UT Neutral Citation Number: [2025] UKUT 00150 (IAC)

Rai and DAM (Grounds of Appeal – Limited Grant of Permission)

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Heard at Birmingham Civil Justice Centre

THE IMMIGRATION ACTS

Heard on 8 November 2024
Promulgated on 19 March 2025

Before

UPPER TRIBUNAL JUDGE MANDALIA
and
UPPER TRIBUNAL JUDGE LANDES

Between

KIRAN RAI (1)
(NO ANONYMITY DIRECTION MADE)

DAM (2)
(ANONYMITY DIRECTION MADE)

Appellant

and

Secretary of State for the Home Department

Respondent

REPRESENTATION

For the first appellant, Kiran Rai:	Mr B Caswell, instructed by Everest Law Solicitors
For the second appellant, DAM:	Mr A Pipe, instructed by Khan & Co Solicitors
For the Respondent:	Mr S Whitwell, Senior Home Office Presenting Officer

GROUNDS OF APPEAL

1. *Section 11(1) of the Tribunals Courts and Enforcement Act ("the 2007 Act") makes provision for an appeal to the Upper Tribunal on any point of law arising from any decision except an excluded decision. In applying for permission to appeal to the Upper Tribunal, practitioners have a duty to carefully consider whether a challenge to the judge's findings of fact, or the application of the facts to the legal framework, is material to the outcome of the appeal. Grounds of appeal are not an opportunity to present a list of errors no matter what the relevance of the error is to the outcome of the appeal.*

2. *Whether a party is represented or not, they are required to identify the arguable errors of law in the grounds of appeal, adequately, so that the arguable error can be considered by a judge.*

3. *Each point of law, where there is more than one, must be clearly and succinctly identified as a numbered ground of appeal with sufficient detail so that the Tribunal and the parties are able to identify the essential issue raised by that ground. The grounds of appeal will rarely need to be lengthy. Each ground of appeal should identify succinctly, in clearly numbered paragraphs or (sub paragraphs):*

    a. *The relevant passage(s) in the decision of the FtT.*

    b. *Any relevant primary or secondary legislation only to the extent necessary to do so.*

    c. *Any authority binding upon the judge that is capable of supporting the ground.*

    d. *Brief submissions proving a short explanation to support the ground.*

4. *The Upper Tribunal is likely to take robust decisions and not permit grounds to be advanced if they have not been properly identified and pleaded, or where permission has not been granted to raise them.*

5. *Where there is any issue as to the grounds of appeal upon which permission has been granted, or the scope of the grounds that leads to an adjournment, the Tribunal may impose sanctions, including the making of orders for wasted costs against the parties or their representatives.*

PERMISSION TO APPEAL ON LIMITED GROUNDS

6. *Where a ground of appeal relates to a discrete aspect of the decision, limiting the grounds for granting permission to appeal can in a clear case, make the appellate process more efficient and focused.*

7. *Unless a ground of appeal upon which permission is refused relates to a discrete aspect of the appeal, the Upper Tribunal, on appeal, should not be constrained from holistically considering critical issues capable of affecting the outcome of the appeal by limiting the grounds on which permission is granted.*

DECISION AND REASONS

As the underlying claim made by the second appellant concerns a claim for international protection, pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the second appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the second appellant, likely to lead members of the public to identify the second appellant. Failure to comply with this order could amount to a contempt of court.

THE ISSUE

1. These two appeals are unconnected but have been listed before us because they raise an important issue. There is a culture that has developed in statutory appeals of unfocused and poorly formulated grounds of appeal with excessive prolixity and complexity that impacts a proper consideration of the grounds when an application for permission to appeal is considered. This sometimes leads to a grant of permission to appeal on limited grounds, which, when properly considered at a hearing, are difficult to disentangle from grounds upon which permission was refused. That in turn causes unnecessary confusion when the appeal is heard regarding the scope of the appeal.

2. In each of the appeals, in this decision we simply address the scope of the appeal before the Upper Tribunal and having done so, the appeals will be listed separately for the Tribunal to consider whether the decision of the First-tier Tribunal ("FtT") is infected by a material error of law, and if so, the appropriate course for the disposal of the appeal. We will not trespass upon the substantive merits of either appeal in this decision.

GROUNDS OF APPEAL

3. Section 11(1) of the Tribunals Courts and Enforcement Act ("the 2007 Act") makes provision for an appeal to the Upper Tribunal on any point of law arising from any decision except an excluded decision. The right of appeal is subject to permission being given, following application by the party, by either the FtT or the Upper Tribunal. Rule 33 of The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 ("the FtT Procedure Rules") requires a party seeking permission to appeal to the Upper Tribunal to make a written application to the Tribunal for permission to appeal which must identify the alleged errors of law in the decision. Where an application has been made to the FtT and refused, the application can be renewed to the Upper Tribunal and rule 21(4)(e) of The Tribunal Procedure (Upper Tribunal) Rules 2008 ("the UT Procedure Rules") requires the party to state the grounds on which the appellant relies. We refer to the 'grounds' in this context as the 'Grounds of Appeal'.

4. The general rights of appeal to the FtT provided for in section 82 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") are quite different to the right of appeal to the Upper Tribunal. Importantly, the right of appeal to the Upper Tribunal requires the grant of permission and is restricted to 'any point of law arising from a decision made by the FtT. The 'point of law' is in effect, a defect in the decision of the FtT that is apparent from its reasoning and/or the procedure leading to the decision.

The grounds of appeal must establish that it is at least arguable, that the FtT wrongly applied a principle of law; misunderstood a statute; reached a decision that no reasonable tribunal could have reached or come to. If errors are made in the decision of the FtT then the grounds of appeal are required to identify the error(s), which on appeal, the Upper Tribunal is being required to rectify. It is a ground upon which, if accepted, the decision of the FtT would, subject to the ground being material to the outcome of the appeal, be set aside.

