Upper Tribunal
(Immigration and Asylum Chamber)

Niaz (NIAA 2002 s. 104: pending appeal) [2019] UKUT 00399 (IAC)

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23 October 2019	……

Before

THE HON. MR JUSTICE LANE, PRESIDENT
MR CMG OCKELTON, VICE PRESIDENT

Between

MUHAMMAD AYAZ NIAZ

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr F Farhat, Solicitor, Gulbenkian Andonian Solicitors
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

Direction Regarding Anonymity – rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, no report of these proceedings shall identify any member of the appellant's family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings. This direction supersedes that made by the First-tier Tribunal.

(1) Section 104(2) of the Nationality, Immigration and Asylum Act 2002 contains an exhaustive list of the circumstances in which an appeal under section 82(1) is not finally determined.

(2) Although section 104(2) is describing situations in which an appeal is not to be regarded as finally determined, the corollary is that, where none of the situations described in sub-paragraphs (a) to (c) apply (and the appeal has not lapsed or been withdrawn or abandoned), the appeal in question must be treated as having been finally determined.

(3) An appeal which has ceased to be pending within the meaning of section 104 becomes pending again if the Upper Tribunal's decision refusing permission to appeal from the First-tier Tribunal is quashed on judicial review.

DECISION AND REASONS

1. The appellant is a citizen of Pakistan who entered the United Kingdom in 2004, aged 27, as a student. In April 2009, the appellant applied for leave as a spouse of a person present and settled in the United Kingdom. That was rejected by the respondent on 8 June 2009. On 15 June 2009, the appellant applied for further leave as the spouse of such a person; and this was granted by the respondent from 2 September 2009 to 2 September 2011.

2. On 2 September 2010, however, the appellant's leave to remain as a spouse was curtailed. On 16 September 2010 the appellant filed an appeal against that decision but his appeal was dismissed in December 2010. On 7 July 2011, the appellant's appeal against the decision of the First-tier Tribunal was allowed.

3. Also on 16 December 2010, the appellant had submitted an application for leave to remain, relying upon Article 8 of the ECHR. The respondent granted him discretionary leave from 30 August 2011 to 30 August 2014.

4. On 28 September 2012, the appellant submitted an application for indefinite leave to remain on the basis of ten years continuous lawful residence in the United Kingdom. That application was refused by the respondent on 9 December 2015 by means of a decision which, it is common ground, included the refusal by the respondent of the appellant's human rights claim.

5. The appellant's appeal came before the First-tier Tribunal in January 2018. Attention rightly focussed upon the ability or otherwise of the appellant to meet the requirements of paragraph 276B of the Immigration Rules. If the appellant could not do so, there would be no prospect of the respondent granting him indefinite leave to remain under paragraph 276C. In that event, it would be necessary to consider paragraph 276ADE(1), which contains the requirements to be met by a person seeking leave to remain on the grounds of a protected private life within the scope of Article 8.

6. Paragraph 276B provides as follows:-

> 276B The requirements to be met by an applicant for indefinite leave to remain on the ground of long residence in the United Kingdom are that:

(i) (a) he has had at least 10 years continuous lawful residence in the United Kingdom.

(ii) having regard to the public interest there are no reasons why it would be undesirable for him to be given indefinite leave to remain on the ground of long residence, taking into account his:

(a) age; and

(b) strength of connections in the United Kingdom; and

(c) personal history, including character, conduct, associations and employment record; and

(d) domestic circumstances; and

(e) compassionate circumstances; and

(f) any representations received on the person's behalf; and

(iii) the applicant does not fall for refusal under the general grounds for refusal.

(iv) the applicant has demonstrated sufficient knowledge of the English language and sufficient knowledge about life in the United Kingdom, in accordance with Appendix KoLL.

(v) the applicant must not be in the UK in breach of immigration laws, except that, where paragraph 39E of these Rules applies, any current period of overstaying will be disregarded. Any previous period of overstaying between periods of leave will also be disregarded where –

(a) the previous application was made before 24 November 2016 and within 28 days of the expiry of leave; or

(b) the further application was made on or after 24 November 2016 and paragraph 39E of these Rules applied."

