Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/19858/2019**

THE IMMIGRATION ACTS

Heard remotely at Field House	**Decision & Reasons Promulgated**
On 27 May 2021 *via Teams*	**On 16 June 2021**

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

MR MUBARAK HANIF ADAM LALA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Y. Din, Counsel instructed by VRS Immigration
For the Respondent: Mr S. Walker, Senior Home Office Presenting Officer

DECISION AND REASONS (V)

This has been a remote hearing which has been consented to / not objected to by the parties. The form of remote hearing was V (video). A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing.

The documents that I was referred to were primarily the bundle from the proceedings before First-tier Tribunal, and a supplementary bundle prepared for the appeal before the Upper Tribunal, the contents of which I have recorded.

The order made is described at the end of these reasons.

The parties said this about the process: they were content that the proceedings had been conducted fairly in their remote form.

1. The appellant, Mubarak Hanif Adam Lala, is a citizen of India born on 1 January 1999. He appeals under section 82 of the Nationality, Immigration and Asylum Act 2002 ("the 2002 Act") against a decision of the Secretary of State dated 20 November 2019 to refuse his human rights claim to remain in the United Kingdom, made on 30 August 2018. The appellant originally appealed to the First-tier Tribunal which, in a decision promulgated by First-tier Tribunal Judge P Hollingworth on 10 March 2020, dismissed his appeal. At a hearing on 11 February 2021, I held that the decision of Judge Hollingworth involved the making of an error of law and set it aside with no findings of fact preserved. I directed that the appeal be reheard in this tribunal. It was in those circumstances that the appeal came before me to be heard afresh. My earlier judgment may be found in the **Annex** to this decision.

Factual background

2. The appellant arrived in this country as a visitor in 2015 with his parents. He was 16 years old at the time. In my error of law decision, I outlined the relevant background in these terms:

> 3. The appellant is part of a large extended family who live together or close by to one another in Leicester. Much of the family life rotates around the appellant's elder brother Bilal. Bilal has a severe form of cerebral palsy and requires around the clock care. The appellant's parents were granted leave to remain outside the Rules to care for him.
>
> 4. The appellant has a sister, Fatima, who arrived alongside him in 2015. She was then aged 19. She also applied for leave to remain outside the Immigration Rules, on the basis that as a single woman in Pakistan, she would face 'very significant obstacles' to her integration. Her application was initially refused, but her appeal against that decision was allowed, coincidentally, by Judge Hollingworth. In a decision promulgated on 7 August 2019, the judge found that Fatima would face 'very significant obstacles' to her return to India as a single female woman, having considered the background materials relating to single women in Pakistan. Fatima was granted leave to remain outside the Rules. She appears to continue to hold limited leave to remain in that capacity.

It appears that Fatima was not a single woman facing return to India alone, as Judge Hollingworth had held in the earlier appeal concerning her human rights claim on the basis of the evidence presented to him on that occasion. In his judgment in this appellant's case, the judge found that he had been misled, that the family (not including the appellant in this matter, or Bilal) had conspired to mislead him. On the evidence before the judge at this appellant's hearing, it was clear that Fatima had been married at all material times. For present purposes, nothing turns on this prior deception.

3. In these proceedings, the appellant claims that he would face "very significant obstacles" to his integration in India if he were to return. He has

not lived there since he was a child, and he would be unable to cope on his own. He relies on the care and support of his extended family, with whom he lives, in this country. He has been diagnosed as experiencing a social anxiety disorder, which would stand in the way of him being able to develop relationships and form a private life of his own in India. His relationship with Bilal engages Article 8 of the European Convention on Human Rights ("the ECHR") as it goes beyond normal emotional ties, he submits, and the nature and quality of the dependency between the two is such that it would be unjustifiably harsh for him to be removed, given the impact on both of them.

4. For the Secretary of State, Mr Walker contends that the appellant would be returning to his country of nationality, to a familiar language and culture, where he would enjoy the ability to live in family property that still exists there, close to his grandfather. He is of working age, and to the extent any medication is required to assist with his condition, it would be available in India. Mr Walker submits that the appellant's family have conspired to evade immigration controls in this country, as demonstrated by their false evidence in Fatima's appeal. This application is merely another example of that. I should dismiss the appeal, he submits.

