**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: HU/21276/2018**

**THE IMMIGRATION ACTS**

**Heard at: Manchester Civil Justice Centre**
**On: 3rd March 2020**

**Decision & Reasons Promulgated**
**On: 5th June 2020**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**Master E**
**(anonymity direction made)**

Appellant

**and**

**Entry Clearance Officer, New Delhi**

Respondent

**For the Appellant:** **Mr Holt of Counsel instructed by Braitch RB Solicitors**
**For the Respondent:** **Mr McVeety, Senior Home Office Presenting Officer**

**DECISION AND REASONS**

1. The Appellant is a national of Afghanistan born in 2001. He appeals with permission against the decision of the First-tier Tribunal (Judge French) to dismiss his human rights appeal.

**Background and Matters in Issue Before the First-tier Tribunal**

2. In June 2018, when he was still a child, the Appellant sought entry clearance to the United Kingdom in order to settle here with his elder brother M. M came to this

country in 2009 and after being recognised as a refugee is now a British citizen. It is averred that both of their parents are dead. The Appellant made his application under paragraph 297 of the Immigration Rules.

3. The Respondent refused the application on the 21st September 2018. Although it was eventually accepted (upon production of DNA evidence) that the Sponsor and Appellant are brothers, it was not accepted that the boys' parents were deceased, or that there were "serious family or other considerations making the exclusion of the Appellant undesirable". As can be seen from the rule, both of these points were concerned with the Appellant's ability to meet one of the alternative provisions in sub-paragraph (i):

> "297. The requirements to be met by a person seeking indefinite leave to enter the United Kingdom as the child of a parent, parents or a relative present and settled or being admitted for settlement in the United Kingdom are that he:
>
> (i) is seeking leave to enter to accompany or join a parent, parents or a relative in one of the following circumstances:
>
> (a) both parents are present and settled in the United Kingdom; or
>
> (b) both parents are being admitted on the same occasion for settlement; or
>
> (c) one parent is present and settled in the United Kingdom and the other is being admitted on the same occasion for settlement; or
>
> (d) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and the other parent is dead; or
>
> (e) one parent is present and settled in the United Kingdom or being admitted on the same occasion for settlement and has had sole responsibility for the child's upbringing; or
>
> (f) **one parent or a relative is present and settled in the United Kingdom or being admitted on the same occasion for settlement and there are serious and compelling family or other considerations which make exclusion of the child undesirable and suitable arrangements have been made for the child's care; and**
>
> (ii) is under the age of 18; and
>
> (iii) is not leading an independent life, is unmarried and is not a civil partner, and has not formed an independent family unit; and
>
> (iv) can, and will, be accommodated adequately by the parent, parents or relative the child is seeking to join without recourse to public funds in accommodation which the parent, parents or relative the child is seeking to join, own or occupy exclusively; and
>
> (v) can, and will, be maintained adequately by the parent, parents, or relative the child is seeking to join, without recourse to public funds; and
>
> (vi) holds a valid United Kingdom entry clearance for entry in this capacity; and
>
> (vii) does not fall for refusal under the general grounds for refusal."

4. It should be noted that the ECO's concern about the Appellant's parents only arose in the alternative. Although the whereabouts and wellbeing of his parents was relevant

to the question raised by 297(i)(f), these matters could not be determinative: the Appellant did not need to be an orphan to qualify.

5. There is no longer any general right of appeal against a refusal to grant entry clearance under the rules. There was however a right of appeal available to the Appellant on human rights grounds. It being accepted that an application under 297 amounted to an assertion of a right to family life under Article 8, it was on this basis that the First-tier Tribunal accepted the Appellant's appeal as valid. So it was that when the appeal came before the First-tier Tribunal it made the following observation:

> "I understood that the appeal needed to be considered in the light of the Immigration Rules. Even though the Rules cannot be a Ground of Appeal in itself, whether the appellant met the provisions of the Immigration Rules is a relevant factor in deciding whether the decision was proportionate"

6. The Respondent accepted this proposition: although the appeal was on 'human rights' grounds in fact the Appellant's ability to demonstrate that he met the requirement of the Rules was very likely to be determinative. Although there may be cases where a historical refusal under the Rules was found to be wrong, but a human rights appeal should nevertheless be dismissed[1], this was not one of them. A positive finding in respect of paragraph 297 would amount to a finding that there was family life and that the refusal of entry clearance betrayed a disproportionate lack of respect for that Article 8 right. Put another way, compliance with the rule would mean that there was nothing on the Secretary of State's side of the scales to show that the refusal of entry clearance could be justified: see TZ (Pakistan) and PG (India) v Secretary of State for the Home Department [2018] EWCA Civ 1109.