7. In refusing the appellant's application, the respondent had taken the view that the application under paragraph 276B fell for refusal "under the general grounds for refusal" (paragraph 276B(iii)) because of certain behaviour of the appellant. The First-tier Tribunal Judge found in favour of the appellant on this issue and we need say no more about it.

8. The First-tier Tribunal Judge, however, agreed with the respondent that the appellant could not meet the requirements of paragraph 276B(i)(a) in that he had not had ten years' continuous lawful residence in the United Kingdom. This was because the appellant had not had lawful leave between 7 April 2009, when his statutorily-extended leave under section 3C of the Immigration Act 1971 expired, and 2 September 2009, when he was granted further leave to remain. 7 April 2009 was the date on which an application by the appellant, made on 24 March 2009 for leave to remain as the spouse of a settled person, had been rejected by the Secretary of State, on the basis that the application was invalid. The appellant had re-submitted

that application on 14 April 2009, leading to another rejection by the respondent on 8 June 2009. It was only when the appellant submitted the application again, on 15 June 2009, that he was granted leave on 2 September 2009.

9. The First-tier Tribunal Judge considered the period of unlawful leave in 2009 to be in excess of 28 days and that the later grant of leave did not rectify matters. The judge, accordingly, considered the appellant's private life by reference to paragraph 276ADE(1) but concluded that the appellant did not satisfy its requirements.

10. Having concluded that the appellant's case "under Article 8 outside the Rules" could not succeed, the appellant's appeal was dismissed (paragraphs 68 and 69).

11. Permission to appeal to the Upper Tribunal was refused by the First-tier Tribunal and, subsequently, by the Upper Tribunal. In her decision, Upper Tribunal Judge Smith found that the appellant's sole ground of appeal was unarguable:-

> "The Appellant was put on notice by the Respondent in the reasons for refusal letter that he was said to have made an application on 24 March 2009 which was refused on 7 April 2009 and a further application on 14 April 2009 which was refused on 8 June 2009 prior to making the application on 15 June 2009 which was granted. The Appellant did not apparently challenge those assertions …
>
> It appears to be asserted that there was no gap of five months as found by the Judge because of the operation of the "28 days" grace periods. That is unarguable. The Appellant had section 3C leave until the refusal of the first application on 7 April 2009 and made a further application on 14 April. That this was in the period of grace which the Respondent allows without automatic refusal on grounds of overstaying does not however mean that it extends section 3C leave. Accordingly, the Judge was right to find that the Appellant had no leave between April 2009 and September 2009 when he was next granted leave and, accordingly, could not claim to have had continuous lawful residence for a period of ten years."

12. In order to understand the legal position following Upper Tribunal Judge Smith's refusal of permission to appeal, it is necessary to set out the following provisions of the Nationality, Immigration and Asylum Act 2002:-

> "**78. No removal while appeal pending**
>
> (1) While a person's appeal under section 82(1) is pending he may not be—
>
> (a) removed from the United Kingdom in accordance with a provision of the Immigration Acts, or
>
> (b) required to leave the United Kingdom in accordance with a provision of the Immigration Acts.
>
> (2) In this section "pending" has the meaning given by section 104.
>
> …
>
> **92. Place from which an appeal may be brought or continued**
>
> …

(8) Where an appellant brings an appeal from within the United Kingdom but leaves the United Kingdom before the appeal is finally determined, the appeal is to be treated as abandoned unless the claim to which the appeal relates has been certified under section 94(1) or (7) or section 94B.

…

104. Pending appeal

(1) An appeal under section 82(1) is pending during the period—

(a) beginning when it is instituted, and

(b) ending when it is finally determined, withdrawn or abandoned (or when it lapses under section 99).

(2) An appeal under section 82(1) is not finally determined for the purpose of subsection (1)(b) while—

(a) an application for permission to appeal under section 11 or 13 of the Tribunals, Courts and Enforcement Act 2007 could be made or is awaiting determination,

(b) permission to appeal under either of those sections has been granted and the appeal is awaiting determination, or

(c) an appeal has been remitted under section 12 or 14 of that Act and is awaiting determination.

…"

13. The effect of Upper Tribunal Judge Smith's refusal of permission to appeal to the Upper Tribunal was that the appellant's appeal was no longer "pending" within the meaning of section 104. The appellant's application for permission to appeal under section 11 of the Tribunals, Courts and Enforcement Act 2007 was no longer "awaiting determination". No appeal lay to the Court of Appeal against Upper Tribunal Judge Smith's decision because her decision was an "excluded decision" within section 13(8)(c) of the 2007 Act.