Legal framework

5. This appeal is brought under Article 8 of the European Convention on Human Rights. The essential issue for my consideration is whether it would be proportionate under the terms of Article 8(2) of the Convention for the appellant to be removed, in the light of the private and family life he claims to have established here. This issue is to be addressed primarily through the lens of the respondent's Immigration Rules (in this case, paragraph 276ADE(1)(vi)) and by reference to the requirements of Article 8 directly. There are a number of statutory public interest considerations that are set out in Part 5A of the 2002 Act to which I must have regard.

6. The appellant bears the burden of demonstrating that his removal would engage Article 8 of the ECHR, to the balance of probabilities standard. Once he has demonstrated that article 8 would so be engaged, it is for the Secretary of State to establish that any interference with those rights would be justified.

Documentary evidence

7. The appellant relied on the bundle he prepared for the proceedings before the First-tier Tribunal, plus a supplementary bundle prepared for these proceedings. In my error of law decision, I gave the appellant permission to rely on new evidence, and in any event, very fairly there was no objection from Mr Walker to him doing so before me. Mr Din prepared a helpful skeleton argument, featuring hyperlinks to background materials in relation to India.

8. The supplementary bundle featured an expert psychological report from Ms Diana da Silva, dated 20 May 2021.

The hearing

9. A feature of the appellant's case is that he experiences social anxiety disorder. Mr Din invited me to treat the appellant as a vulnerable witness, which I did. The specific reasonable adjustments requested by Mr Din were to avoid complex and competitive questions in cross examination, and to provide the appellant with the opportunity for a break every 15 to 20 minutes. I am satisfied that Mr Walker approached his cross-examination with his customary fairness, and I ensured that there were appropriate breaks throughout the proceedings as requested by Mr Din.

10. The appellant gave evidence and participated in the proceedings through a Gujarati interpreter. At the outset, I established that the appellant and interpreter could understand one another and communicate through each other.

11. The appellant gave evidence and adopted the undated statement he relied upon before the First-tier Tribunal, and his supplementary witness statement prepared for these proceedings dated 21 May 2021. I do not propose to set out the evidence I had in detail in this decision but will do outline the evidence I heard to the extent necessary to reach my findings and give reasons for them.

12. The hearing took place remotely in order to guard against the spread of Covid-19. Following some initial technical difficulties, all parties were able fully to participate in the proceedings digitally. At the conclusion of the hearing, Mr Din and Mr Walker confirmed that they were content the proceedings have been conducted fairly in their remote form.

Discussion

13. I reached the following findings having considered the entirety of the evidence and submissions, including those set out in Mr Din's skeleton argument, in the round, to the balance of probabilities standard.

14. The appellant's private and family life rights under Article 8 of the ECHR are plainly engaged. He has lived here for over five years, with his family. He arrived as a child. His removal would interfere with his private and family life rights and have consequences of such severity so as to engage the operation of Article 8. It would be in accordance with the law, in the sense that it would be governed by an established legal framework, coupled with a right of appeal to this tribunal. It would be capable, in principle, of being regarded as "necessary in a democratic society" for one of the permitted derogations listed in Article 8(2). The essential question is whether the appellant's removal would be proportionate for the purposes of Article 8(2). To assess that issue, I will address the proportionality of the

appellant's removal through the lens of the Immigration Rules, and then outside the rules.

Very significant obstacles – paragraph 276ADE(1)(vi) of the Immigration Rules

15. I will deal first with the report of Ms da Silva. At paragraph 1.3 of her report, she concludes that the appellant experiences a social anxiety disorder (social phobia), which, in her view, makes it "highly likely that [the appellant] will struggle if deported [*sic*] to India." At paragraph 4.6, Ms da Silva records that the appellant has no pre-existing medical conditions, and that he denied experiencing any psychological issues in the past. He is very worried about his immigration status and experiences nightmares about his removal to India. The appellant is not displaying symptoms of depression, but he does suffer from moderate to severe symptoms of anxiety. He feels excessively anxious in different social situations, such as those where he has to meet unfamiliar people, having 'intimate' conversations with colleagues, going out with friends, and performing in front of others, such as presentations at college. He does not have any friends outside his college, save for his brother Bilal. He spends all his time interacting with his relatives. He fears negative evaluation by others and avoids interacting with them. His palms become sweaty with fear, and, even before the pandemic, he avoided shaking hands. His anxiety is out of proportion to the actual threat posed by the social context.

