case, breaches) of the Deportation Order and are likely to provide strong justification for continuing the order even if the ten year period has elapsed. This has simply not been done in the present appeal and is clearly material to the outcome. For this reason alone, the decision of the First-tier Tribunal must be set aside and proper consideration given to the framework for recovcation of Deportation Orders in the Immigration Rules and not only the two breaches of the Deportation Order by re-entry, but the length of time the Appellant remained in the United Kingdom after re-entry in breach.

18. The second ground of appeal concerns the decision on the Appellant's application for Judicial Review in 2018. Again, this is referred to in the decision in paragraph 18 when the Respondent's case is set out, but not referred to again anywhere in the findings or reasoning. Whilst the principles in *Devaseelan* do not strictly apply, particularly as there was no detailed fact finding or consideration in the course of the application for Judicial Review, it was a matter relied upon by the Respondent as to the position in 2018 which should have formed part of the consideration of the evidence a a whole. As a standalone matter, this ground of appeal would fall far short of being a material error of law as alone it could not realistically have affected the outcome of the appeal but it is just an error of law in circumstances where part of the task of the First-tier Tribunal was, in accordance with paragraphs 390 and following of the Immigration Rules, to consider any material change of circumstances since deportation, the last of which was in 2018 following the unsuccessful application for Judicial Review.

19. The third ground of appeal concerns the adequacy of reasons given by the First-tier Tribunal in finding that the family life exception to deportation is met, that it would be unduly harsh for the Appellant's family to remain in the United Kingdom without him and also that the stand alone exercise of considering undue harshness in accordance with KO (Nigeria) was not followed. In relation to the latter point, an appropriate self-direction is given in paragraph 56 of the decision that the exception was self-contained and did not include a consideration of the parent's conduct; however, what follows when considering the exception between paragraphs 58 and 72 includes multiple references to the Appellant's conduct, for example as to the length of his criminal sentence in paragraph 67; his reporting to the Respondent and leaving the United Kingdom after the second re-entry in paragraph 68; that there was no further criminal offences in paragraph 69 (which although not convictions, must be doubted given the accepted re-entry in breach of a Deportation Order is a criminal offence) and all matters balanced in paragraph 71. Whilst not an error of law that in the scheme of things disadvantaged either party or affected the outcome of the appeal, it was a clear error of law in approach to the exception.

20. As to the reasons themselves, I do not find that the decision contains sufficient reasons to lawfully explain why it was considered that the circumstances of this family met the elevated threshold of being unduly harsh or such that would be

sufficient for the losing party to understand why the appeal was allowed. At their highest, the findings and reasons given in the final section of the decision amount primarily to a backwards looking exercise (for example, the Appellant having an active role in one child's early development, the effect of the pandemic on the Appellant's wife) rather than a forward looking assessment as to the impact of the Appellant remaining subject to a Deportation Order, or even any specific findings to identify any detrimental impact already seen since the Appellant last returned to Vietnam around 2018. There are generic references to an adverse impact on family finances and to studies showing adverse effects on children and a parent in single parent families; leading to the conclusion that it would be in the best interests of the children to have both parents in the same country, but nothing further to specify what would be or make it unduly harsh. In a case where a parent has already been absent for around 4 years, it would be reasonable to expect there to be evidence and clear findings on what impact or detriment has already been felt as a rational indicator that that may continue or worsen the longer the separation. There is nothing of that sort in the decision at all (nor in the underlying evidence) and it simply fails to explain how the high threshold is met. The consisentency of evidence and credibility of the Appellant's wife and the one line opinion of the Independent Social Worker that the impact would be devastating falls very far short of adequate reasons for the ultimate finding. The First-tier Tribunal decision must also be set aside for this error of law which is clearly material.

21. The final ground of appeal adds nothing in the scheme of what is set out above and in reality, is unlikely to be a material error of law on its own. It is not necessary to say anything more than that this should, for completeness, be considered when the appeal is remade given it is a statutory requirement on the Tribunal to do so.

22. For the reasons set out above, the decision of the First-tier Tribunal contains material errors of law such that the decision must be set aside and heard de novo. Directions are given below for this.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of a material error of law. As such it is necessary to set aside the decision.

I set aside the decision of the First-tier Tribunal.

Directions

1. The appeal to be relisted on the first available date before any UTJ for a face to face hearing with a time estimate of 2.5 hours. A Vietnamese interpreter is required.

2. Any further evidence on which the Appellant wishes to rely must be filed and served no later than 14 days before the relisted hearing. An up to date written statement is required to stand as evidence in chief for the any person giving oral evidence.

3. Any further evidence on which the Respondent wishes to rely must be filed and served no later than 14 days before the relisted hearing.

G Jackson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

28th July 2023