14. Since the appellant's appeal was not pending, section 78 of the 2002 Act no longer acted as a statutory bar on his removal by the respondent from the United Kingdom. However, on 21 May 2018, ten days after Upper Tribunal Judge Smith's refusal of permission, the appellant instructed his present solicitors to begin judicial review proceedings, which sought to quash Upper Tribunal Judge Smith's decision. The basis of the judicial review was that the appellant did, in fact, meet the requirements of paragraph 276B of the Immigration Rules for the following reasons. Paragraph 276B(v) required any previous period of overstaying between periods of leave to be disregarded, where the further application was made before 24 November 2016 and was within 28 days of the expiry of leave. According to the appellant, the "clock" stopped, for the purpose of calculating the 28 day period, on 14 April 2009, when the appellant re-submitted his application. This meant, the appellant submitted, that the period from 15 April to 8 June 2009 fell to be disregarded for the purposes of paragraph 276B. On 8 June 2009, the respondent again rejected the application; and

so, according to the appellant, only seven days passed before the appellant re-submitted on 15 June 2009. That re-submission stopped the "clock" again until 2 September 2009, when leave was granted.

15. As a result, the appellant submitted that he could, in fact, meet the requirements of paragraph 276B(v). In this regard, he relied upon an unreported case of the Upper Tribunal, which had adopted the approach just described.

16. The appellant's application for permission to bring judicial review was refused by HHJ McKenna, sitting as a High Court Judge. He held that the First-tier Tribunal had been "plainly right" to conclude that there was a gap of five months for the reasons articulated in the First-tier Tribunal's decision and in the decision of Upper Tribunal Judge Smith refusing permission.

17. HHJ McKenna's decision to refuse permission was made on 13 July 2018. On 17 August 2018, the appellant was detained by the respondent and the police. He was issued with a notice of removal. The appellant's solicitors informed the respondent that an application for permission to appeal to the Court of Appeal against HHJ McKenna's decision would be made. A notice of application to that effect was filed with the Court of Appeal on 21 August 2018.

18. An out of hours application for a stay on removal was made by the appellant's solicitors to the High Court on 28 August 2018. The High Court refused to grant the stay, observing that the appellant's removal would not nullify the pending appeal before the Court of Appeal and that, if the appellant were ultimately successful, there would be no barrier to his return to the United Kingdom.

19. The appellant was removed by a charter flight on 28 August 2018. He remains in Pakistan. The appellant's solicitors say they informed the Court of Appeal of this development.

20. On 23 January 2019, the Court of Appeal granted permission to appeal and remitted the matter to the High Court which, on 12 April 2019, quashed the Upper Tribunal's refusal of permission to appeal.

21. On 8 May 2019, the appellant's solicitors wrote to the respondent to request that the appellant should be allowed to return to the United Kingdom, following the successful outcome of his judicial review. On 30 May 2019, the respondent replied to the effect that the appellant would not be able to return and that his appeal fell to be treated as abandoned. A copy of the respondent's letter was forwarded to the Upper Tribunal.

22. On 26 July 2019, the Upper Tribunal issued a notice to the effect that the appeal would be treated as abandoned, subject to submissions from the appellant's solicitors. On 31 July 2019, the solicitors responded, submitting that the appeal should not be treated as abandoned because in section 92(8) of the 2002 Act the verb "leaves" in the phrase "leaves the United Kingdom" required the appellant to depart from the United Kingdom out of choice, rather than being forcibly removed by the respondent.

23. The matter came before us on 23 October 2019. We were assisted by helpful skeleton arguments from Mr Farhat and Mr Kotas, supplemented by their oral submissions. We are grateful to them for their assistance.

24. We do not accept Mr Farhat's submission that an appeal is not finally determined for the purpose of section 104 of the 2002 Act during the period when a judicial review of the Upper Tribunal's refusal of permission to appeal may be made or whilst an application for such a judicial review is awaiting decision. The wording of section 104(2) precludes such a construction. Section 104(2) lists three specific situations in which an appeal is not finally determined. Subsection (2) does not mention judicial review. If the legislature had intended to include judicial review in the list, it would have done so. There is also, in our view, no reason for assuming the legislature intended section 104(2) to be merely a non-exhaustive set of examples of when an appeal is not to be treated as finally determined. The prohibition in section 78 on removal whilst an appeal is pending requires legal certainty on this issue. (We shall have more to say about section 104(2) at paragraph 29 below.)