7. The Appellant's ability to meet the requirement at 297(i)(f) was then the primary matter in issue before the First-tier Tribunal.

**The Decision of the First-tier Tribunal**

8. The Tribunal directed itself to the legal framework, as set out above [at §2]. It recorded the evidence of the Sponsor [at §3], some of which it found to be "vague". It noted the Respondent's concern that there was no documentary proof that the boys' parents were deceased [at §4], and that there was no apparent reason why the sponsor could not return to Afghanistan to be with his brother [§5]. It then considered the best interests of the child [§6] and noted that continuity of residence is an important factor in the wellbeing of children. The Appellant had lived his entire life until this point in Afghanistan, and was familiar with the customs and language of the country [§6]. He could not however speak English. The Sponsor and Appellant had in fact only spent 2 months together in the past ten years. Accordingly the Tribunal was not satisfied that any emotional or financial dependency had been established [§7]. Finally the Tribunal had regard to the weight

[1] A paradigm example being where a sponsor had, since the original decision, left the United Kingdom.

to be attached to the maintenance of immigration control before finding that there were no compelling reasons to allow the appeal.

**Error of Law**

9. Although the grounds are lengthy and detailed there are, in essence, two central grounds of appeal. The first is that the First-tier Tribunal has failed to direct itself to the central matter in issue: whether the Appellant meets the requirements of paragraph 297(i)(f). The second is that in its evaluation of the Appellant's case the First-tier Tribunal failed to take material evidence into account whilst giving weight to immaterial factors.

10. I find the first ground to be made out. That paragraph 297(i)(f) underpinned the legal structure to be followed in this appeal is not apparent from the First-tier Tribunal decision. Having initially directed itself to the correct test it then veers off into a generalised assessment of Article 8 having regard to matters such as whether the Appellant can speak English and the length of the separation of the brothers, the public interest in maintaining immigration control and the degree of financial dependency. All of these matters may have been relevant, but it is hard to see where the Tribunal addressed the question posed in the rule: are there serious and compelling family or other considerations which make exclusion of the child undesirable?

11. The second ground is also made out. As already mentioned, the Tribunal appears to give weight to matters which are of no consequence at all: there was for instance no requirement under the rule that this Appellant demonstrate that he can speak English. The Tribunal further appears to diminish the significance of a street robbery suffered by the Appellant on the grounds that it was not a "political act": what the relevance of that might be is left unexplained. Conversely the Appellant is able to point to various pieces of material evidence before the First-tier Tribunal that are not addressed in its decision, such as the Sponsor's testimony about how and why he and his brother became separated, the documentary evidence of financial support and the photographs corroborating the claim that the Appellant has been the victim of crime in Kabul. More significantly the decision completely ignores previous judicial consideration of the circumstances of this family, namely the decision of the First-tier Tribunal (Judge Pooler) in respect of the Sponsor's asylum claim. This decision contains findings plainly relevant to the disposal of this appeal including:

    a) That the boys' parents were killed in 2005 whilst on their way to visit a hospital in Kabul;

    b) That the boys were thereafter placed in the care of a paternal uncle living in Ghazni;

    c) That this uncle was a Taliban sympathiser;

    d) That both boys were ill-treated by this man, being regularly beaten and in the case of the Sponsor, attacked with a knife;

e) That the Sponsor (the elder of the two) was coerced by this uncle into committing crimes such as setting fire to the local school and planting landmines;

f) That accordingly a real risk of harm arose in Ghazni, where there was not a sufficiency of protection;

g) That the escape of both children was facilitated by a maternal uncle then living in Iran but they were separated *en route;*

h) That the Sponsor was only 16 years old when he arrived in this country; *and*

i) That it would be unreasonable and unduly harsh to expect the sponsor to internally relocate to Kabul because at the material time he was a child with no support in the city.

12. The Judge in this case was bound by the *Devaseelan* principles to take the findings of Judge Pooler as his starting point. The omission to consider them is clearly significant, given their relevance to the question of whether there are today "serious and compelling" reasons why *this* young man, who has only just turned 18, should be extracted from Kabul and permitted to settle here with his brother.