5. Rule 2(4) of the FtT Procedure Rules and the UT Procedure Rules impose a duty on the parties to help the Tribunals to further the overriding objective and to cooperate with the Tribunals generally. Practitioners have a duty to carefully consider whether a challenge to the judge's findings of fact, or the application of the facts to the legal framework is material to the outcome of the appeal and the grounds of appeal must be prepared with the above guidance in mind.

6. In August 2019, the Presidents of the FtT and Upper Tribunal issued 'Joint Presidential Guidance 2019 No 1: Permission to appeal to UTIAC' ("the Joint Presidential Guidance") that set out guidance for judges considering whether to grant permission to appeal from a decision of the FtT to the Upper Tribunal. The guidance highlights the expectation that professional representatives should set out the basis of the application for permission to appeal with an appropriate degree of particularity and legibility; *OK (PTA; alternative findings) Ukraine* [2020] UKUT 00044 (IAC), at [15]. The grounds should, in simple language, clearly and concisely identify why the decision of the First-tier Tribunal was wrong. The guidance draws attention to the observations made by McCombe LJ in *VW (Sri Lanka)* [2013] EWCA Civ 522, at [12]:

> "Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge's decision is legally flawed because it did not deal with a particular matter more fully. In my judgment, with respect, that is no basis on which to sustain a proper challenge to a judge's finding of fact."

7. In *Secretary of State for the Home Department v Sherma Joseph* [2022] Imm. A.R. 1360, the Upper Tribunal provided guidance in relation to the content of applications for permission to appeal, and in particular, the need for the application for permission to properly plead any error or errors of law. The Upper Tribunal said:

> "13. It is also essential for an application for permission to appeal to be pleaded by reference to an arguable error of law, not a disagreement of fact or weight. The right of appeal to the Upper Tribunal is on any "point of law" arising from a decision made by the First-tier Tribunal, other than an excluded decision: section 11(1) of the 2007 Act. There are many reported authorities, in this jurisdiction and from further afield, addressing the need for grounds of appeal to be pleaded properly and succinctly, and by reference to an arguable error of law. Maintaining the distinction between errors of law and disagreements of fact is essential; it reflects the jurisdictional delimitation between the first-instance role of the FTT and the appellate role of the UT, and reflects the institutional competence of the FTT as the primary fact-finding tribunal. The distinction, however, is often blurred, with unhelpful consequences. As Warby LJ put it

in *AE (Iraq) v Secretary of State for the Home Department [2021] EWCA Civ 948; [2021] Imm AR 1499 at [32]* :

> "Commonly, the suggestion on appeal is that the FTT has misdirected itself in law. But it is not an error of law to make a finding of fact which the appellate tribunal might not make, or to draw an inference or reach a conclusion with which the UT disagrees. The temptation to dress up or re-package disagreement as a finding that there has been an error of law must be resisted."

14. Warby LJ recalled the judgment of Floyd LJ in *UT (Sri Lanka) v Secretary of State for the Home Department [2019] EWCA Civ 1095 at [19]* :

> "… although 'error of law' is widely defined, it is not the case that the UT is entitled to remake the decision of the FTT simply because it does not agree with it, or because it thinks it can produce a better one. Thus, the reasons given for considering there to be an error of law really matter."

By the same token, those observations apply not only to this Tribunal when discharging its role under section 11(1) of the 2007 Act , but to an unsuccessful party before the FTT considering whether to make an application for permission to appeal and, moreover, to a judge considering the application."

8. A decision of the FtT will always be capable of having been better expressed. Specific findings of fact, even by the most meticulous judge, are inherently an incomplete statement of the impression which was made upon them by the primary evidence. Equally, an appeal Court or Tribunal should not subject a judgment to narrow textual analysis. The decision of the FtT should not be picked over or construed as though it was a piece of legislation or a contract and the Upper Tribunal is not entitled to find an error of law simply because it does not agree with the decision, or because the Tribunal thinks the decision could be more clearly expressed.

9. Judges of the FtT are often required to consider a wealth of evidence in a complex area of the law that constantly evolves whether by reference to the introduction of primary or secondary legislation, changes to the Immigration Rules, or by country guidance. If a judge reaches a decision, adopting the correct burden of proof, applying the correct standard of proof addressing the issues in the appeal by weighing the evidence relevant to those issues, the Upper Tribunal will only interfere with the decision if there is an error of principle or approach, or the conclusions of the judge are clearly unsustainable.

10. To that end, the grounds of appeal should, in respect of each complaint, contain a succinct statement of the error committed by the judge. The relevant rules of the FtT and the Upper Tribunal require the party seeking permission to appeal to provide a copy of the decision of the FtT that is challenged. The judge deciding the application for permission to appeal will therefore have a copy of the decision of the FtT before them. Where a party simply expresses dissatisfaction with the outcome of the appeal before the FtT in very general terms, it is unlikely to be very difficult for a judge considering an application for permission to appeal, to refuse permission with brief reasons.

11. The purpose of the grounds of appeal is to provide clear and concise outline of the errors of a point of law that the party claims is arguable and the grounds on which that

claim is made. Reciting large tracts of the decision of the FtT with commentary by the author of the grounds is neither helpful nor relevant. Each point of law, where there is more than one, needs to be clearly and succinctly identified as a ground of appeal with sufficient detail so that the Tribunal and the parties are able to identify the essential issue raised by that ground. Without being prescriptive, where the error is, for example, that the judge erred in their understanding of the legal framework, the ground should identify succinctly, in clearly numbered paragraphs, the relevant passage(s) in the decision and the authority for the proposition that the decision is vitiated by a misunderstanding of the legal framework. Where the proposition relies upon a provision set out in primary or secondary legislation, the relevant legislation should be cited only to the extent necessary to do so, together with any authority binding upon the judge that is capable of supporting the proposition. Brief submissions limited to providing a short explanation to support the ground should be set out in separate numbered paragraphs or sub-paragraphs.

