No8 Chambers Immigration Team Autumn 2023 Webinar

15th November 2023 4:30-6:00pm

CHAMBERS

Top of the UT Pops 2023: the key reported cases of the year so far

Adam Pipe

ASAs, Issues & Decisions: The Secretary of State for the Home Department v TC [2023] UKUT 164 (IAC) (14 June 2023)

1. Practice Statement No 1 of 2022 ('the PS') emphasises the requirement on the part of both parties in the FTT to identify the issues in dispute and to focus on addressing the evidence and law relevant to those issues in a particularised yet concise manner. This is consistent with one of the main objectives of reform and a modern application of the overriding objective pursuant to rule 2 of the Tribunal Procedure (FTT)(Immigration and Asylum Chamber) Rules 2014. It ensures that there is an efficient and effective hearing, proportionate to the real issues in dispute.

2. A PS-compliant and focussed appeal skeleton argument ('ASA') often leads to a more focussed review, and in turn to a focussed and structured FTT decision on the issues in dispute. Reviews are pivotal to reform in the FTT. The PS makes it clear that they must be meaningful and pro-forma or standardised responses will be rejected. They provide the respondent with an important opportunity to review the relevant up to date evidence associated with the principal important controversial issues. It is to be expected that the FTT will be astute to ensure that the parties comply with the mandatory requirements of the PS, including the substantive contents of ASAs and reviews.

3. The identification of 'the principal important controversial issues' will lead to the kind of focussed and effective FTT decision required, addressing those matters, and only those matters, which need to be decided and concentrating on the material bearing upon those issues. The procedural architecture in the FTT, including the PS under the reformed process, is specifically designed to enable these principal important controversial issues to be identified and for the parties' preparation, as well as the hearing to focus upon them.

4. FTT decisions should begin by setting out the issues in dispute. This is clearly the proper approach to appeals under the online reform procedure where at each major stage there is a requirement to condense the parties' positions in a clear, coherent and concise 'issues-based' manner.

5. The need for procedural rigour at every stage of the proceedings applies with equal force when permission to appeal to the UT is sought and in the UT, including a focus on the principal important controversial issues in the appeal and compliance with directions. The requisite clear, coherent and concise 'issues-based' approach continues when a judge considers whether to grant permission to appeal. This means that the judge should consider whether a point relied upon within the grounds of appeal was raised for consideration as an issue in the appeal.

6. The reasons for the permission to appeal decision need to focus upon, in a laser-like fashion, those grounds which are arguable and those which are not. To secure procedural rigour in the UT and the efficient and effective use of Tribunal and party time in resolving the issues that are raised, it is necessary for the grant of permission to clearly set the agenda for the litigation for the future.

The Secretary of State for the Home Department v TC [2023] UKUT 164 (IAC) (14 June 2023)

31. We accept Ms Ahmed's submission that each of these reasons on their own and when read together, fail to explain how the evidence in support of the respondent's case has been brought into account. It is a one-sided, exclusively positive view of the evidence on risk, which needed to be explained by reference to all the evidence, in order for the respondent to understand why she lost on this issue. Contrary to [A] above, Mr Gregory's report is not so unequivocal. Rather, Mr Gregory predicts a low chance of reoffending if the appellant remains mentally well and continues to be intensely supported. Mr Gregory makes it clear that the last two incidents requiring police intervention subsequent to the index offence occurred within the context of the appellant being acutely unwell, notwithstanding his compliance with the support and treatment available to him. The OASys report also made a clear link between a decline in the appellant's mental health and an increased risk of offending (pages 23/62 and 45/62). The low-risk predictor in the OASys must be approached with that caveat in mind, and should not be viewed in isolation from the remainder of the rounded assessment within the report. As Ms Ahmed submitted, MA (Pakistan) v SSHD [2014] EWCA Civ 163 at [18-20] provides a reminder of the caution that must be exercised when approaching OASys risk scores. In this context we note the low risk was still assessed as including probabilities of proven offending ranging between 22-49%. It is also unclear whether the author of the OASys had the full ambit of the appellant's mental health history available to the FTT.

The Secretary of State for the Home Department v TC [2023] UKUT 164 (IAC) (14 June 2023)

50. In any event, and perhaps more importantly, the FTT clearly accepted that there would be an absence of the vital community mental health services relied upon by the appellant to prevent a psychotic relapse, given the significance and seriousness of his mental health problems. Ms Ahmed was unable to take us to any evidence inconsistent with the FTT's conclusion that there would be no community mental health treatment available to this appellant, which on the evidence of the professionals was vital to maintain his fragile mental health. We note that the respondent's own Zimbabwe country expert in PS, Dr Chitiyo, accepted that the appellant in that case would be "*most unlikely to be able to access any social care or mental health treatment, given the very poor state of those facilities*" in Zimbabwe - see [108] of PS. The CPIN describes the mental health treatment available in Zimbabwe, but this tends to be centred around a few government-run, hugely under-resourced institutions. By way of example, 5.1.12 of the CPIN quotes from the US State Department report for 2020 in which it was observed that "*residents in these government-run institutions received cursory screening, and most waited for at least one year for a full medical review*".

51. We do not accept Ms Ahmed's submission that the FTT engaged in unwarranted speculation in the manner warned against in Bensaid. The FTT's conclusions on Article 3 are adequately based upon the evidence before it, including the appellant's dependence upon medication and mental health community support in the UK, which would be absent in Zimbabwe, and; the professionals' consistent assessment of likely impact of deportation to Zimbabwe upon the appellant, in the light of his own intense subjective beliefs (whether or not they are well-founded) regarding the Zimbabwean security agencies' interest in him - a significant relapse in his mental health. By contrast, in Bensaid the evidence indicated that there was reasonable access to Olanzapine and hospital treatment, and the appellant's claims that in practice these would be difficult to access, was speculative. In addition, the applicant in Bensaid did not rely upon evidence contained within the mental health professionals' reports in this case, to the effect that deportation alone to the country of origin was sufficient to trigger a relapse in the light of past perceived trauma. Mr Bensaid's case was a more nuanced one - he would not be able to access treatment, in the event his schizophrenia deteriorated in Zimbabwe.