13. For those reasons I set the decision of the First-tier Tribunal aside.

**The Re-Made Decision**

14. In remaking the decision I have had regard to the following material:

a) The Appellant's bundle dated 18th April 2019 (containing *inter alia* witness statements from the Sponsor and from an additional witness Mr Mohammadi)

b) Appellant's supplementary bundle dated 26th February 2020 (containing *inter alia* an undated statement from the Appellant drafted with the assistance of a Dari-English translation bureau in Kabul)

c) The Entry Clearance Officer's bundle containing *inter alia* the application form and refusal letter.

15. The only ground of appeal is human rights. The Appellant relies on Article 8 ECHR and asserts that the decision to refuse to grant him entry clearance is not a proportionate response to the need to maintain immigration control. Before I turn to consider the matters in issue, I record the agreement between the parties, and my acceptance, that there is a family life between the sole surviving members of this family, namely the Appellant and his Sponsor. As the evidence I set out below demonstrates, there is here both emotional and financial dependency such that there is a 'family life' between these two. I am further satisfied that the decision to refuse entry clearance demonstrates a lack of respect for that family life such that Article 8 is engaged. The only question is whether that lack of respect is on the facts, and having regard to the need for immigration control, justified. The burden of proof in relation to this matter rests on the Entry Clearance Officer. The Appellant submits that this burden cannot reasonably be discharged, because the Appellant can demonstrate

that at all material times he met the requirements of the Rules, specifically paragraph 297 thereof.

16. The test at 297(i)(f) is a high one, containing three separate limbs. The first is that there is a relative present and settled in the United Kingdom: the Respondent accepts that this part of the test is met, since the Sponsor M was granted indefinite leave to remain in 2015 and is now a British citizen. Similarly no issue is taken with the Appellant's ability to meet the third limb of the test, that "suitable arrangements have been made for his care". The matter in issue is confined to the second limb: that there are "serious and compelling family or other considerations which make the exclusion of the child undesirable".

17. In Mundeba (s.55 and para 297(i)(f)) [2013] UKUT 00088(IAC) a Presidential panel of the Upper Tribunal (Mr Justice Blake and Upper Tribunal Judge Dawson) considered what factors might be relevant in consideration of the rule. The headnote reads:

> *i) The exercise of the duty by the Entry Clearance Officer to assess an application under the Immigration Rules as to whether there are family or other considerations making the child's exclusion undesirable inevitably involves an assessment of what the child's welfare and best interests require.*
>
> *ii) Where an immigration decision engages Article 8 rights, due regard must be had to the UN Convention on the Rights of the Child. An entry clearance decision for the admission of a child under 18 is "an action concerning children ... undertaken by … administrative authorities" and so by Article 3 "the best interests of the child shall be a primary consideration".*
>
> *iii) Although the statutory duty under s.55 UK Borders Act 2009 only applies to children within the UK, the broader duty doubtless explains why the Secretary of State's IDI invites Entry Clearance Officers to consider the statutory guidance issued under s.55.*
>
> *iv) Family considerations require an evaluation of the child's welfare including emotional needs. 'Other considerations' come in to play where there are other aspects of a child's life that are serious and compelling for example where an applicant is living in an unacceptable social and economic environment. The focus needs to be on the circumstances of the child in the light of his or her age, social backgrounds and developmental history and will involve inquiry as to whether:-*
>
> *a. there is evidence of neglect or abuse;*
>
> *b. there are unmet needs that should be catered for;*
>
> *c. there are stable arrangements for the child's physical care;*
>
> *The assessment involves consideration as to whether the combination of circumstances are sufficiently serious and compelling to require admission.*

18. In the body of the decision Blake J emphasises the high threshold that the language implies:

> 34. In our view, 'serious' means that there needs to be more than the parties simply desiring a state of affairs to obtain. 'Compelling' in the context of paragraph 297(i)(f) indicates that considerations that are persuasive and powerful. 'Serious' read with 'compelling' together indicate that the family or other considerations render the exclusion of the child from the United Kingdom undesirable. The analysis is one of degree and kind. Such an interpretation sets a high threshold that excludes cases where, without more, it is simply the wish of parties to be together however natural that ambition that may be.