12. The grounds of appeal will rarely need to be lengthy. Albeit in the context of grounds for review in a Judicial Review claim, as Lord Burnett (with whom King LJ and Singh LJ agreed) said in *R (Dolan) v Secretary of State for Health and Social Care an another* [2020] EWCA Civ 1605:

> "… excessively long documents serve to conceal rather than illuminate the essence of the case being advanced. They make the task of the court more difficult rather than easier and they are wasteful of costs …"

13. We acknowledge the burden placed on litigants in person, however the Tribunal cannot afford excessive indulgence for non-compliance with the requirements of the rules. Whether a party is represented or not, they are required to identify the arguable errors of law in the grounds of appeal, adequately, so that the arguable error can be considered by a judge. The test at the permission stage is simply whether the ground of appeal is arguable. In most appeals, in respect of each complaint, any arguable error should be capable of being coherently encapsulated in a few short sentences.

14. The grounds of appeal are not an opportunity to present a list of errors no matter what the relevance of the error is to the outcome of the appeal. Instead, the grounds should focus succinctly on identifying the most compelling errors, ensuring the ground of appeal is demonstrated by clear legal reasoning and by reference to the findings made. A consequence of poorly drafted grounds of appeal is the inappropriate expenditure of judicial time in attempting to understand the basis and thrust of the application. It is only if the parties do what is properly required of them that the Upper Tribunal will be able to deal with the appeal fairly and justly in accordance with the overriding objective set out in Rule 2 of the Upper Tribunal Procedure Rules.

15. The Grounds of Appeal will not ordinarily be permitted to evolve during the course of the appeal. The Upper Tribunal is likely to take robust decisions and not permit grounds to be advanced if they have not been properly identified and pleaded or where permission has not been granted to raise them. Where there is any issue as to the grounds of appeal upon which permission has been granted, or the scope of the grounds that leads to an adjournment, it should not come as any surprise to the parties

to an appeal that the Tribunal may impose sanctions, including the making of orders for wasted costs against the parties or their representatives.

THE GRANT OF PERMISSION TO APPEAL ON LIMITED GROUNDS

16. The Tribunals may grant or refuse permission on all or any of the grounds of appeal or, direct an oral hearing. Where permission is granted, the focus of the Upper Tribunal will be limited to only those grounds of appeal for which permission has been granted. Appeals must be conducted with an appropriate degree of procedural rigour and the clear identification of the grounds upon which permission has been granted provides an adequate opportunity for the preparation of a response under rule 24 of the Upper Tribunal Rules by the other party.

17. The joint Presidential Guidance states:

> "48. … A judicial observation on the merits of other grounds that have not caused permission to be granted may be of value to the judge seised of the appeal, who will be able to direct the parties to those grounds which are considered to have arguable merit.
>
> 49. If nevertheless it is decided permission should only be granted on limited or restricted grounds, the Judge must state this clearly and expressly in the section of the standard form that contains the decision. The judge must also set out reasons why permission has been refused on some grounds. It is only in very exceptional circumstances that the UT will be persuaded that a decision which, on its face, grants permission to appeal without express limitation is to be construed as anything other than a grant of permission on all of the grounds accompanying the application for permission, regardless of what might be said in the reasons for decision section of the document *(see Safi and others (permission to appeal decisions) [2018] UKUT 388 (IAC))*."

18. In *Safi and Others v Secretary of State for the Home Department* [2019] Imm. A.R. 437, a Presidential panel of the Upper Tribunal made it clear that judges intending to grant permission to appeal to the Upper Tribunal only on limited terms had to make that fact absolutely clear. The focus of the Tribunal was upon the scope of the grant of permission. The Tribunal gave examples of appropriately stated decisions and suggested suitable formulations for the 'reasons for decision' section of the standard decision document for situations where, although permission had been granted generally, the judge considered that certain of the grounds would not have given rise to a grant in themselves.

19. As to a grant of permission on limited grounds the Tribunal referred to the decision of the Upper Tribunal in *Ferrer (limited appeal grounds; Alvi)* [2012] UKUT 00304 (IAC), which was dealing with the predecessor of the 2014 procedure rules, noting:

> "23. … the First-tier Tribunal should consider carefully the utility of granting permission only on limited grounds. Given that the effect of any grant of permission to the Upper Tribunal is to set in train proceedings on the case in question in the Upper Tribunal, a grant of permission on limited grounds will not, in practice, often be as helpful to the parties or to the Upper Tribunal as would a general grant of permission by reference to all of the applicant's grounds, which nevertheless expressly identifies the ground or grounds that are considered by the First-tier Tribunal to have the strongest prospect of success. In this way, the First-tier Tribunal identifies the likely ambit of the

> forthcoming Upper Tribunal proceedings, which – if that Tribunal concurs – can then form the backdrop for the Upper Tribunal's subsequent case management directions under rule 5 of the Tribunal Procedure (Upper Tribunal) Rules 2008 ("the Upper Tribunal Rules"). It should also be noted that rule 15(1)(a) and (b) of those Rules expressly enables the Upper Tribunal to give directions as to the issues on which it requires evidence or submissions and the nature of the evidence or submissions it requires."

20. In *Safi and others*, having concluded that if there is ambiguity arising from the language of the 'reasons given', that such ambiguity is to be resolved in favour of the applicant: particularly where the opening part of the Order concerning the actual grant of permission was unqualified, the Tribunal declined the invitation to provide general guidance as to how limited grants of permission to appeal are to be framed. The Tribunal referred to the Guidance Note 2011/No 1, as amended, issued by Blake J (President) in 2011. The Tribunal recognised that there will inevitably be cases where one or more of the grounds of appeal arguably establish that the decision of the FtT is infected by an error on a point of law, but other grounds of appeal have little or no merit. The question that arises is whether the judge considering the application for permission to appeal is bound to refuse permission on the grounds the judge considers to be unmeritorious. The Tribunal said:

> "31. It is not, in fact, the case that permission to appeal cannot be granted to the Upper Tribunal unless the granting judge is satisfied that there is an arguable error of law in the decision of the First-tier Tribunal. Section 11(1) of the Tribunals, Courts and Enforcement Act 2007 confers a right of appeal "on any point of law arising from a decision", other than an excluded decision. It is, therefore, possible for permission to be granted, even where it is not considered by the granting judge that the First-tier Tribunal has arguably made a legal error, if the point of law in question is, in the granting judge's view, of such significance as to make it desirable for the Upper Tribunal to become seized of the matter."