16. The appellant does not experience any language impairment and displayed no cognitive abilities, Ms da Silva reported. He does experience negative thoughts ahead of his possible removal to India. He presents a low suicide risk. Ms da Silva recommends cognitive behavioural therapy ("CBT") as the primary treatment, although medication or a short term psychodynamic psychotherapy would be other, less effective, options.

17. The above conclusions appear to be within Ms da Silva's competence as a psychologist. However, appendix 5 of her report purports to discuss the appellant's likely ability to integrate upon his return to India, under the title "*Will Mr Lila struggle as a lone muscle and mail in India? Will he be exposed to criminals?*" Later she addresses "*Is he able to cope by himself in India?"* and "*How Mr Lala contributes to his brother's daily life?* [Sic]" As Mr Din very fairly accepted, much of the analysis in this part of her report exceeds Ms da Silva's competence. The analysis that features in appendix 5 is of the sort one would expect from a country expert (and possibly a social worker) not a psychologist. Ms da Silva does not purport to have any expertise in relation to in-country conditions in India, nor in relation to appellant's relationship with Bilal, and therefore her conclusions in these respects attract less weight.

18. The overall weight of the da Silva report is lessened by the author's willingness to set out conclusions which superficially supported the appellant's case on matters wholly outside her expertise. Her willingness to do so gives rise to concerns in relation to the weight the remaining

aspects of her report attract, even in relation to matters within her expertise. However, I accept that the appellant is an anxious individual. The concrete examples given by the da Silva report relate primarily to presentations he has had to give a college. I accept that meeting new people can be an anxious activity for him. I accept Mr Din's submission that the conditions outlined in the report will impact the appellant's ability to integrate upon his return to India.

19. Under cross-examination, the appellant confirmed that there is a family property in India in the form of a family home, although added that it is currently locked up and closed down and would have to be opened up. His grandfather lives nearby in India, although he is elderly and infirm. The appellant's family in this country would support him financially, in the event he were to return, he confirmed. In light of this evidence, I find that the appellant would have available to him property and funds upon his return. He is from a supportive family and there is no evidence to demonstrate that the support they have provided him this far in his life would cease upon his return. As his grandfather still lives in India, he would not be without some family assistance, although I accept that his grandfather is elderly, and that he would not enjoy the support currently provided by his parents and wider family in this country. While I have no reason to doubt the appellant's subjective belief that he could not cope on his own in India, that is not a fear that is grounded in objective reality.

20. Against that background, it is necessary to consider whether the appellant's integration would be faced with "very significant obstacles" for the purposes of paragraph 276ADE(1)(vi) of the Immigration Rules. Mr Din invites me to perform the "broad evaluative assessment" commended by Lord Justice Sales in *Kamara v Secretary of State for the Home Department* [2016] EWCA Civ 813; [2016] 4 WLR 152, addressing the ability of the appellant to form meaningful relationships, and establish a private life of his own within a reasonable period of time. I find that the appellant would be returning to India with a firm command of the Gujarati language, as demonstrated by his reliance on the Gujarati interpreter to participate in the proceedings before me. He is plainly familiar with Indian customs and culture, having lived in India until he was 15 years old, and living in a large extended family of Indian citizens in this country. He is 22 years old, and has studied computing in this country, and studied to secondary level in India. He does not have any physical ailments.

21. Ms da Silva records at paragraph 4.6 of her report that the appellant has not reported conditions of this nature previously. Her operative conclusions do not reconcile this new and relatively sudden diagnosis with the absence of prior symptoms of social anxiety disorder. In this respect, it is relevant that a significant feature of the appellant's anxiety, as confirmed by Ms da Silva, relates to the prospect of his return. Of course, upon the appellant's return to India, the anxiety concerning his immigration status, and the uncertainty that hangs over him currently, will have come to an end. That is not a factor the da Silva report considers.

22. I find that there is no reason why the appellant's mother or other members of his family would not be able to return to India with him, at least initially. In her statement prepared for the proceedings before the First-tier Tribunal, his mother said at paragraph 11 that she would have to return to India with the appellant, suggesting that would entail leaving Bilal behind permanently. The family have that option (as discussed further below), or his mother could return with the for a short period, or visit regularly, to assist with the initial period of settling in. Either way, the appellant would not be without the support he needs to begin, and later complete, his integration.