19. I have heard live evidence from two witnesses, the sponsor M and a further witness, family friend Mr Mohammadi. I have also had regard to the decision of Judge Pooler and the written evidence before me. Like Judge Pooler I found M to be a straightforward and credible witness. Nothing about his evidence struck me as evasive or vague. Having had the opportunity to cross examine him Mr McVeety accepted that he was a credible witness, and in particular he expressly accepted M's account of the family history and how he and his brother came to be separated and eventually reunited. Mr Mohammadi gave similarly straightforward and credible evidence, all of which was consistent with the evidence that he had given before, and with the rest of the Appellant's case. I find as follows.

20. The brothers were born to a Hazara family in a village in Ghazni. The Sponsor M was born in June 1993 and so was eight years old when the Appellant was born in September 2001. They lived together with their parents and a younger brother until, in the summer of 2005, their parents and little brother were killed on their way to attend a hospital in Kabul. The brothers were taken to live with their paternal uncle Murad in another village in Ghazni. They were not treated well by this uncle. He was a cruel man who sympathised with the Taliban. He owned a gun shop and the Sponsor was expected to help out there, cleaning the stock, making tea etc. Murad started to take the Sponsor, then aged 12/13 along with him to meetings with Talibs. They started asking him to undertake tasks for them and this eventually escalated to requiring him to launch terrorist attacks: he was once told to lob a grenade at a local school and on another occasion was given petrol and told to burn the building down. Luckily for the Sponsor, Murad's activities became known to another maternal uncle, who lived in Iran. This uncle contacted him and told him that he was making arrangements to get the boys away from Murad, and out of Afghanistan.

21. Their escape from Ghazni was orchestrated in the early Spring of 2009, when the Sponsor M was approximately 15 and the Appellant 8. They describe the situation as chaotic. Many civilians were trying to flee Ghazni at that time, which was a centre of the Taliban insurgency. The Appellant describes being separated from M in a busy bazaar where there were many people trying to get transport out of the area. He was lost and alone and it was there that he was taken in by a man whom he knew as 'Haaji'. The Sponsor meanwhile, unable to find his brother, continued on his journey out of Afghanistan and across Asia towards Europe, under the control of agents paid for by his uncle in Iran. He arrived in the United Kingdom in June 2009 and claimed asylum. He was recognised as a refugee following the decision of Judge Pooler in December 2009.

22. The Appellant was taken by Hajji back to a farm in a remote village called Jaghoori in Ghazni. The witness Mr Mohammadi explained that this was a village where there was not a central point (as you might expect to find in the United Kingdom context). The buildings and houses were quite far apart, scattered over the mountainside, but there was one central mosque and they all fell under the same administrative district. The Appellant states that at the beginning Hajji was "OK" with him. H was kind and genuinely helped the Appellant, who described feeling safe with him. As he got older, however, Hajji's behaviour towards him changed. He became more aggressive and started expecting the Appellant to do a lot of work around the farm. He beat the Appellant and on many days he went without food as punishment for some transgression. The Appellant says that in retrospect he thinks that Hajji was "mental" – he was also very cruel to his wife and would beat her for "silly reasons". The Appellant did not receive any help from anyone else. The farm was far from other houses and you would have to walk a long way to get to another dwelling. Hajji tried to keep the Appellant away from other people.

23. During the *Muharram* festival in September 2016 the Appellant was in the mosque in the village when a "miracle" happened. He was approached by a man named Mr Mohammadi who told him that he had been sent by his brother in the United Kingdom to find him. Mr Mohammadi bought him new clothes and shoes and fed him. When he returned to the farm Hajji was angry when he saw the new items and took them from the Appellant. He beat him when he explained that they had been a gift from a man at the mosque. Before me Mr Mohammadi described the encounter from his point of view. He had been in the area visiting his family and had, upon M's request, been making enquiries about the Appellant. Initially he got nowhere as the people he asked did not know who this boy might be. Because it was *Muharram*, however, the mosque was very busy for ten days straight. Towards the end of the festival someone came to him and pointed out the Appellant – he told him "that is the boy you have been looking for". Mr Mohammadi describes the Appellant at this first meeting:

> "if I was to say I my words he was in a bad way. He was not dressed very well, he wasn't very clean, he did not seem that he had bathed or showered for some time. He seemed very fragile and down; he looked like a child that had no one to look after him"

24. Mr Mohammadi said that the Appellant was very shocked when he explained to him that his brother was in the United Kingdom and was looking for him. He gave the Appellant the Sponsor's number in the United Kingdom, and managed to find out Hajji's number to give to the Sponsor.