25. As a general matter, we agree with Mr Farhat that a person who does have a pending appeal, and who is removed by the Secretary of State pursuant to her immigration powers, does not thereby cause their appeal to be abandoned under section 92(8). The meaning of "leaves the United Kingdom" in this context has been authoritatively determined by Sales LJ, giving judgment in SR (Algeria) v Secretary of State for the Home Department [2015] EWCA Civ 1375:-

> "15. The phrase "Where an appellant brings an appeal from within the United Kingdom but leaves the United Kingdom before the appeal is finally determined" defines the circumstances in which the appeal is to be treated as abandoned. In my view, the word "leaves" used in this context means "voluntarily leaves the United Kingdom". It does not cover a situation in which an appellant is removed against her will by the Secretary of State.
>
> 16. My reasons for construing the word "leaves" in this way are as follows:
>
> (i) To my mind, as a matter of ordinary usage, the word "leaves" has a strong connotation of an action being taken by an agent on a voluntary basis (e.g. "The protester did not leave the building but was removed from it by a security guard");
>
> (ii) In certain contexts it may be possible for the word to be used to refer to simple physical relocation of a person, however that relocation might be achieved, whether by deliberate action taken by the person as agent or by actions taken by others to relocate that person. However, there are no indications from the context here that such a wider meaning was intended. On the contrary, I think that both the linguistic context and the wider context and scheme of the legislation support the narrow meaning of "leaves" referred to above. As to the linguistic context, the word "leaves" appears in a composite opening phrase in which there is a single subject, the "appellant", who does two things: she "brings an appeal" and she "leaves the United Kingdom". The first clearly imports a notion of voluntary agency on the part of the appellant, since bringing an appeal is not something which is done to an appellant, and I see no reason to change the sense of the appellant being a voluntary agent doing something when

one comes to the second verb in the same phrase. The use of the word "but" supports this view: the appellant has acted voluntarily to commence an appeal, but then acts voluntarily in another way so that it should be treated as abandoned.

(iii) Rule of law considerations in this context support the same conclusion. In a state governed by the rule of law, where the state itself is the subject of ongoing litigation, it would breach rule of law principles for the state to be able to defeat the litigation not by defending it on the merits before a court or tribunal, but by physically removing the opposing party so that she is prevented from bringing her claim before a court or tribunal, as appropriate, for determination according to law. Parliament is taken to legislate for a state governed by the rule of law with rights of access to justice: see, for example, R (Anufrijeva) v Secretary of State for the Home Department [2003] UKHL 36; [2004] 1 AC 604, paragraphs [26]-[28]. Accordingly, Parliament must be taken to have intended to use the word "leaves" in the narrow sense referred to above, where it is the voluntary act of the appellant which has the stated effect of the appeal being abandoned;

(iv) The narrower interpretation of the word "leaves" also accords with what I think is the manifest object and purpose of the provision, namely to make it possible to strike out an appeal with a minimum of procedural fuss when an appellant has voluntarily left the United Kingdom, since such action is generally inconsistent with the serious pursuit of an appeal launched on an in-country basis. To give the word "leaves" a wider meaning would involve going beyond that object and purpose without any good reason to do so;

(v) It is also significant that in those cases in which predecessor provisions, including section 104(4)(b) of the 2002 Act, set out above, have been considered in this court, the judges expressing views as to their meaning have been careful to say that the word "leaves" refers to the appellant "by his voluntary action" physically leaving the United Kingdom: see MM (Ghana) v Secretary of State for the Home Department [2012] EWCA Civ 827 at paragraph [32] and Shirazi v Secretary of State for the Home Department [2003] EWCA Civ 1562; [2004] INLR 92 at paragraph [13]. These observations have not been critical to the points in issue in those cases, which in fact concerned voluntary departures by an appellant. However, they are in line with my own view that the natural interpretation of the word "leaves" in this context is that it connotes voluntary action on the part of the appellant in question."