…

53. We are satisfied that the FTT's reference to the respondent leading evidence on alternative medication is probably a reflection of what often occurs in these types of appeals in practice. As here, the appellant relies upon evidence that he requires anti-psychotic medication, which the CPIN confirms to be unavailable in Zimbabwe. In many cases, the respondent seeks to adduce additional evidence on available medication, by providing a '*MedCOI, response to information request*' (see the footnotes to Annex A of the CPIN). This did not happen in this case. The FTT was entitled to conclude that the appellant displaced the burden upon him given the evidence he led regarding the absence of medication and community mental health treatment in Zimbabwe.

54. When the FTT decision is read as a whole, we are satisfied that it properly directed itself to and applied the correct burden of proof. The FTT was clearly aware that the burden lay on the appellant to adduce evidence capable of establishing a prima facie Article 3 case, and was satisfied that this burden was displaced by him. The appellant having adduced that evidence, it was for the respondent to dispel any doubts raised by it. The respondent's review manifestly demonstrates that the respondent did not raise any particularised concerns about the appellant's prima facie case.

Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC) (7 February 2023)

(1) The effect of Part 3 of the Practice Direction and paragraph 7 of the Practice Statement is that where, following the grant of permission to appeal, the Upper Tribunal concludes that there has been an error of law then the general principle is that the case will be retained within the Upper Tribunal for the remaking of the decision.

(2) The exceptions to this general principle set out in paragraph 7(2)(a) and (b) requires the careful consideration of the nature of the error of law and in particular whether the party has been deprived of a fair hearing or other opportunity for their case to be put, or whether the nature and extent of any necessary fact finding, requires the matter to be remitted to the First-tier Tribunal.

(3) Applying AEB v Secretary of State for the Home Department [2022] EWCA Civ 1512, in considering the question of whether the appeal should be retained or remitted it will be material to take account of the loss of the two-tier decision making process if the decision is retained. Not every finding of an error of law concerning unfairness will require the appeal to be remitted: the nature of the unfairness and the extent of its impact on the findings made overall will need to be evaluated as part of the decision as to whether the general principle should be departed from.

https://www.bailii.org/uk/cases/UKUT/IAC/2023/46.html

Tribunal cannot dispose of an appeal without considering the merits: SSGA (Disposal without considering merits; R25) Iraq [2023] UKUT 00012 (IAC)

In *SSGA* the FTT allowed an asylum appeal without considering the merits on the basis that the SSHD had failed to comply with directions or engage with the proceedings (which also led to a wasted costs order being made).

In setting aside the decision the UT held that Judges in the FtT do not have power to dispose of an appeal without considering its merits. This is because of the statutory duty under s.86 NIAA 2002 to determine each matter raised as a ground of appeal. Every judge seized of an appeal must reach his or her own decision on the case and must exercise for himself or herself any available discretion. Judges in the FTT do not have power to treat an appeal as unopposed on the ground that a party has not complied with any requirement of the FTT Rules or a practice direction or any direction(s) of the Tribunal even if the failure to comply is persistent.

The UT also gave guidance for when consideration is being given to whether or not an appeal should be disposed of without a hearing. The guidance notes that a hearing should be held whenever credibility is disputed on any material issue or fact. Cases in which it would be appropriate to determine an appeal without a hearing if credibility is materially in issue would be rare indeed.

EUSS and Erroneous Applications: Siddiqa (other family members, EU exit) Bangladesh [2023] UKUT 47 (IAC) (10 February 2023)

In Siddiqa (other family members, EU exit) Bangladesh [2023] UKUT 47 (IAC) (10 February 2023) the Upper Tribunal considered the case of an EFM who had made an out-of-country application to join her brother in the United Kingdom. The Appellant however erroneously selected an EUSS application rather than an application under the Immigration (European Economic Area) Regulations 2016.

The Upper Tribunal upheld the dismissal of the appeal finding that in the case of an applicant who had selected the option of applying for an EUSS Family Permit on www.gov.uk and whose documentation did not otherwise refer to having made an application for an EEA Family Permit, the SSHD had not made an EEA decision for the purposes of Regulation 2 of the Immigration (European Economic Area) Regulations 2016 ("the 2016 Regulations).

The Upper Tribunal distinguished the unreported case of *ECO v Ahmed and ors (UI-2022-002804-002809)*. The Upper Tribunal *relied Batool and Ors (other family members: EU exit)* *[2022] UKUT 219 (IAC)* and that Articles 18(1)(e) or (f) of the Withdrawal Agreement did not mean that the SSHD “should have treated one kind of application as an entirely different kind of application”; and that it was not disproportionate under Article 18(1)(r) for the SSHD to "determine...applications by reference to what an applicant is specifically asking to be given". Furthermore Article 18(1)(o) was to be read narrowly and did not require the SSHD to treat the applicant's application as something that it was not stated to be; or to identify errors in it and then highlight them to her.

Application Errors: Siddiqa (other family members, EU exit) Bangladesh [2023] UKUT 47 (IAC) (10 February 2023)

(1) In the case of an applicant who had selected the option of applying for an EU Settlement Scheme Family Permit on www.gov.uk and whose documentation did not otherwise refer to having made an application for an EEA Family Permit, the respondent had not made an EEA decision for the purposes of Regulation 2 of the Immigration (European Economic Area) Regulations 2016 ("the 2016 Regulations"). Accordingly the First-tier Tribunal was correct to find that it was not obliged to determine the appeal with reference to the 2016 Regulations. ECO v Ahmed and ors (UI-2022-002804-002809) distinguished.