23. Mr Din also relies on certain background country materials concerning the position of Muslims in India, as a religious minority, and the provision of healthcare.

24. The respondent's *Country Policy and Information Note India: Medical and healthcare provision*, version 1.0, October 2020 confirms that escitalopram and sertraline, two of the drugs recommended by the da Silva report for the appellant's condition, are available in India. While it may be harder to secure CBT or other psychological treatment in India than in this country, medication is available there. In isolation, difficulties in receiving CBT in respect of a social anxiety disorder, when adequate alternative treatment would be available, is not capable of meeting the high threshold for very "significant obstacles".

25. In her *Country Policy and Information Note India: Religious minorities*, version 2.0, May 2018, the respondent outlines reports of anti-Muslim violence. Mr Din prays these reports, plus similar reports in the US State Department 2019 *Country Reports on Human Rights Practices: India*, in aid of his argument that the appellant would face very significant obstacles to his integration. I do not accept that these materials demonstrate the appellant's prospects of integration will be met with obstacles of the sort claimed. The evidence relied upon is incapable of demonstrating that the integration of a young Muslim man of this appellant's likely profile would be affected to any significant extent by the violence experienced by some Muslims in India. Nothing in the appellant's evidence demonstrates that the family previously experienced difficulties in this respect, and although his grandfather still lives in India, there are no reports of him experiencing discrimination or persecution on that basis.

26. Drawing this analysis together, I accept that there will be obstacles to the appellant's integration of the sort many would face upon their involuntary return to their country of origin. Some may be significant. None will be *very* significant. I find that, with the support of his family, whether on a remote basis or in-country, the appellant would not face very significant obstacles to his integration. There is no evidence that his Muslim faith will expose him to the persecution and discrimination experienced by some Muslims. Establishing a private life in India would not entail very significant hardship and will be possible within a reasonable period of time. Adopting a broad view of his likely circumstances, social anxiety, housing, cultural

awareness, language skills, family assistance, physical health, and the support from his grandmother, I do not accept that the appellant would face very significant obstacles to his integration in India. I find he enjoys the capacity to form a private life of his own within a reasonable period of time.

27. The appellant's Article 8 appeal cannot succeed on the basis that he meets the requirements of paragraph 276ADE(1)(vi).

Article 8 outside the rules

28. I accept that the appellant, Bilal, and the wider UK-based family enjoy Article 8 family life together. They are siblings and have always lived together since the appellant arrived in this country as a child; family life does not suddenly cease to exist simply upon reaching the age of majority, especially in the context of a relationship involving someone with health conditions as severe as those experienced by Bilal. The appellant assists with Bilal's care, and does so as a brother, out of genuine love. The appellant's only friends are his family, including Bilal. I accept that there is strong emotional support and dependence between Bilal and the appellant, within the meaning of *Kugathas v Secretary of State for the Home Department* [2003] EWCA Civ 31.

29. The appellant revealed under cross-examination that he has another brother, Sohel, who also lives in the family home. There is no evidence that the appellant and Sohel enjoy family life together for Article 8 purposes; the appellant does not mention him in his statement.

30. The appellant, however, is not the sole carer for Bilal. Professional carers attend four times each day. Other members of the family assist. Until the pandemic, the appellant attended college, and was at home much less. The appellant's parents also assist with Bilal's care. They have been granted compassionate leave to remain in order to do so.

31. To assess the proportionality of the prospective interference with the appellant's private and family life Article 8 rights, I will adopt a balance sheet approach. In doing so, I ascribe no significance to the appellant's family's deception before Judge Hollingworth; there is no evidence the appellant was part of that, and it is irrelevant to this proportionality assessment, which concerns his removal.

32. Factors in favour of the appellant's removal include:

    a. The public interest in the maintenance of effective immigration controls, which is a statutory consideration under section 117B(1) of the 2002 Act;

    b. The appellant does not meet any of the requirements of the Immigration Rules, in particular he would not face very significant obstacles to his integration upon his return;

c. The appellant would return to property and his grandfather, with family financial support and with a firm command of the language, and an understanding of the culture and customs of his home region in India, where he grew up and lived until as recently as 2015. His mother would (and other family members) would be able to visit, or relocate to be with him, should they choose to do so;

d. The appellant is in good physical health, and although he has a moderate to severe social anxiety disorder, the presenting trigger for his symptoms, namely the uncertainty over his immigration status, would be resolved upon his return. Treatment is available in India for his condition in any event;

e. The appellant does not speak English, which is a statutory consideration under section 117B(2) of the 2002 Act relevant to his ability to integrate in this country.