21. That in our judgment must be correct. If the Upper Tribunal is seised of an appeal because a judge is satisfied that there is an arguable error of law on one ground, it can often be difficult to disentangle that error from other conclusions reached by the judge in the same decision. If, for example, an arguable error is demonstrated by the grounds as to a judge's analysis of a particular facet of an Article 8 claim being advanced, it is likely to be problematic if permission to appeal on a separate ground, for example alleging that the judge erred in their overall analysis of 'proportionality', is refused. The error in the assessment of a discrete aspect of the Article 8 claim is likely to impact upon the overall proportionality of the decision. The Upper Tribunal, on appeal, should not be constrained from holistically considering critical issues capable of affecting the outcome of the appeal.

22. That is not to say that a judge considering an application for permission to appeal should never limit the grant of permission, where the ground relates to a discrete aspect of the decision. Limiting the grounds for granting permission to appeal can in a clear case make the appellate process more efficient and focused. For example, if grounds of appeal are directed to an international protection claim, a judge might properly conclude that there is an arguable claim that the judge's decision as to 'the risk upon return to a person's home area and whether sufficient protection is available' is vitiated by a material error of law, but grounds directed to the Article 8 claim, are

discrete and wholly divorced from the ground that is arguable. It is perfectly proper for a judge to conclude that permission should be limited to the former ground(s) and refused on the latter ground(s), with reasons.

23. Here too, the parties and their representatives have an important role. It is primarily their responsibility to ensure that the grounds of appeal are presented in a concise and coherent manner. Properly structured grounds of appeal identifying the error on a point of law, and the consequence of the alleged error upon the decision enables the judge considering the application for permission to appeal to understand the issues that will arise in the appeal and whether any error is material. Unfocused grounds of appeal lead to unnecessary confusion regarding the identification of the errors that lie at the heart of the appeal before the Upper Tribunal and do not assist the Tribunal to further the overriding objective.

24. We now turn to the grounds of appeal and the grant of permission to appeal in these two appeals. Because they lie at the heart of the issues that we have considered in this decision, we set out the grounds of appeal to the Upper Tribunal and the grant of permission to appeal, in full. In each case, the grounds of appeal are unnecessarily lengthy and lack focus. The judges considering the application for permission to appeal have had to distil the grounds to their essence and set out in summary, the errors claimed.

KIRAN RAI

25. On 6 April 2023 the respondent refused Mr Rai's application for entry clearance as the adult dependent child of a former member of the Brigade of Gurkhas. The appellant's appeal against that decision was dismissed by a judge of the First-tier Tribunal ("FtT") on 22 January 2024. In summary, the judge found that notwithstanding the appellant's marriage, he was financially supported by his father. However, by the time of the hearing before the FtT, the appellant's father had passed away and the appellant had of course failed to establish 'a current and ongoing family life between himself and his deceased father'. The judge said he had no hesitation in finding that there were emotional ties between the appellant, his mother and sister, but nothing more. The judge therefore found that Article 8 was not engaged on family or private life grounds.

26. The appellant applied for permission to appeal to the Upper Tribunal. The grounds of appeal dated 12 February 2024 claimed:

> "1. [The judges's] determination is vitiated by one or more errors of law as follows.
>
> 2. In paragraphs 12 to 14 of his determination the Judge concluded that - even though the Appellant did indeed satisfy the relevant immigration rules at the date of application / date of decision - nonetheless this was not relevant to his assessment of the article 8 claim as at the date of the hearing before him, on account of the intervening death of the Appellant's father.
>
> 3. However, para 23 of Mostafa 2015 UKUT 112 remains authority for the proposition that the ability to satisfy the immigration rules "…may be capable of being a weighty factor in an appeal based upon human rights …. which must be weighed with the other facts in the case."

4. Moreover, the immigration rules themselves were changed between the date of decision and the date of the hearing. Thus, on 5 October 2023 Appendix Gurkha was introduced which – unlike the former rules under Annex K – no longer requires the former Gurkha parent of a relevant child to still be alive at the date of application: see AF(GHK)12.3.

5. Which being so the Judge misapplied the law and/or failed to take into account all relevant considerations.

6. In addition, the Judge's determination is based upon significant factual errors concerning relevant dates. Thus, the Judge wrongly states:

a) in paragraph 1 that the Respondent's refusal decision is dated 12 April 2023, when in fact it was dated 6 April 2023, and

b) in paragraph 2 that the Appellant's parents and sister were granted a settlement visa on 6 April 2022 (thereby repeating an error first made by the Respondent in the Appellant's refusal decision), when in fact they were granted settlement by various decisions also dated 6 April 2023, and

c) in paragraph 3 that the Appellant's mother and sister visited the Appellant in Nepal in January 2024, whereas they in fact visited him in the period after his father's death 8 on 8 November 2023 and ending only a few days before the appeal hearing on 9 January 2024.

7. The Judge thereby failed to appreciate that the applications of the Appellant, his father, mother, and sister were all made simultaneously and dealt with simultaneously by the Respondent, being a relevant requirement under the relevant immigration rules.

8. Moreover, the Judge then failed to appreciate that the Appellant and his parents and sister all lived with him in the same house in Nepal until very recently, specifically 30 June 2023 (when they entered the UK), and then all soon thereafter returned to live with him – apart from his father – after the father's death. Further that the only reason that they were not still living with the Appellant at the date of his appeal hearing was because they had been forced to return to the UK to give oral evidence at that hearing.

9. The Judge thereby by necessity failed to take into account all relevant factors pertaining to the nature and depth of the relevant family relationships.