(2) In Batool and Ors (other family members: EU exit) [2022] UKUT 219 (IAC), the Upper Tribunal did not accept that Articles 18(1)(e) or (f) of the Withdrawal Agreement meant that the respondent "should have treated one kind of application as an entirely different kind of application"; and that it was not disproportionate under Article 18(1)(r) for the respondent to "determine...applications by reference to what an applicant is specifically asking to be given". There was no reason or principle why framing the argument by reference to Article 18(1)(o) should lead to a different result. Accordingly, consistently with the approach taken by the Upper Tribunal in Batool, Article 18(1)(o) did not require the respondent to treat the applicant's application as something that it was not stated to be; or to identify errors in it and then highlight them to her.

(3) Annex 2.2 of Appendix EU (Family Permit) enables a decision maker to request further missing information, or interview an applicant prior to the decision being made. The guidance given by the respondent as referred to in Batool at [71] provides " help [to] applicants to prove their eligibility and to avoid any errors or omissions in their applications" for the purposes of Article 18(1)(o) . A pplicants are provided with "the opportunity to furnish supplementary evidence and to correct any deficiencies, errors or omission" under Article 18(1)(o). In accordance with Batool, Article 18(1)(o) did not require the respondent to go as far as identifying such deficiencies, errors or omission for applicants and inviting them to correct them. This is especially so given the "scale of EUSS applications" referred to in Batool at [72]. This provides a good reason for Article 18(1)(o) to be read narrowly to exclude errors or omissions of this sort, and this was the effect of the approach taken by the Upper Tribunal in Batool .

Osunneye (Zambrano, transitional appeal rights) Nigeria [2023] UKUT 162 (IAC) (30 May 2023)

1. Following the UK's withdrawal from the EU, the Immigration (European Economic Area) Regulations 2016 are continued for transitional purposes by statutory instruments including the Immigration and Social Security Coordination (EU Withdrawal) Act 2020 (Consequential, Saving, Transitional and Transitory Provisions) (EU Exit) Regulations 2020 (SI 1309/2020).

2. Paragraph 5 of Schedule 3 to the 2020 Regulations deals with "Existing appeal rights and appeals". Paragraph 6 of Schedule 3 then sets out the specified provisions of the EEA Regulations 2016. Neither regulation 16 nor 20 of the EEA Regulations are included in that schedule. Regulation 36 relating to appeal rights is. Schedule 2 to the EEA Regulations is also amongst the provisions continued as modified. At paragraph 6(cc), the modifications to that schedule are set out.

3. Those provisions draw a distinction between appeals which arise before or are against decisions taken before 31 December 2020 (paragraphs 5(1)(a) to (c)) and those against decisions taken after 31 December 2020 (paragraph 5(1)(d)).

4. Contrary to the unreported decision in Secretary of State for the Home Department v Oluwayemisi Janet James (UI-2021-000631; EA/05622/2020), the right of appeal against a decision made prior to 31 December 2020 therefore continues in force until finally determined (see in that regard paragraph 5(2) of Schedule 3 to the 2020 Regulations).

5. Part Four of the Withdrawal Agreement is concerned with transitional provisions which apply during the transition or implementation period between the date of the Withdrawal Agreement and 31 December 2020.

6. Part Four of the Withdrawal Agreement applies "Union law" during the transition period. The Zambrano right is a derivative one which depends on Article 20 Treaty for the Functioning of the European Union (TFEU). The TFEU is part of "the EU Treaties". It is continued in force during the transition period.

https://www.bailii.org/uk/cases/UKUT/IAC/2023/162.html

Rexhaj (extended family members: assumed dependency) Albania [2023] UKUT 161 (IAC) (24 April 2023)

1. Where an applicant:

a. has been granted entry clearance as a dependent parent under Appendix EU (Family Permit); and

b. is subsequently granted limited leave to enter at the border as a dependent parent,

the operative basis upon which the individual was granted leave to enter at the border is to be found within Appendix EU.

2. It follows that such an applicant will already have been granted leave as a dependent parent under Appendix EU (c.f. "under this Appendix") and, pursuant to the definition of "dependent parent" in Annex 1 to Appendix EU at paragraph (c)(i), will not be subject to the requirement to establish dependency.

https://www.bailii.org/uk/cases/UKUT/IAC/2023/161.html

Surinder Singh Latest: Kutbuddin & Ors v Secretary of State for the Home Department (India) [2023] UKUT 76 (IAC) (22 March 2022)

The requirement that an EFM must show prior lawful residence in another member state is not a requirement of EU law, nor is it endorsed by the CJEU.

38. For those reasons I must conclude that there is no basis in law for the conclusion reached by the Respondent, and the First-tier Tribunal, that these Applicants are not eligible for residence cards simply because they failed to show that they were "lawfully resident" for the entire time that they lived in Ireland with their Sponsor. In treating the requirement at Regulation 9 (1A)(b) of the Immigration (European Economic Area) Regulations 2016 as determinative the decision-maker breached the Appellants' rights under the EU Treaties in respect of their residence in the United Kingdom.

[the numbering goes wrong on the reported decision]

Surinder Singh, EFMs and Lawful Residence: Kutbuddin & Ors v Secretary of State for the Home Department (India) [2023] UKUT 76 (IAC) (22 March 2022)

45. In ZA, however, Upper Tribunal Judge Rintoul explains how the word "genuine" has a specific meaning in this context. The First-tier Tribunal had dismissed ZA's appeal, accepting the Secretary of State's case that bad faith was at play, and that the family in question had only ever gone to Ireland in order to take advantage of the Surinder Singh route. Careful analysis of the jurisprudence, in English and French, led the Upper Tribunal to conclude that for the purpose of Regulation 9 motive is irrelevant: it did not matter, on the facts of that case, why the couple in question had chosen to go and live in Ireland. The only legitimate questions were whether they had in fact done so, whether the EEA national sponsor had exercised treaty rights whilst there, and whether family life had been created or strengthened during that period of residence. The term "genuine" is used by the CJEU simply in the sense that the exercise of treaty rights must have
been real, substantive or effective. Whether there was another ulterior - or primary - purpose is, absent abuse of rights or fraud, of no concern to decision makers.