26. The effect of the quashing of a decision of the Upper Tribunal refusing permission to appeal from the First-tier Tribunal upon section 104(2) of the 2002 Act was considered in Saimon (Cart Review: "pending") [2017] UKUT 00371 (IAC). In that case, an appellant had brought judicial review to challenge the decision of the Upper Tribunal, refusing permission to appeal against the decision of the First-tier Tribunal, which had dismissed the appellant's appeal against a decision of the respondent, refusing to vary leave to remain. After the quashing of the Upper Tribunal's refusal of permission, the appellant left the United Kingdom voluntarily.

27. The case for the appellant in Saimon was that the Upper Tribunal's refusal of permission meant that the appellant's appeal had been "finally determined" and that the appellant had not, therefore, abandoned his appeal by leaving the United Kingdom.

28. The Upper Tribunal's response to this submission was as follows:-

> "7. We have the very gravest of difficulty in accepting that submission. We should say that nothing decided here should be taken as a decision as to whether an appeal is pending after a decision of the Upper Tribunal refusing permission to appeal has been given but before it has been quashed in any judicial review proceedings brought in respect of it. During that time we agree with Mr Saini that it may be rather difficult to say that the appeal is pending: but we make no decision on that. That is not this case. In this case the question is whether the appeal was pending at the time when the appellant left the United Kingdom, which was *after* Judge Freeman's decision had been quashed. The effect of the quashing of Judge Freeman's decision was that from 13 May 2015 the position was that there had been no lawful determination of the application for permission to appeal made to the Upper Tribunal. That application, previously thought to have been determined, was now awaiting decision or determination. Indeed, in proceedings before this Tribunal, Judge Canavan granted permission. If she had not done so, the appeal could not be before us. But she could only do so on the basis there was, following the judgment of the High Court, an application for permission outstanding and awaiting determination.
>
> 8. Although the argument put by Mr Saini might have effect if confined to the interpretation of s 104(1)(b), it simply cannot stand, in our judgment, against 104(2) because leaving out the words which do not apply precisely to this appeal, the position is that "an appeal under s 82(1) is not finally determined for the purposes of sub-s 1(b) while an application for permission under s 11 of the 2002 Act is awaiting determination". That is precisely the position of this appeal, following the 13 May 2015 decision of the High Court; the application for permission was awaiting determination, the determination which was in due course apparently made by Judge Canavan on 11 January 2017.
>
> 9. It follows that the appeal was pending at the time when the appellant left the United Kingdom in August 2015. By leaving the United Kingdom he abandoned his appeal and since that date there has been no appeal before the Tribunal; it fell to be treated as abandoned from that date. All subsequent proceedings in it are therefore invalid and the position is that the appeal having been abandoned, the appeal to us cannot succeed."

29. The second and third sentences of paragraph 7 of Saimon foreshadow the conclusion we have reached in the present case; namely, that an appeal which has been finally determined ceases to be pending. In the case of an application for permission to appeal to the Upper Tribunal under section 11 of the 2007 Act, the appeal is finally determined when it is no longer "awaiting determination", which will, of course, be the position once the application is, in fact, determined. That, in our view, is the inexorable result of section 104(2)(a). Although section 104(2) is describing situations in which an appeal is not to be regarded as finally determined, the corollary is that, where none of the situations described in sub-paragraphs (a) to (c) apply (and the appeal has not lapsed or been withdrawn or abandoned), the appeal in question

must be treated as having been finally determined. Any other result would mean the respondent could never safely assume that the removal of an individual would not violate section 78 of the 2002 Act.

30. The fact that the refusal of permission to appeal was quashed, as a result of the proceedings in the Court of Appeal after the appellant had been removed, means the appellant's appeal must, from that point, be treated as again pending. There is nothing inherently problematic with the fact that an appeal may, under the statutory scheme, become pending after a period during which, compatibly with that scheme, the appeal has been treated as finally determined.