25. From there the Sponsor, having spoken by telephone to the Appellant, arranged for another family friend, a Mr Mohammad Jan Samim, to collect him from Hajji's farm. Mr Samim took him, at M's request, to a Hazara area in West Kabul where M had made arrangements for the Appellant to be accommodated in a dormitory, which M described in his evidence as a "hostel for boys like him". I was shown photographs of this hostel. He has a room, which is apparently shared with another boy. It is clean

and apart from some mould on the ceiling appears to be in a good state of repair. There is a cabinet and a prayer area. The boys sleep on very thin mattresses which are laid out on the floor, covered in typical thick polyester blankets. There are shared bathroom facilities, and there is a supervisor on site who cooks communal meals for the residents. The food bill is included in the rent, which M pays for.

26. In his statement the Appellant describes his mental state:

> "I had many times fallen ill whilst out herding in the mountains because no food I was very weak, whatever food they gave me I ate usually less food than them. Because Hajji hit me many times in the head I sometimes have had mental problems nightmares of the past and no one to support me. I just sit on my bed and cry feeling hopeless of everything. I have my brother now in the UK which is the best thing that has ever happened to me. It was my best time when he came to visit me, he supports me financially but emotionally I feel I got no one here I cant trust anyone I have lost trust in so many people. I chat to my brother on a daily basis. He is trying his best to help me get over there with him to be safe….
>
> I missed and miss my parents every day I see everyone living a normal happy life with their family and friends but I cant do that because I have no family or friends here accept (sic) the people who live at the dormitory as me which I have limited connection, my brother is worried I will get robbed again of my money or mobile phone that's what happened to me previously when some found out I had my brother overseas they tried to be funny with me asking and using my phone credit for their own calls.
>
> Last year I was assaulted in the street and some gangs tried to steal my money and phone and beat me up badly…."

27. M explained in his evidence that he has sent his brother a laptop, a mobile and English language books. He encourages him to stay in the dormitory because he is worried about his safety. There have been a number of bomb blasts in the area that he lives in and on one occasion a stray bullet hit the dormitory when fighting broke out in that neighbourhood. Also because he has a brother abroad M worries that the Appellant is vulnerable to crime. The bundle contains a number of photographs, said to have been taken by the Appellant on his mobile and sent to M. These include two of what appears to be a large bomb site, and one of an internal wall with a shrapnel mark on it. I was also provided with photographs of the Appellant after he was mugged. His face appears bruised and there is what looks like blood on his jumper. The bundle also contains evidence of money transfer receipts going back to 2016 showing that the Sponsor sends to Afghanistan varying amounts. He explained in evidence that he tries to send between £50 and £100 every month, and then occasionally sends a much larger amount for payment of rent – for instance on one occasion he sent £500 and on another £1500.

28. Having considered all of that evidence I am in no doubt that the Appellant has discharged the burden in respect of the remaining limb of 297(i)(f). Mr McVeety is right when he says that the Appellant is probably in a far more advantageous

position than other Hazara orphans living on their own in Kabul. He has a roof over his head, the relative security that this brings, and his brother's remittances ensure that he is being fed, and able to pay for medical treatment when it is required. If these practical considerations were the only matters pertinent to the rule, the appeal would therefore fail. As Mundeba makes clear, however, the rule requires a holistic evaluation of the applicant's circumstances. Those include the family history thus far, and a focus on what needs are being unmet. As it clear from the foregoing, it is the Appellant's emotional need for a *family* which is presently left unfulfilled. This is a child orphaned at the age of 5. He then spent four years under the control of a violent and abusive uncle, followed by approximately seven years, between the ages of 9 and 15, in what was effectively a forced labour situation. His expression of joy at being reunited with his brother, the sole surviving member of his family, is therefore unsurprising. Whilst he enjoys friendships with other boys in the hostel, these friendships are poor compensation for the lack of any family support at all as he embarks on adulthood. I accept without hesitation that he is in Kabul lonely, and frightened about what the future holds. These are matters to which, in the context of the rule, I have attached considerable weight.