10. Moreover, the Judge further failed to take into account whatsoever the following further significant matters concerning financial support being provided by his surviving family in the UK:

a) the Appellant remains living rent free in the family home in Nepal, the same as he always has and – on the evidence – as he always will be allowed to so do. Until his father's death this was due to the support of his father, the owner of the house. Thereafter it is due to the support of his mother who has inherited the house – as she stated in her oral evidence at the appeal hearing - from her late husband;

b) the Appellant's huge legal costs of making the initial application in February 2023 and then paying for his appeal up to and including the appeal hearing itself on 9 January 2024 were and remain wholly funded directly and indirectly (by their guaranteeing his debts to neighbours) by his family in the UK. In which regard the Judge ignored all refences to the payment of his legal costs within the costs of the 4 joint applications, the same issue being expressly raised in the various witness

statements of the Appellant, his late father and his mother, and then supplemented by oral evidence at the appeal hearing itself.

11. In addition, the Judge failed to take into account the evidence of near daily (and sometimes twice daily) phone calls between the Appellant and his family in the UK, during such times as they have been living in different countries, such evidence being set out in the various witness statements and also by the supporting documents in the Appellant's bundle.

12. Which being so the Judge by necessity failed to take into account all relevant evidence relating to the nature and depth of financial and emotional support being provided to (and by) the Appellant as at the date of the appeal hearing.

13. By reason of the foregoing the Judge has failed to give any adequate reasons why he has refused to accept the existence of ongoing family life between the Appellant and his UK based family, and why he has refused the appeal under article 8. Further or alternatively, he has failed to take into account all relevant circumstances and/or he has reached a perverse conclusion."

27. Permission to appeal was granted by another judge of the FtT on 15 March 2024 "on the first ground". He said:

"2. The grounds assert that the Judge erred in making material errors of law by:

a) Failing to take into account that the Immigration Rules had changed during the period between the application and the decision under appeal and the fact that the appellant met the relevant Rules

b) By making factual errors in the decision and reasons.

c) By failing to give adequate reasons for rejecting the appeal under Article 8

3. The first ground raises an arguable material error of law if it is shown that the appellant met the Immigration Rules and that appropriate weight was not given to this in the decision."

28. The appellant renewed the application for permission to rely upon the remaining grounds to the Upper Tribunal. The appellant said:

"2. … it is respectfully asserted and/or repeated that the ambit of the forthcoming appeal ought properly to be wider than is currently permitted.

3. In particular, by finding that "…the Appellant has failed to establish a family life and therefore Article 8 is not engaged" (para 17) [the judge] reached a finding of fact on this crucial issue that is vitiated by one or more errors of law as follows:

a) he failed to identify, let alone to apply, the correct legal test for the existence of such family life, namely "…effective, real or committed support": see Uddin 2020 EWCA Civ 338 at paragraph 40;

b) further or alternatively he actively applied (para 16) a narrower and thus incorrect legal test by his use of the words "…failed to show that he is financially and (own emphasis applied) emotionally dependent on his mother and sister…". Thus see e.g. Rai v ECO 2017 EWCA Civ 320 at para 17 "…what may constitute an extant family life falls well short of what constitutes dependency…"

c) he failed to identify all relevant background circumstances, including – as per Rai again at para 17: "…identifying who are the near relatives of the appellant, the nature of the links between them and the appellant, the age of the appellant, where and with whom he has resided in the past and the forms of contact he has maintained with other members of the family with whom he claims to have a family life." See also para 40 again of Uddin: "…continuing cohabitation after adulthood will be suggestive of ongoing real, effective or committed support which is the hallmark of a family life";

d) further or alternatively, he failed to take into account all material considerations namely the facts that:

i) the Appellant was still a young man in his 20's who had lived with his mother and sister in the family home throughout all of his life except the short period from 30 June 2023 (when they entered the UK) till shortly after his father's death on 8 November 2023, plus the further miniscule period of literally approximately one week immediately preceding the appeal hearing on 8 January 2024 (for which they had returned to the UK in order to give evidence at that hearing);

ii) the Appellant was living rent free in the family house in Nepal which since his father's recent death now belonged to his mother (as per her evidence at the hearing);

iii) on the available evidence, both written and oral, he was wholly reliant on his UK family for the payment of his past and continuing legal costs, running into many thousands of pounds sterling, of and occasioned by both his immigration application and subsequent appeal – including the costs of his legal representation at the appeal hearing on 8 January 2024;

iv) the Appellant had applied simultaneously with his mother and sister to settle in the UK and using the funds secured by a joint loan taken out by his parents;

v) there was not simply some mere ongoing limited "…contact with his mother and sister…" (para 16) but rather on the evidence the Appellant and his mother and sister were still incredibly close to each other, as evidenced by where they had been jointly living, the impact of the recent death of their father, and the daily or even twice daily phone calls – according to the written and oral evidence - between them all in those brief periods when they were not actually cohabiting.

e) further or alternatively he actively took into account inaccurate and/or irrelevant considerations in that:

i) he wrongly asserted in para 2 that the Appellant's mother and sister were granted settlement in the UK on 6 April 2022 when in fact it was on 6 April 2023, and

ii) he wrongly asserted in para 3 that the mother and sister "visited" him (wrongly called "the sponsor") only in "January 2024";

iii) he thus apparently considered that any close contact and cohabitation between the claimed family members had ended in April 2022, when in fact it had continued until the week immediately preceding the appeal hearing."

29. On 24 May 2024, Upper Tribunal Judge Blundell considered the renewed application for permission and said:

> "1. The grounds of appeal against [the FtT Judge's] decision are poorly pleaded, in that they are not clearly delineated into separate grounds. On analysis, however, the original grounds raised the following arguments:
>
> (i) The judge misdirected himself in law in the weight that he attached to the appellant's ability to meet the Immigration Rules: [2]-[5] of the grounds.
>
> (ii) The judge misdirected himself on the facts and failed, as a result, to take account of material factors: [6]-[9].
>
> (iii) The judge failed in any event to take account of material matters in considering whether or not the relationship displayed more than normal emotional ties: [10]-[12].
>
> 2. [The FttT] granted the appellant permission to appeal on the first of the three grounds which were advanced but said nothing about the other two grounds. The renewed application for permission to appeal will be considered at a hearing on a date to be notified."