31. In this regard, Mr Kotas rightly relied upon the judgment in AB v Secretary of State for the Home Department [2017] EWCA Civ 59. In that case, the appellant had been removed following an unsuccessful appeal that had been heard pursuant to the so-called detained fast track process, which was subsequently held to be unlawful. An application for judicial review compelling the respondent to use her best endeavours to facilitate and fund the appellant's return to the United Kingdom, in order to take a direct and active part in the appeal process (which was again ongoing, following the withdrawal of the detained fast track regime), was unsuccessful. The Court of Appeal regarded itself as bound by its earlier judgments in Draga v Secretary of State for the Home Department [2012] EWCA Civ 842 and Fardous v Secretary of State for the Home Department [2015] EWCA Civ 931. In those cases, the court had refused to hold that a decision of the respondent taken in pursuance of her immigration powers must be treated as unlawful, merely because the respondent's decision was taken by reference to the decision of another body which was later found to have been unlawful. McFarlane LJ, giving judgment in AB, held as follows:-

> "69. This court is bound by the decisions in *Draga* and *Fardous*. The starting point for our consideration must be that, in absence of any additional basis for holding that decision 'B' was made unlawfully, a later finding that, in the event, an earlier decision 'A' that was relied upon was unlawful does not, of itself, affect the validity of decision 'B'. Absent any separate basis for holding that the SSHD acted unlawfully in making and implementing the decision to remove AB to the Cameroon in December 2014, the fact that, subsequently, the DFT regime and his FTT appeal have been held to have been unlawful does not render the separate removal decision unlawful or establish that the SSHD was not entitled, at the time, to rely upon the legal validity of the DFT scheme and the tribunal decisions relating to the appeal and the refusal of a stay."

32. The upshot of all this is (a) that on 28 August 2018 the respondent did not act contrary to section 78 of the 2002 Act in removing the appellant because, at that time, the appellant did not have a pending appeal; and (b) that the Upper Tribunal is seized of the appellant's appeal. Although the Upper Tribunal granted permission to appeal against the decision of the First-tier Tribunal, following the quashing of Upper Tribunal Judge Smith's refusal, it is for the appellant to show that the First-tier Tribunal's decision contains an error of law, such that that decision should be set aside.

33. As Mr Farhat candidly acknowledged at the hearing before us, the appellant's case, based on paragraph 276B, faces insuperable difficulties. On 21 June 2019, the Court of Appeal handed down the judgment in R (Masum Ahmed) v Secretary of State for

the Home Department [2019] EWCA Civ 1070 which, when deciding the question of permission, was directed to be published, given the numerous appeals raising the same issue.

34. At paragraph 13, the court noted that the respondent submitted that the applicant "has misunderstood paragraph 276B of the Rules. … paragraphs 276B(i) – (v) are quite separate requirements, each of which had to be fulfilled in order for a person to qualify for 'long residence' status again".

35. The court agreed. In its view the wording of paragraph 276B was clear and that sub-paragraphs (i) to (v) "are separate, freestanding provisions, each of which has to be met" (paragraph 15(1)). Sub-paragraph (v) was not drafted as an exception to sub-paragraph (i)(a) and made no reference to it. There was no difficulty in giving sub-paragraph (v) a self-contained meaning. There was also a marked contrast in the drafting of the definitions of "continuous residence" and "lawful residence" in paragraph 276A. Differences in drafting should not be read as accidental or unintended (paragraph 15(2) to (7)). There is, accordingly, no error of law on the face of the First-tier Tribunal Judge's decision. The judge made a correct finding regarding the operation of paragraph 276B, on the facts of the appellant's case. It has not been shown that the judge erred in respect of the findings on paragraph 276ADE or in his analysis of Article 8, outside the Rules.

36. Mr Farhat submitted that there may, in fact, have been errors in the respondent's rejection, on 7 April and 8 June 2009, of the appellant's applications of 24 March and 14 April respectively. It was possible that the respondent's records would disclose the reason for the rejections, which could then be scrutinised. Although Mr Farhat submitted that these matters could appropriately be addressed in the context of the present appeal, and that this would be preferable to the appellant making an application for entry clearance once any relevant information had been uncovered, we are firmly of the contrary view. The present proceedings are not a vehicle for embarking upon such a course of action. If the appellant has a case to make, including on Article 8 grounds, then he can and should put that case in an entry clearance application and await the result. As we pointed out to Mr Farhat, in responding to any application, the Entry Clearance Officer is obliged to act in accordance with the Human Rights Act 1998.

Decision

The decision of the First-tier Tribunal does not contain an error of law. The appeal is dismissed.

Signed Date

The Hon. Mr Justice Lane
President of the Upper Tribunal
Immigration and Asylum Chamber