33. Factors mitigating against the appellant's removal include:

a. The appellant was brought here by his parents aged 15. Given he was a child at the time, he cannot be held responsible for decisions taken by others in relation to his immigration status as a child (however it was not until August 2018 that the appellant made a human rights claim, having attained the age of majority some 20 months earlier);

b. The appellant enjoys family life with Bilal. Bilal's condition makes it highly unlikely that the family could relocate to India. On the evidence before me, Bilal looks set to remain here for the foreseeable future. Removal of the appellant is likely to mean he will never live in the same country as his brother;

c. The appellant enjoys family life with his parents and siblings living with him (although there is no evidence that the appellant enjoys family life with Sohel, for the purposes of this analysis I will assume that he does). The appellant's removal would entail separation from his family, including his mother, or, alternatively, his mother would have to leave Bilal in the hands of other carers, should she choose to accompany him to India;

d. The appellant's social anxiety disorder will place some obstacles in the way of his integration in India, albeit not very significant obstacles. Even in this country, the appellant's integration is limited, as his life revolves around his family, suggesting that without those support networks, his integration will face difficulties;

e. The appellant has known only life as a child in India (albeit not as a very young child, having lived there until he was 16), and he currently enjoys the close support and provision of a large extended family household. By contrast, upon his return to India he will be without that support, and will need to learn to look

after himself to a significant extent, albeit that he will enjoy the presence of his grandfather, at least initially, and his mother will be able to visit, if not other family members, too;

f. There is no evidence that the appellant is not financially independent, which is a neutral factor under section 117B(3) of the 2002 Act.

34. Drawing these factors together, I consider that the reasons in favour of the appellant's removal outweigh those in favour of him being permitted to stay. He has no basis to stay under the Immigration Rules, and the public interest in the maintenance of effective immigration controls is a weighty factor, capable of outweighing the cumulative force of the considerations set out above mitigating against the appellant's removal. While this decision is likely to mean the appellant and Bilal will not be able to live together in this country, there is no reason why the appellant cannot make periodic return visits to see his brother, and other family members. The mere fact that Article 8 is engaged on a family life basis does not mean that, by definition, removal will be disproportionate. The social anxiety disorder experienced by the appellant is not so severe as to render his removal unjustifiably harsh, even when combined with the other factors set out above. Treatment will be available in India. There is no evidence that the appellant has a risk profile such that he will suffer discrimination on account of his faith. His mother could choose to spend time with him in India, and while that would mean that Bilal's care would have to be entrusted to others more than it is at present, that is a choice open to the family, and at no time will Bilal be without the care he needs. I find that the appellant's removal will be proportionate. The appellant may be removed from the United Kingdom without breaching his rights under Article 8 of the convention, nor those of the remaining family members in this country.

35. The Secretary of State has demonstrated that the interference that the appellant's removal would entail to his Article 8 rights would be justified for the purposes of Article 8(2).

Notice of Decision

This appeal is dismissed on human rights grounds.

No anonymity direction is made.

Signed *Stephen H Smith*

Upper Tribunal Judge Stephen Smith

Date 28 May 2021

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed *Stephen H Smith*

Upper Tribunal Judge Stephen Smith

Date 28 May 2021

IAC-AH-SC-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/19858/2019

THE IMMIGRATION ACTS

Heard at Field House
On 11 February 2021
Extempore decision

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

MUBARAK HANIF ADAM LALA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Y Din, Counsel, instructed by VRS Immigration
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of First-tier Tribunal Judge P J M Hollingworth promulgated on 10 March 2020 dismissing an appeal brought by the appellant against a decision of the respondent dated 20 November 2019. The respondent's decision was to refuse the appellant's human rights claim made on 30 August 2018.

Factual Background

2. The appellant is a citizen of India born on 1 January 1999. He arrived here in September 2015 aged 16. He was brought here by his parents, both of whom have subsequently been granted leave to remain outside the Immigration Rules.