Historical Injustice: Ahmed (historical injustice explained) Bangladesh [2023] UKUT 165 (IAC) (03 July 2023)

1. As is clear from the decision in Patel (historic injustice; NIAA Part 5A) [2020] UKUT 351(IAC), the phrase "historical injustice" does not connote some specific separate or freestanding legal doctrine but is rather simply a means of describing where, in some specific circumstances, the events of the past in relation to a particular individual's immigration history may need to be taken into account in weighing the public interest when striking the proportionality balance in an Article 8 case. In relation to the striking of the proportionality balance in cases of this kind we make the following general observations:

a. If an appellant is unable to establish that there has been a wrongful operation by the respondent of her immigration functions there will not have been any historical injustice, as that term is used in Patel, justifying a reduction in the weight given to the public interest identified in section 117B(1) of the Nationality, Immigration and Asylum Act 2002. Although the possibility cannot be ruled out, an action (or omission) by the respondent falling short of a public law error is unlikely to constitute a wrongful operation by the respondent of her immigration functions.

b. Where the respondent makes a decision that is in accordance with case law that is subsequently overturned there will not have been a wrongful operation by the respondent of her immigration functions if the decision is consistent with the case law at the time the decision was made.

c. In order to establish that there has been a historical injustice, it is not sufficient to identify a wrongful operation by the respondent of her immigration functions. An appellant must also show that he or she suffered as a result. An appellant will not have suffered as a result of wrongly being denied a right of appeal if he or she is unable to establish that there would have been an arguable prospect of succeeding in the appeal.

d. Where, absent good reason, an appellant could have challenged a public law error earlier or could have taken, but did not take, steps to mitigate the claimed prejudice, this will need to be taken into account when considering whether, and if so to what extent, the weight attached to public interest in the maintenance of effective immigration controls should be reduced. Blaming a legal advisor will not normally assist an appellant. See Mansur(immigration adviser's failings: Article 8) Bangladesh [2018] UKUT 274 (IAC).

https://www.bailii.org/uk/cases/UKUT/IAC/2023/165.html

Deprivation of Citizenship appeals: the correct approach: Chimi v The Secretary of State for the Home Department (deprivation appeals; scope and evidence) Cameroon [2023] UKUT 115 (IAC) (19 April 2023)

Chimi is the latest decision from the UT which continues to grapple with the correct approach to deprivation of citizenship appeals following the decision of the Supreme Court in *Begum, R. (on the application of) v Special Immigration Appeals Commission & Anor [2021] UKSC 7*.

The Presidential panel held that the same approach was to be taken in respect of decisions under s40(2) BNA 1981, where the condition precedent is that 'the Secretary of State is satisfied that deprivation is conducive to the public good' and in respect of decisions under s40(3) BNA 1981 case, the condition precedent is that 'the Secretary of State is satisfied that registration or naturalisation was obtained by means of fraud, etc'. The Tribunal summarised the steps to be taken on appeal as follows:

Deprivation of Citizenship appeals: the correct approach: Chimi v The Secretary of State for the Home Department (deprivation appeals; scope and evidence) Cameroon [2023] UKUT 115 (IAC) (19 April 2023)

(1) A Tribunal determining an appeal against a decision taken by the respondent under s40(2) or s40(3) of the British Nationality Act 1981 should consider the following questions:

(a) Did the Secretary of State materially err in law when she decided that the condition precedent in s40(2) or s40(3) of the British Nationality Act 1981 was satisfied? If so, the appeal falls to be allowed. If not,

(b) Did the Secretary of State materially err in law when she decided to exercise her discretion to deprive the appellant of British citizenship? If so, the appeal falls to be allowed. If not,

(c) Weighing the lawfully determined deprivation decision against the reasonably foreseeable consequences for the appellant, is the decision unlawful under s6 of the Human Rights Act 1998? If so, the appeal falls to be allowed on human rights grounds. If not, the appeal falls to be dismissed.

(2) In considering questions (1)(a) and (b), the Tribunal must only consider evidence which was before the Secretary of State or which is otherwise relevant to establishing a pleaded error of law in the decision under challenge. Insofar as Berdica [2022] UKUT 276 (IAC) suggests otherwise, it should not be followed.

(3) In considering question (c), the Tribunal may consider evidence which was not before the Secretary of State but, in doing so, it may not revisit the conclusions it reached in respect of questions (1)(a) and (b).

Chimi v The Secretary of State for the Home Department (deprivation appeals; scope and evidence) Cameroon [2023] UKUT 115 (IAC) (19 April 2023)

56. We would, however, wish to amplify this understanding of the position to provide some clarity in relation to the application of this approach in practice. In common with the observations of SIAC in paragraph 27 of *U3,* we do not consider that in paragraph 71 of Lord Reed's judgment in Begum he was intending to provide an exhaustive list of the potential types of public law error which it is open to the Tribunal to conclude have affected the decision on the condition precedent under consideration. We see no basis for reading what Lord Reed said in *Begum* as excluding other types of public law error which were not specifically identified from being potential grounds upon which a decision could be impugned. We see no reason to conclude that Lord Reed's reference in paragraph 71 to a consideration of whether the respondent has "erred in law" should be restricted to whether the respondent has acted in a way that no reasonable decision maker could have acted or taken account of irrelevant considerations or disregarded matters which should have been taken into account. Questions of fairness beyond procedural impropriety may be relevant to the assessment in some cases, as may the jurisdiction arising from an error of established fact derived from the case of *E v Secretary of State for the Home Department* [2004] EWCA Civ 49; [2004] QB 1044, or a failure to undertake sufficient enquiries commonly referred to as the *Tameside* duty, from *Secretary of State for Education Science v Tameside Metropolitan Borough Council* [1977] AC 1014. Thus, we would elaborate upon paragraph 1 of the headnote in *Ciceri* to make clear that the task of the Tribunal is to scrutinise the condition precedent decision in any section 40(2) and section 40(3) decision under appeal to see whether any material public law error has been established in the respondent's decision. A public law error in the decision under challenge will be material unless it is established that the decision would inevitably have been the same without the error: *Smith v North East Derbyshire PCT* [2006] EWCA Civ 1291; [2006] 1 WLR 3315.