29. I add to this the concerns about security which feature so heavily in the evidence of both Appellant and Sponsor. I accept M's evidence that he actively discourages his brother from venturing out into West Kabul. That advice appears to be very sensible. The Appellant's description of terrorist attacks, and violent crime, in the city is supported by the country background evidence. The US Overseas Security Advisory Council advised in March 2019 that "there is a serious risk of crime in Kabul" and that the "security situation remains volatile and unpredictable". The report details several large-scale insurgent attacks, such as those described by the Appellant, and concludes that "politically motivated terrorism is a major concern". More recently a Radio Free Europe report dated 11th February 2020 details a suicide bomb that exploded near the Kabul Military Academy, not far from the Appellant's dormitory. I have attached considerable weight to these matters. I note, and accept, Mr Holt's point that M was successful in gaining refugee status in part because Judge Pooler accepted that it would be unduly harsh for a teenage boy to be expected to live alone in Kabul. That is precisely the situation in which the Appellant now finds himself.

30. Having had regard to all of the evidence, and for those reasons, I am satisfied that there are serious and compelling considerations rendering the exclusion of the Appellant undesirable.

31. Returning to the rule I note that before me Mr McVeety raised two matters which did not feature in the Entry Clearance Officer's original refusal. The first is that the Appellant is now over the age of 18, and so as of today's date can no longer meet the requirement at 297(ii). In fairness Mr McVeety accepted that this was a factor of minimal significance in this human rights appeal, given that there is no 'bright line' between minority and majority and that the Appellant's circumstances have changed not a jot between September last, when he turned 18, and today. The second matter concerns the Appellant's living arrangements. Sub-paragraph 297(iii) requires that the applicant "is not leading an independent life, is unmarried and is not a civil

partner, and has not formed an independent family unit". Mr McVeety questioned whether, in his present circumstances, the Appellant could be said to be living independently. Mr Holt in response referred me to the authority of NM ("leading an independent life") Zimbabwe [2007] UKAIT 00051 in which the Upper Tribunal held that the phrase much be interpreted inclusively. The words "leading an independent life" must be read in the context of the rest of the clause which refers to marriage. For this reason the matter of choice becomes relevant – has this child chosen to set up a household separate from his parents, or in this case, his brother? The Tribunal further had regard to the fact that the purpose of the rule is to facilitate family unity and held:

> *"Where a child (who may be over 18) is seeking limited leave to remain as the child of a parent with limited leave, in order to establish that he is not "leading an independent life" he must not have formed through choice a separate (and therefore independent) social unit from his parents' family unit whether alone or with others".*

Applying this guidance to the facts of the present case I am satisfied that the Appellant has not chosen to set up an independent life for himself. Life in the dormitory, arranged and paid for by M, is in fact akin to the Appellant being at boarding school, living in an institution arranged by his relative where he is provided for by an adult paid to look after him. I am satisfied that all of the requirements of the rule were met at the date of application, and at the date of the Entry Clearance Officer's decision. Apart from the fact that the Appellant has, during the appeals process, 'aged out', he continues to meet the requirements of that rule today.

32. The parties before me accepted that success under the rule would in effect be determinative. For the sake of completeness I must however have regard to those factors set out at Part 5A of the Nationality, Immigration and Asylum Act 2002. The Act mandates that the maintenance of immigration control is in the public interest. In this context I note my own finding that the Appellant has succeeded in demonstrating that he qualified for leave to enter under the Rule. It is further in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that the Appellant is financially independent, because such persons are less of a burden on taxpayers, and are better able to integrate into society. I accept that the Appellant is not technically "independent" but also mark the accepted fact that he is to be adequately maintained and accommodated by his Sponsor, and as such may be considered to be financially independent for the purpose of the Act: Rhuppiah v Secretary of State for the Home Department [2018] UKSC 58. The only factor which weighs against the Appellant is his inability to speak English to any measurable degree of competence. I note that it is in the public interest that as a person seeking to settle in the United Kingdom this is a matter that must be weighed against him.

33. I remind myself that the focus of this appeal is the United Kingdom's obligation under Article 8. The focus of the rule is family reunion. Both purposes are clearly served by permitting the Appellant to enter the country and live once again with his

brother. I find the decision to refuse entry clearance is in all the circumstances disproportionate and unlawful within the terms of s6 of the Human Rights Acts 1998.

**Anonymity Order**

34. This appeal, at its inception, related to a minor. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

> "Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings"

**Decisions and Directions**

35. The decision of the First-tier Tribunal is set aside for material error of law.

36. The decision in the appeal is remade as follows: the appeal is allowed on human rights grounds.

37. There is an order for anonymity.

Upper Tribunal Judge Bruce
Date 4th March 2020