3. The appellant is part of a large extended family who live together or close by to one another in Leicester. Much of the family life rotates around the appellant's elder brother Bilal. Bilal has a severe form of cerebral palsy and requires around the clock care. The appellant's parents were granted leave to remain outside the Rules to care for him.

4. The appellant has a sister, Fatima, who arrived alongside him in 2015. She was then aged 19. She also applied for leave to remain outside the Immigration Rules, on the basis that as a single woman in Pakistan, she would face 'very significant obstacles' to her integration. Her application was initially refused, but her appeal against that decision was allowed, coincidentally, by Judge Hollingworth. In a decision promulgated on 7 August 2019, the judge found that Fatima would face 'very significant obstacles' to her return to India as a single female woman, having considered the background materials relating to single women in Pakistan. Fatima was granted leave to remain outside the Rules. She appears to continue to hold limited leave to remain in that capacity.

5. It is now common ground that Judge Hollingworth was misled in relation to Fatima's situation at her appeal. Although she purported to be a single woman who remained part of the family unit consisting of her parents, this appellant and Bilal, she had, in fact, married in July 2018, a year before that hearing in July 2019. By the time of those proceedings in the First-tier Tribunal, Fatima had left the family home, and was living with her husband, not far from the appellant's home that he shares with his parents and with Bilal.

6. Judge Hollingworth found in his decision concerning this appellant's appeal that he had been 'gravely misled' in relation to the position of Fatima in her appeal (see [20]).

7. The judge outlined the evidence that had been given by the appellant and by his parents on this occasion. The evidence related both to the claimed difficulties the appellant contended he would face in India, and also the role he performs in caring for Bilal in this country. From the judge's operative reasoning, it is clear that he considers that he was misled by two of the witnesses in these proceedings during Fatima's appeal. The judge's sense of frustration is both palpable and understandable. He concluded that none of the witnesses were credible and the appeal must be dismissed. He found there were discrepancies between what the appellant had written in his statement concerning the care he provided to Bilal and the extent to which Fatima visited the family home, and the evidence that he had given orally. The judge found at [23]:

> 'The discrepancies to which I have referred above go to the core of the evidence with which I have been provided by the appellant and by his parents. I do not find the appellant or his parents to be credible. I reject their evidence.'

8. Then, at [24] the judge concluded in these terms:

> 'I do not find that it has been shown that the Immigration Rules have been fulfilled. I do not find that it has been shown that there would be any breach of Article 8 outside the Rules. I have rejected the evidence.'

The judge dismissed the appeal.

Grounds of Appeal

9. The grounds of appeal have two limbs. Under the first limb, Mr Din contends that the judge erred in his credibility assessment by holding against this appellant the evidence that his parents had given in Fatima's appeal. The appellant had not given evidence in Fatima's appeal. He had not been part of those proceedings. While Mr Din makes no complaint about the judge's assessment of the credibility of the appellant's parents' evidence, he contends that it was incumbent upon the judge to conduct a proper analysis of the appellant's own evidence in these proceedings, in particular the circumstances that the appellant claimed would face him upon his return to India.

10. That leads in to the second limb of the grounds of appeal pursued by the appellant. It is said that there was no assessment of whether the appellant would face very significant obstacles to his own integration in India. Rather than engaging with the contents of the appellant's witness statement and his oral evidence, the judge has simply asserted that the Immigration Rules are not met and that there are no requirements outside the Rules which would justify the appeal being allowed on that basis either. The appellant is entitled to know why he has lost this appeal, Mr Din submits. Mere assertion unsupported by reasoning of any kind is insufficient he submits.

11. On behalf of the respondent, a Rule 24 notice was sent to the Upper Tribunal on 30 September 2020. The respondent contends that the judge was entitled to conclude that the witnesses lacked credibility and that, in the absence of a factual foundation upon which the findings of the First-tier Tribunal could be based, it was open to the judge to dismiss the appeal in these terms. The witnesses did not give a faithful or truthful account. The judge is not to be criticised for having dismissed the appeal.

Legal Framework

12. An appeal lies to this Tribunal on the basis of a finding an error of law rather than an error of fact. Of course, certain errors of fact may amount to errors of law, for example in circumstances where a judge failed to

consider all relevant considerations or where the weight ascribed to a consideration may properly be said to be irrational. It is also well-established that a judge must give sufficient reasons for reaching their decision. It is trite law that the parties need to know the reasons for a judge's decision.