Chimi v The Secretary of State for the Home Department (deprivation appeals; scope and evidence) Cameroon [2023] UKUT 115 (IAC) (19 April 2023)

61. The question which then arises is as to what if any material which was not before the respondent at the time the decision was reached could be taken as admissible in respect of this jurisdiction. Again, we are clearly of the view that the evidence to be considered in relation to the exercise of the error of law jurisdiction in respect of the statutory decision (as distinct from any human rights consideration) is not limited to that before the respondent at the time when the respondent's determination was made. However, any evidence must be strictly relevant and admissible only because it directly pertains to an error of law which the appellant has specifically pleaded. Furthermore, the evidence will bear upon the facts and circumstances pertaining at the time when the decision was reached. The principles are identical to those which apply in judicial review, further guidance in respect of which might be found at paragraph 23.3.3 of the Administrative Court Guide 2022 and 16-081 of De Smith's Judicial Review, Eighth Edition.

62. It is relatively straightforward to imagine examples of where material which was not before the respondent could be admissible in order to support an argument that an error of law has occurred. The jurisdiction in respect of an established error of fact may require material to be produced so as to demonstrate that there was such an established error of fact bearing upon the decision which was reached in relation to the condition precedent and that it was material. Mr Clarke was correct, therefore, to accept in this case that a witness statement from Mr Lefebvre, admitting that he had confused the appellant's case with that of someone else, would have been admissible through this gateway. In order to support an allegation that there had been a breach of the *Tameside* duty again it may be necessary to receive evidence which was not before the decision maker as to what the decision maker ought to have researched and brought into account when making the decision in order for that contention to be established.

CHILDREN AND THE IMMIGRATION RULES –SOME OBSERVATIONS

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Introduction

This is not intended to be a full scale review of all the Rules, but rather some hopefully practical advice. The Rules regarding children can be seen to be a bit complex, as they occur in different places. *Part 8 of the Immigration Rules* is relevant where the parents who are not entering or are already in the UK under Appendix FM, but have some other form of leave (excluding as we shall see those parents who come under *Appendix Children).* This group's children commonly apply under *Rule 297, 301* if limited leave is held by the parent, R*ule 303A* as a child of a fiancé(e) or proposed civil partner, and so on. [Given time constraints it is not proposed to consider *Rules 309A-316A* in relation to adoption].

Appendix FM, for family members is relevant for parents who have entered under this part of the Rules. *Appendix Children* applies to certain specified routes of entry to the UK such as Domestic Workers, Global Business Mobility, Gurkha veterans, Innovators, Skilled Workers, Temporary Workers, UK ancestry and others—there is quite a long list. It is proposed to deal with the requirements of *Rule 297 in Part 8 of the Rules*, which is a good starting point to deal with the other rules in its requirements.

However, before doing so if a child has UK citizenship or indeed settled status they will not be required to apply for entry clearance and to obtain a visa. This is sometimes forgotten, particularly in cases involving blended families.

Rule 297

I am not going to set out the Rule in it's entirety, rather I will just look at some features in paragraph 297 (i);

* first of all the child is applying for settlement in the UK because either one or both of the parents, or a relative are settled in the UK, or are being admitted for settlement (if they only have limited leave to remain then *Paragraph 301* applies, and child will be given leave in line with the person sponsoring the child).

* secondly one parent is settled in the UK and the other parent is being admitted on the same occasion for settlement, and the child is entering with the parent or

* One parent is present and settled in the UK and the other parent is dead (proof will be needed about the deceased parent) or

** And this is a common scenario* one parent is settled or being admitted on the same occasion for settlement and has sole responsibility for the child's upbringing or

* *again a common situation* one parent or a relative (note the difference here) is present and settled in the UK or being admitted for settlement 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. (in the UK)

TD (Paragraph 296 (i) (e): “sole responsibility”) Yemen [2006] UKIAT 00049

Now dealing with the common positions in relation to Rule 297 the leading case on Rule 297 (i) (e)—sole responsibility is **TD (Paragraph 296 (i) (e): “sole responsibility”) Yemen [2006] UKIAT 00049**.

In short form; it is to be assumed that one parent (for whatever reason) has disappeared from the life of the child, but the other parent has continuing control and direction of the child’s life. It may be that the child’s carer abroad is responsible for “day to day” decisions, but any important decisions taken by them show shared responsibility.

Financial support from the parent abroad is to be expected, and the length and cause of the separation of child from parent is very relevant.

Issues

- Is your client related to the child as a parent? DNA evidence, or birth certificate and Passport?
- Money Transfers? To whom? How often?
- Why the separation?
- Who takes decisions about schooling, health, clothes, holidays? Evidence of that
- Evidence of contact with the child needed—particularly now there is electronic means of communication
- What is the child's routine, interests of the child, educational record, ambitions
- Is there current stability in their life, if not why not?
- Who else can look after the child.