30. The grounds of appeal have been helpfully summarised by Upper Tribunal Judge Blundell. It should not have been necessary for him to do so, and if they had been properly formulated as three grounds when the application for permission to appeal was made, it is likely that the judge considering the application would have reached a focused decision considering whether the grounds were arguable, and the utility of granting permission only on the first of the three grounds.

31. Mr Caswell submits the focus is upon the FtT judge's finding that the appellant has failed to establish a family life and that Article 8 is therefore not engaged. Permission has been granted on the first ground which relates to the appellant's ability to meet the immigration rules. The second ground of appeal is concerned with the judge's consideration of the evidence regarding the appellant's on-going family life with his mother and sister. The third ground of appeal is concerned with the judge's overall assessment of the Article 8 claim and the complaint is that the judge failed to take account of material matters, including those identified in the second ground of appeal, in reaching their conclusion.

32. The appellant has been granted permission to appeal on the first ground only. As set out by the Court of Appeal in *TZ (Pakistan)* [2018] EWCA Civ 1109, compliance with the immigration rules would usually mean that there is nothing on the respondent's side of the scales to show that the refusal of the claim could be justified. The difficulty with granting permission on the first ground only is that any factual errors that the appellant may establish, or the adequacy of the reasons overall, are capable of having an impact upon the judge's consideration of whether Article 8 is engaged.

33. As Upper Tribunal Judge Blundell said, the FtT judge said nothing about the second and third grounds upon which permission was refused. As far as the second ground of appeal is concerned, it is unfortunate that the grounds of appeal as originally pleaded refer to what are described as "significant factual errors" that cannot realistically be material to the outcome of the appeal. Some of the factual errors relied

upon may be material to the outcome of the appeal, but others are plainly immaterial. For example, whether the respondent's refusal decision is dated 12 April 2023 or 6 April 2023 is entirely irrelevant to the judge's conclusion that the appellant has failed to establish a family life and that Article is therefore not engaged. That said, the second and third grounds of appeal concern the judge's consideration of the evidence before the Tribunal regarding the prior questions of whether the refusal of entry clearance is an interference with the appellant's right to respect for private and family life; and, if so, whether the interference has consequences of such gravity as potentially to engage the operation of Article 8.

34. There is plainly an overlap in the grounds of appeal properly formulated and summarised by Upper Tribunal Judge Blundell such that there is little utility in refusing permission on grounds two and three regardless of the lack of any real merit of some, not all, of the criticisms made. In the end, the question for the Upper Tribunal will be whether it was open to the judge of the FtT to dismiss the appeal on Article 8 grounds for the reasons set out in the decision of the FtT because the decision is unlawful under section 6 of the Human Rights Act 1998.

35. We are satisfied therefore that we should grant permission on the second and third grounds of appeal.

D.A.M

36. On November 2003 DAM was convicted at Bristol Crown Court for conspiracy to supply class A controlled drugs. On 19 November 2003 he was sentenced to 5 years and 6 months imprisonment and recommended for deportation. On 22 December 2005 he was deported from the UK. In 2007 he re-entered the UK in breach of the Deportation Order and on 31 March 2015 an application was made to revoke the deportation order. The respondent made a decision on 20 December 2017 to refuse to revoke the deportation order and to refuse the appellant's human rights claim. The appellant's appeal against that decision was allowed by the FtT but subsequently dismissed by the Upper Tribunal. On 16 October 2019 further representations were made to the respondent, including representations on international protection grounds. On 7 September 2020, the respondent made a decision to refuse the appellant's protection and human rights claims and concluded there are no grounds to revoke the deportation order.

37. The appellant's appeal was dismissed by the FtT for reasons set out in a decision promulgated on 2 June 2023. The judge found the appellant has been convicted of a particularly serious crime and that the appellant has failed to rebut the presumption that "by reason of his offending, he is currently a danger to the community". For the same reasons the judge found the appellant is excluded from humanitarian protection. The judge considered the appellant's international protection claim and concluded that the appellant has failed to establish he has a well founded fear of persecution or would be at risk upon return to Jamaica, or that his deportation would be in breach of Article 3. Finally the Judge addressed the appellant's Article 8 claim based upon his relationship with his partner and children. The judge referred to an independent social work report relied upon by the appellant but gave limited weight to that report. The

judge considered the impact of the appellant's deportation upon his children and partner and concluded that the relevant factors, both individually and cumulatively, are not such as to outweigh the significant and enhanced public interest in the removal of the appellant. The judge concluded that on balance, this is not a case in which there are very compelling circumstances that outweigh the public interest in the appellant's deportation.