Discussion

13. In submissions, Mr Din, who did not appear below, sought to stray beyond the grounds of appeal in relation to which the appellant enjoyed permission to appeal. He submitted that it was incumbent upon the judge to conduct his own research into the contents of the respondent's *Country Policy and Information Note* ('the CPIN') concerning the appellant's return to Pakistan. He accepts that the CPIN was not before the judge, but nevertheless submits that it was incumbent upon the judge to consider those matters of his own motion.

14. There is no merit to that submission. It is for an appellant to establish their case to the balance of probabilities, and the task of doing so requires the reliance on evidence rather than assertion. It was incumbent upon the appellant to rely upon the relevant background materials. The premise of this submission is deeply flawed, as judges should not do their own evidential research, for well established reasons.

15. It is striking that in Fatima's appeal there had been extensive reliance on the background materials relating to single women in India, as is clear from the judgment in that case. Judge Hollingworth was clearly accustomed to engaging with detailed background information and applying it to the facts of a case. It cannot be said that it was an error for the judge to fail to conduct research and obtain evidence which should have been provided by the appellant. Nothing turns on this aspect of Mr Din's submissions.

16. As I indicated during the course of argument, Mr Din was on much stronger ground submitting that the judge simply failed to engage with the evidence of the appellant. While the judge was understandably shocked that he had been misled in such a brazen way during Fatima's appeal, it was nevertheless incumbent upon him to engage with the detail of the appellant's evidence. To the extent that the judge had credibility concerns with the appellant's mother and father arising from the evidence they had given in Fatima's appeal, he should have addressed those concerns in light of considering the evidence in the case in the round.

17. However, it was not open to the judge impute to this appellant credibility concerns arising from the evidence that his parents gave in separate proceedings when he was still a very young man. That would have been irrational. It is not clear whether the judge did that, although it is the implication from the frustration which is understandably evident from the concluding paragraphs of his discussion. However, the point that Mr Din makes in this respect is a simpler one: the evidence adduced on behalf of

the appellant going to his likely circumstances in India, a country he left as a minor, needed to be considered. By failing to consider those matters the judge fell into error. He failed to make findings on a material matter.

18. I also accept Mr Din's submission that the judge simply provided no reasons for finding that the provisions of the Immigration Rules were not met. On the judge's part at [24] there was simply a bold assertion with no underlying explanation. That was an error.

19. It follows that the decision of the judge was infected by material error in relation to the credibility assessment of the appellant and the operative analysis of the appellant's case under the Immigration Rules and outside the Rules.

20. Having considered the bases relied upon by the appellant for contending that there would be very significant obstacles to his integration in India, while some judges may not allow an appeal on the basis of what the appellant sought to rely on, I cannot conclude at this stage that it would be impossible for the appellant to succeed on the factual matrix that he advanced.

21. It therefore follows that the decision of Judge Hollingworth must be set aside to the extent that it was flawed on the bases outlined above. As Mr Din very fairly accepted, there is no basis upon which he could challenge the credibility findings in relation to the appellant's parents and Fatima. I therefore preserve all findings reached by the judge save for those relating to the appellant's circumstances in India and his own personal credibility. I direct that this matter be reheard in the Upper Tribunal in order for a proper consideration of the appellant's circumstances to take place and for those findings of fact to be analysed through the appropriate provisions of the Immigration Rules.

Notice of Decision

The appeal is allowed. The decision of Judge Hollingworth involved the making of an error of law and is set aside save for the savings referred to above.

It will be reheard in the Upper Tribunal with a time estimate of three hours, at a remote hearing.

If either party objects to the matter being resumed at a remote hearing, it must file and serve reasoned objections **within 14 days of being sent this decision.**

Within 28 days of being sent this decision, the appellant is to file and serve on the Secretary of State any updated evidence upon which he seeks to rely at the resumed hearing, consisting of evidence specific to him and the care he currently provides for Bilal and, if relevant, any updated background materials.

I direct a Gujarati interpreter.

No anonymity direction is made.

Signed *Stephen H Smith* Date 11 March 2021
Upper Tribunal Judge Stephen Smith