Rule 297(i)(f)

Here it is necessary to refer to **Mandeba (s.55 and para 297 (i) (f)) [2013] UKUT 88 (IAC).** This is a potentially wider sub rule, including relatives as well as parents, but is more restrictive in application. The test of "serious and compelling reasons" is rather a high bar. Examples of issues which could succeed, are evidence of abuse, unmet needs which should be met, and stable arrangements in these circumstances for the child's care. These are rather cumulative in nature as in a combination of circumstances meeting the test. The starting point is a child should be with at least a parent, however continuity of residence is also important (this potentially makes it difficult for a relative to succeed).

In short, one is approaching a generalised Article 8 ECHR analysis. Evidence needs to be adduced as to unsatisfactory living conditions, the history of care for the child, why the present situation cannot be tolerated. Country evidence may be required.

There are other requirements in relation Rule 297; adequate accommodation and maintenance (which will need evidencing), the child being under the age of 18 at the date of application, unmarried and not a civil partner, and not leading an independent life (that is, of the child's own volition).

Appendix FM

This appears as “ *Family Life as a child of a person with limited leave as a partner or parent”* under *Section E-ECC* . here there are suitability grounds like all Appendix FM applications, although they are hardly likely to be applicable. The same criteria are applicable as in R*ule 297.* However here the financial requirements of *Appendix FM* need to be met-- £18,600 plus £3,800 for the first child, and £2,400 for each additional child, or indeed another way of meeting the financial requirement.

Appendix Children

This is separated into two parts, where the child is applying as a dependent child and where the child is not applying as such, and is entering to study. [It is not intended to deal with this category here.]

As expected the same rules apply as under *Part 8 of the Rules* in respect of age, independent life, care, and indeed the relationship requirement which more or less mirrors the points already made. I note at CHI 3.3. if it claimed the Applicant was born in the UK and is the child of a person with permission, or their partner, a full UK birth certificate showing the parent(s) name must be provided.

The categories of application are set out, however it should be noted that from January 2024 only students studying in post graduate research courses will be allowed to be bring family members with them.

Burden and standard of proof in asylum claims & MAH Egypt [2023] EWCA Civ 216

Michael Brooks

CHAMBERS

Burden and standard of proof in asylum claims – MAH Egypt in context

- MAH Egypt [2023] EWCA Civ 216
- Standard of proof in protection claims
- Credibility
- Burden on appellant
- MAH identifies the correct approach to corroboration
- Particularly documents

Look at

- MAH
- Where it may apply
- Wider context of credibility
- Numbers in [square brackets] are to MAH paragraphs

Refusals and Ho submissions

- All experienced protection claims where there may be documents that could be provided
- **If missing HO say:** **ought to be provided**
- **If copy provided HO say:** **not original**
- **If original HO say:** **not verified**
- **If appellant provides original HO say:** **no duty to verify**
- The HO like to imply credibility inference may be drawn
- HO may make such a submission
- MAH addresses the issue of documentary corroboration

Standard of proof

- **A reasonable degree of likelihood** [49]
- Reasonable possibility [50]
- Real risk
- A real as opposed to fanciful risk
- Even a 10% risk may satisfy the test [52]
- CoA critical UT in MAH as UT did not set out the standard [45]
- Rather than a binary question of
- yes or no as a tribunal may ask itself in applying the balance of probabilities
- the test in protection claims was more akin to an **assessment of risk** [70]

MAH and the CoA

- MAH concerned a protection clam that **failed for lack of credibility** [1]
- Unusual
- CoA recognised that it was unlikely to grant permission
- Because
- Acting as tribunal of fact = unusual for an appellate tribunal [13]
- Well established that CoA will not readily interfere with findings of fact [69]

MAH – basis of claim

- MAH's claim was based on his father having been politically active
- UT considered the absence of evidence making the following points:
- Not unreasonable (now adult and legally represented) **to confirm**
- 'with reliable **documentation** from Egypt'
- whether his father had been imprisoned [38]
- Significant point against appellant's core credibility [40]
- Failure to **seek evidence** about a raid [41]
- Arrests of two family members arrested for political involvement
- 'not made out to lower standard' [42]
- No reasonable explanation for the **absence of evidence** from these family members [43]

The absence of evidence is not evidence of absence

(Carl Sagan, American Astronomer)

- versus
- UT in MAH … and … HO regularly ….
- The absence of X undermines your credibility

Was and was not

- MAH was not
- Observed demeanour in live evidence
- Inherent Plausibility
- Lies
- Inconsistencies
- MAH was
- **Could and should have taken further steps to corroborate**
- CoA held that this was an instance of the UT imposing a high threshold when something
- ‘far less than the balance of probabilities standard is required’ [37]

Crux

- What both Article 4(5) of the Qualification Directive and para. 339L of the Immigration Rules provide is that, where certain criteria are met, corroborative evidence is not required.
- **It does not follow from this that, where one or more of those criteria are not met, corroborative evidence is required.** [77]

In SB Sri Lanka [59] an element that a tribunal could consider was

- the adequacy (or by contrast paucity) of
- evidence on relevant issues that, logically, the appellant should
- be able to adduce in order to support his or her case
- Caution on plausibility
- cautious before finding an account to be **inherently incredible**, because there is a **considerable risk** that it will be over influenced by its **own views** of what is or is not plausible, and those views will have inevitably been influenced by its own background in this country and by the customs and ways of our own society. It is therefore important that it should seek to view an appellant's account of events in the context of conditions in the country from which the appellant comes [61: Y [2006] EWCA iv 1223]
- Balanced against
- The decision-maker is not expected to suspend its own judgment. In appropriate cases, it is entitled to find that an account of events is so far-fetched and contrary to reason as to be incapable of belief [62]

UT fell into error [87]

- by concluding that the **failure to adduce corroborative evidence**
- **undermined his credibility** in the circumstances of the case
- e.g. scarring

FTT or UT appeals

- Important when considering appeal:
- He [MAH] still **does not know** whether his father was in fact a member of the Muslim Brotherhood or whether that was the **reason** why the Egyptian authorities **arrested and detained** him. Nor does he know whether they will take a similar interest in him if he is returned to Egypt. His evidence was to the effect that that is his fear and that fear is well-founded … [88]

Caution

s.32, Nationality and Borders Act 2022

From 28.6.22

32 Article 1(A)(2): well-founded fear

s.32 (2)

The decision-maker must first determine, on the balance of probabilities

(a)whether the asylum seeker has a characteristic which could cause them to fear persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion (or has such a characteristic attributed to them by an actor of persecution), and

(b)whether the asylum seeker does in fact fear such persecution in their country of nationality (or in a case where they do not have a nationality, the country of their former habitual residence) as a result of that characteristic.(See also section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (asylum claims etc: behaviour damaging to claimant's credibility).)