38. The appellant applied for permission to appeal to the Upper Tribunal. The Grounds of Appeal are as follows:

> "1. The Appellant's appeal was heard before [the FtT] on 28th April 2023 at Newport. In a decision promulgated on 2nd June 2023 the Judge dismissed the Appellant's appeal.
>
> 2. The Appellant seeks permission to appeal to the Upper Tribunal.
>
> 3. The Respondent accepted that: there are many organised crime groups in Jamaica (§33 RFRL), originally entered on 7th October 2001 (§96 RFRL), genuine and subsisting relationship with sons (§99 RFRL), negative impact on mental health of youngest son (§102 RFRL), genuine and subsisting relationship with partner (§108 RFRL), and partner's wellbeing has decreased since last hearing (§111 RFRL).
>
> 4. The Judge has erred in the following ways:
>
> a. Making a material misdirection of law/Making an irrational finding. At §20 the Judge accepts that the Appellant has not been arrested, charged or convicted of a crime since his conviction on 14 th March 2003. At §36 the Judge however finds that, notwithstanding the Appellant's lengthy period of non-offending, he has failed to rebut the presumption that he is a danger to the community. The Judge has erred and has failed to rationally set out why the Appellant poses a danger to the community given his lack of offending over a significant period of time. The Appellant's unlawful entry in 2007 does not rationally mean that he is still a danger to the community when he has been living with his family, came forward to the Respondent in 2015 and has no further convictions. The Judge's conclusions at §36 & §38 are irrational given the circumstances of the claim. The Judge's error in respect of the certification pursuant to §72 NIAA 2002 is material to the protection claim and the human rights claim.
>
> b. Failing to consider material evidence/Failing to consider material matters. In assessing whether the Appellant is a danger to the community the Judge has failed to consider material matters which were supported by evidence. The Judge states that the Appellant has failed to accept his involvement in the conspiracy (§36). However at §5 of the Appellant statement (dated 10 th June 2021) the Appellant stated:
>
> *I have accepted full responsibility for my actions. Going to the flat in Ransley House on that fatal day to hang around with people whom I had known for only a short period of time was a bad choice. I am very remorseful for what has happened. My deepest sympathy goes out to anyone who has fallen victim to class A drugs or any illegal substance. I am now fully aware of the devastating and negative impact Class A drugs have on peoples lives and the destruction it can cause communities. I am now a totally reformed person. I do not hang around with anyone who is involved in any type of illegal activities. I was 26 years of age when this happened...*
>
> Again in the Appellant's supplemental statement (dated 30th March 2023) he expresses similar remorse and responsibility at §§117-18. The Judge has not

engaged with this material evidence in his assessment of whether the Appellant poses a danger to the community. Furthermore the medical evidence (pages 10- 21 & 108-120 AB) showed that the Appellant has suffered from anxiety and depressive disorder for a number *(sic)* years which has deteriorated. The medical evidence was material to the assessment of whether the Appellant has rebutted the presumption and the Judge has not factored it into his assessment. The Judge has erred.

c. Making a material misdirection of law. The Judge finds that the Appellant's account, in relation to the protection claim, has been consistent throughout (§46). The Judge also accepts that the Appellant account is consistent with and supported by country evidence (§47). The Judge however finds that the Appellant's account is a fabrication designed to frustrate removal based on the delay in making the claim. In rejecting the Appellant's consistent account, which was supported by the country evidence, the Judge has failed to properly make an assessment of risk upon the lower standard (MAH (Egypt) v Secretary of State for the Home Department [2023] EWCA Civ 216 (28 February 2023)). The Judge has erred.

d. Making a material misdirection of law/making an irrational assessment of the evidence. The Judge has erred in his assessment of the Independent Social Work reports. At §59 the Judge notes that there was no challenge to the expert Social Work report by the Respondent. The Judge has failed to consider that the 2019 report included (Appendix 2) a psychological assessment by Weronika Krakowaik. Furthermore at §59 the Judge states that at points the expert has speculated, playing the Appellant's case at its highest, straying into the role of an advocate. The Judge's assessment of the report is unreasonable and the points at which the Judge asserts that the expert is speculating is a mischaracterisation of the report. The Judge also states in relation to the expert's assessment of the youngest child that there was no assessment of whether the child was exaggerating or feigning symptoms and whether there were alternative causes of the self-harm scarring. The Judge has erred, there was no challenge to the expert and it was never asserted that either of the children have been exaggerating. The social work report was not a scarring assessment where alternative causes are in issue. The Judge's assessment is flawed.

e. Making a contradictory finding/making an irrational assessment of the evidence. At §59 the Judge is critical of the Social Worker's assessment of the Appellant's youngest child's mental health and self-harm (see above) yet having considered the school and doctor's letters the Judge accepts at §67 that the Appellant youngest child suffers from anxiety and has self-harmed. The Judge further accepts that removal would exacerbate the Appellant's youngest child's anxiety. The Judge's acceptance at §67 undermines and contradicts his criticism of the Social Worker for not considering if the child was exaggerating or if there were alternative causes for the scratching/bruising. The Judges acceptance at§67 shows that his criticism and deprecation of the Social Worker is flawed.

f. Failing to consider material matters. In considering the position of the Appellant's wife at §§77-80 the Judge has failed to engage with what the Social Worker said in respect of her. In the 2023 report the Social Worker considered the position of the Appellant's wife (§§10.1-10.5) and sets out how she is finding it difficult to cope, is only getting 3 hours sleep per night, puts on a mask to hide the despair at home and has engaged in compulsive behaviour (§10.5). The Judge has erred and failed to consider material matters in respect of the Appellant's wife.

g. Failing to consider material matters/making a material misdirection of law. At §51 of HA (Iraq) v Secretary of State for the Home Department [2022] UKSC 22 (20 July 2022) Lord Hamblen sets out a list of factors to be considered when assessing very compelling circumstances (this was set out in the skeleton). Lord Hamblen includes 'the time elapsed since the offence was committed and the applicant's conduct during that period' . The Judge fails to consider this as part of his balance of factors in favour of the Appellant at §89. Furthermore at §90 the Judge sets out "neutral' factors in the balance, however a number of the factors set out therein (b), (c) (d) and (e) are factors that should have weighed in the Appellant' favour and to treat them as neutral flaws the Judge's assessment.

5. The above constitute errors on points of law and permission to appeal should be granted.

6. The Judge's decision should be set aside and reconsidered by the Upper Tribunal or remitted to the First-tier Tribunal."

39. Permission to appeal in respect of Grounds (a), (b), (e) and (f) was granted by a judge of the FtT on 25 August 2024. Permission to appeal was refused on grounds (c), (d) and (g). The judge addressed the merits of each of the grounds at some length and insofar as permission was refused the judge said:

"5. Ground (c) : There is no arguable error in the assessment of risk in the protection claim. Whilst the Judge did find that the Appellant's account had been consistent throughout and that it was largely consistent with the objective background evidence as to gang violence in Jamaica, the Judge also considered a range of other factors in relation to credibility including the length of time it took for the Appellant to lodge his protection claim; the fact that he failed to do so even in 2015 when he put forward his Human Rights claim; his awareness and knowledge of the immigration system generally and that he is a sophisticated individual and the vague nature of his claim to reach a conclusion that it was a fabricated claim.