(3)Subsection (4) applies if the decision-maker finds that—

(a)the asylum seeker has a characteristic mentioned in subsection (2)(a) (or has such a characteristic attributed to them), and

(b)the asylum seeker fears persecution as mentioned in subsection (2)(b).

s.32 (4)

The decision-maker must determine whether there is a <u>reasonable likelihood</u> that,

if the asylum seeker were returned to their country of nationality (or in a case where they do not have a nationality, the country of their former habitual residence)—

(a)they would be persecuted as a result of the characteristic mentioned in subsection (2)(a), and

(b)they would not be protected as mentioned in section 34.

(5)The determination under subsection (4) must also include a consideration of the matter mentioned in section 35 (internal relocation).

Take away

- Where HO or tribunal say ‘you ought to have done X’
- With the implication that this undermines credibility
- Consider MAH

APPENDIX ADULT DEPENDENT RELATIVES

Emma Rutherford

Introduction

The purpose of this Appendix is to provide a route for the adult dependent relatives of those who are British citizens, settled in the UK, here with protection status and EEA nationals with limited leave to remain under Appendix EU to apply for leave to enter the UK.

In order to apply under this route, the applicant must be the parent, grandparent child or sibling of the sponsor and must require long term personal care to perform everyday tasks due to age, illness or disability and that care must be either not available or not affordable in the country where the applicant is living.

Where the person applying is a parent or grandparent of the Sponsor has a partner that partner can also apply even if they do not need long term personal care.

The applicant must be outside of the UK

Where the sponsor is British or settled in the UK a successful applicant will be granted ILR. If the sponsor has limited leave to remain a successful applicant will be granted leave in line with their sponsor and can seek either an extension of that leave to remain or ILR whilst in the UK.

Appendix ADR

The Appendix sets out the validity, suitability and eligibility requirements. The latter sets out the provisions relating to the relationship between the applicant and sponsor, dependency and the financial requirement.

Relationship requirements for an Adult Dependent Relative

ADR 4.1. An applicant applying for entry clearance or permission to stay as an Adult Dependent Relative must be one of the following:

(a) the parent; or

(b) the grandparent; or

(c) the son or daughter; or

(d) the brother or sister,

of a person in the UK ("the sponsor").

ADR 4.2. The sponsor of the applicant must be one of the following:

(a) a British Citizen; or

(b) settled in the UK; or

(c) in the UK with protection status; or

(d) an EEA national with limited leave to enter or remain granted under paragraph EU3 of Appendix EU on the basis of meeting condition 1 in paragraph EU14 of that Appendix.

ADR 4.3. Where the applicant is applying for permission to stay, the sponsor must be the same person who sponsored the applicant when they were last granted entry clearance or permission as an Adult Dependent Relative.

Dependency requirements for an Adult Dependent Relative

ADR 5.1. The applicant, or if the applicant is applying as a parent or grandparent, the applicant's partner, must as a result of age, illness or disability require long term personal care to perform everyday tasks.

ADR 5.2. Where the application is for entry clearance, the applicant, or if the applicant is applying as a parent or grandparent, the applicant's partner, must be unable to obtain the required level of care in the country where they are living, even with the financial help of the sponsor because either:

(a) the care is not available and there is no person in that country who can reasonably provide it: or

(b) the care is not affordable.

Long Term Personal Care

The first limb of the dependency test that needs to be established is the need for long term personal care. There is no definition of this contained in the immigration rules themselves. The Family Policy Adult Dependent Relatives Guidance dated 7th August 2023 states

"As a result of age, illness or disability, the applicant must require long-term personal care to perform everyday tasks, for example washing, dressing and cooking. This means that they must be incapable of performing such everyday tasks for themselves.

This situation may have been arrived at recently – such as the result of a serious accident resulting in long-term incapacity – or it could be the result of deterioration in the applicant's condition over several years."

There is no guidance given as to the meaning of long term but clearly the need for care following an accident or medical treatment where a recovery is anticipated would not be sufficient.

Unable To Obtain The Required Level Of Care

The second limb of the dependency test is that the applicant must be unable to obtain the required level of care in the country where they are living because it is not available or it is not affordable. This limb is further broken down into three elements.

Required Level Of Care

The first element of this is establishing the required level of care. This will vary on a case by case basis and will be dictated by the nature of their disability/illness, the assistance and care that is required to address those needs and the extent of the care required.

In addition to the physical care needs the emotional and psychological needs of the applicant can and should be considered as part of the assessment of the required level of care.

The Home Office guidance on this states

“The “required level of care” is a matter to be objectively assessed, with reference to the specific needs of the applicant. The level of long-term personal care must be what is required by the individual applicant to perform everyday tasks, in light of their physical needs and any emotional or psychological needs, in each case as established by evidence provided by a doctor or other health professional.

In considering whether the care is available in the country in which the applicant is living, the Entry Clearance Officer (ECO) will consider both what care is available, and whether it is realistically accessible to the applicant. As to the latter, consideration should be given both to the geographical location and the cost of such care.”