6. Ground (d): There is no arguable error in the Judge's assessment of the ISW report. The grounds wrongly submit that the Judge noted that there was no challenge to the report by the Respondent. There was in fact no challenge to the expert status and qualifications of the ISW. The Judge was entitled reach his own conclusions in relation to the ISW report notwithstanding the expert status of the author of the report. The Judge has given adequate reasons for placing limited weight on the report which are not perverse or irrational.

…

9. Ground (g): There is no arguable error made by the Judge in the balancing exercise under Article 8. Whilst he may not have considered the time elapsed since the offence was committed and the Appellant's conduct during that period at paragraph 89 , he clearly refers to that factor and takes it into account at paragraph 91. The grounds further submit that the Judge has considered a number of factors at paragraph 90 as neutral factors when they should have been given positive weight. The Judge has carefully and clearly described why factors, which on first sight might be positive factors, are neutral and has set out with clear reasons in relation to each particular factor why that is so. I find that this part of the grounds amounts to no more than a disagreement with the Judge's conclusions and is not arguable."

40. It is conceded that the decision of the FtT judge who granted permission to appeal to limit the grounds upon which permission is granted complies with the guidance set

out in *Safi and others (permission to appeal decisions)* [2018] UKUT 388. No application has been made to the Upper Tribunal to rely upon the grounds upon which permission was refused. In summary, Mr Pipe submits that was not necessary given the inevitable overlap within some of the grounds of appeal. The FtT judge has granted permission to appeal on grounds concerning the judge's assessment of the Article 8 claim and if the grounds upon which permission has been granted are established, it would follow, Mr Pipe submits, that the judge's overall assessment of proportionality would have to be revisited.

41. Notwithstanding the way in which the grounds of appeal are framed, there are in fact four errors on a point of law that the appellant points to:

    a. Grounds (a) and (b) concern the finding that the appellant has not rebutted the statutory presumption that he has been convicted of a particularly serious crime and constitutes a danger to the community of the UK. The judge found that the appellant cannot therefore rely upon the protection that the Refugee Convention would provide and is excluded from humanitarian protection. Permission to appeal has been granted and the errors relied upon are set out in paragraphs 4(a) and (b) of the grounds of appeal.

    b. Ground (c) is a challenge to the judge's conclusion that the appellant has not established that he has a well founded fear of persecution or is at real risk of serious harm upon return to Jamaica. Permission to appeal has been refused on this ground and the application has not been renewed to the Upper Tribunal.

    c. Grounds (d), (e) and (f) concern the judge's consideration of the reports of the independent social worker and the weight to be attached to the reports. Permission has been granted on grounds (e) and (f), but refused on ground (d).

    d. Ground (g) concerns the judge's overall consideration of whether there are very compelling circumstances over and above those described in Exceptions 1 and 2 of s117C of the 2002 Act. Permission to appeal has been refused.

42. Mr Pipe accepts that ground (c) is a discrete ground upon which permission to appeal has been refused and that will form no part of the consideration of the appeal by the Upper Tribunal. He acknowledges that even if the Upper Tribunal finds an error on a point of law on grounds (a) and (b), that will not assist the appellant because the FtT judge went on in any event to consider the international protection claim and following the refusal of permission on this ground, the FtT judge was entitled to reject it for the reasons given.

43. It is again unfortunate that the grounds of appeal were formulated as they were, rather than as four grounds of appeal, each directed to a particular conclusion, that are clearly delineated as they have been summarised above. If it is claimed, as here, that the judge erred in the assessment of the reports of the independent social worker, that is the ground of appeal. The claimed errors that support that proposition could properly be set out in sub-paragraphs.

44. Although there is no renewed application for permission to rely upon grounds (d) and (g) when the Upper Tribunal considers whether the decision of the FtT is vitiated by material errors of law as set out in the grounds upon which permission to appeal has been granted, the errors identified in paragraphs (e) and (f), will feed into the judge's assessment of the reports of the independent social worker and the weight to be attached to the conclusions set out in the reports. Similarly, as Mr Pipe submits, any error that is established by grounds (e) and (f) will feed into the judge's overall assessment of the Article 8 claim and the factors that weigh in favour of and against the appellant when considering whether there are very compelling circumstances over and above those described in Exceptions 1 and 2 of s117C of the 2002 Act.

45. To that extent only the criticisms made in grounds (d) and (g) of the grounds of appeal will in effect be subsumed within the grounds of appeal upon which permission is granted and be within the scope of the appeal before the Upper Tribunal. If the appellant wished to go further and rely upon grounds (d) and (g) as pleaded, it was open to the appellant to renew the application for permission to the Upper Tribunal. The appellant has not done so and there is no reason for the Upper Tribunal to allow the appellant to argue those grounds as pleaded when permission has been refused.

CONCLUSION

46. The difficulties that arise from a failure to provide the FtT and Upper Tribunal with coherent and properly pleaded grounds of appeal are all too apparent from the matters that we have had to address in this decision. The failure of the appellants' representatives has had the unfortunate consequence that the appellants have been put to unnecessary cost. It also places an unnecessary strain upon limited resources if significant amounts of time have to be spent determining the essence of the complaint made.

47. In this decision we have determined the grounds of appeal that are before the Upper Tribunal and the scope of the matters that the Upper Tribunal will consider when the appeals are heard. As we said at the outset, the appeals will now be listed separately for the Tribunal to consider whether the decision of the First-tier Tribunal ("FtT") is infected by a material error of law, and if so, the appropriate course for the disposal of the appeal.

V. Mandalia
Upper Tribunal Judge Mandalia

Judge of the Upper Tribunal
Immigration and Asylum Chamber

28 February 2025