It was held in BRITCITS v The Secretary of State for the Home Department [2017] EWCA Civ 368 at paragraph 59 that

“*Second, as is apparent from the Rules and the Guidance, the focus is on whether the care required by the ADR applicant can be "reasonably" provided and to "the required level" in their home country. As Mr Sheldon confirmed in his oral submissions, the provision of care in the home country must be reasonable both from the perspective of the provider and the perspective of the applicant, and the standard of such care must be what is required for that particular applicant. It is possible that insufficient attention has been paid in the past to these considerations, which focus on what care is both necessary and reasonable for the applicant to receive in their home country. Those considerations include issues as to the accessibility and geographical location of the provision of care and the standard of care. They are capable of embracing emotional and psychological requirements verified by expert medical evidence. What is reasonable is, of course, to be objectively assessed.*”

Cannot Obtain The Required Level of Care As It Is Not Reasonable Available

The second element to this part of the dependency rules requires the applicant cannot obtain the required level of care because there is no person who can reasonably provide that care.

On this topic the SSHD's Guidance states

The ECO should consider whether there is anyone in the country where the applicant is living who can reasonably provide the required level of care. This might be a close family member: son, daughter, brother, sister, parent, grandchild, grandparent, a wider family member, friend or neighbour, or another person who can reasonably provide the care required, for example a home-help, housekeeper, nurse, carer or care or nursing home.

If an applicant has more than one close family member in the country where they are living, those family members may be able to pool resources to provide the required care.

The concept of whether another person can "reasonably" provide care may require consideration of such matters as the location of that person, their own circumstances and other commitments, and their willingness to provide such care. The fact that a person or organisation has been providing care for a period may suggest that they can continue to do so, however, if evidence is provided as to the temporary nature of such care, or as to a change in circumstances, this must be carefully considered.

The provision of the care in the applicant's home country must be reasonable both from the perspective of the provider of the care and the perspective of the applicant.

The ECO should bear in mind any relevant cultural factors, such as in countries where women are unlikely to be able to provide support in some circumstances"

The word reasonable is of significance here – it may be possible to obtain care but is the care reasonably available. Here the question must be addressed from the perspective of the applicant and the person or people providing the care taking into account their individual circumstances.

Cannot Obtain The Required Level Of Care Due To Affordability

The final element of the second limb of the dependency rules arises where there is suitable care reasonably available as it then needs to be considered if it is affordable.

This is based not just on the applicant's resources but also any financial support that the UK sponsor can provide.

This will requires comprehensive evidence of the cost of meeting the applicant's care needs and the finances available to bot the applicant and the sponsor.

Partner requirement on the Adult Dependent Relative route

ADR 5.3A.1. If the applicant is the sponsor's parent or grandparent they must not be in a subsisting relationship with a partner, unless that partner is applying for entry clearance or permission to stay as an Adult Dependent Relative at the same time.

Financial requirement for an Adult Dependent Relative

ADR 6.1. The sponsor must be able to provide adequate maintenance, accommodation and care for the applicant in the UK without access to public funds.

ADR. 6.2. The sponsor must provide evidence of income or cash savings sufficient to show they can meet the financial requirement and:

(a) evidence from income (other than self-employment) or savings must cover the 6 month period immediately before the date of application; or

(b) where the sponsor is receiving maternity, paternity, adoption or sick pay, their income from salaried employment can be shown for either the 6 months immediately before the date of application or the start date of the maternity, paternity, adoption or sick leave; or

(c) where the income is from self-employment it must be shown for the last full financial year before the date of application, with additional evidence of ongoing self-employment as in paragraphs 7 or 9 (as relevant) of Appendix FM-SE; or

(d) where there is non-employment income it must be shown to have been received in the 12 months before the date of application except where specified in paragraph 10 of Appendix FM-SE; or

(e) where property has been sold and the money received has been converted into cash savings the requirements in paragraph 11A(d) of Appendix FM-SE must be met.

Financial requirement for an Adult Dependent Relative

ADR 6.3. The income or cash savings must be evidenced as specified in paragraphs 1, 12A and 12B of Appendix FM-SE.

ADR 6.4. The sponsor must provide a signed maintenance undertaking confirming that the applicant will not have access to public funds, and that the sponsor will be responsible for the maintenance, accommodation and care of the applicant for either:

(a) a period of 5 years from the date the applicant arrives in the UK if the applicant is to be granted settlement; or

(b) the duration of the period of permission to be granted if the applicant is being granted temporary permission to stay.

ADR 6.5. If the applicant receives public funds during the period covered by the maintenance undertaking (see ADR 6.4.) the UK Government may seek to recover the public funds from the sponsor who gave the undertaking.

Eligibility under Article 8 for an Adult Dependent Relative

ADR 7.1. If the applicant does not meet all the suitability requirements (subject to ADR 7.2) or does not meet all of the eligibility requirements in ADR 3.1. to ADR 6.4., but the decision maker is satisfied that refusal of the application would breach Article 8 of the Human Rights Convention, because it would result in unjustifiably harsh consequences for the applicant or their family, the applicant will meet the Article 8 ECHR eligibility requirement.

ADR 7.2. Where ADR 7.1. applies and the applicant falls for refusal on suitability grounds under S-EC.1.2 to S-EC.1.5, or S-LTR.1.2 to S-LTR.1.6. of Appendix FM of these rules the application as an Adult Dependent Relative must be refused.

Highlights from the new Bail Guidance for Immigration Judges

Olu Sobowale

N8 CHAMBERS

President of the First-tier Tribunal (Immigration and Asylum Chamber)

Presidential Guidance Note No 1 of 2023

(Implemented on 1 March 2023)

material amemdments to the 2018 guidance

(a working knowledge is assumed!)

‘Gentle reminder ‘

- *para 5*

- *Home Office guidance to staff states that “there is a presumption in favour of immigration bail and, wherever possible, alternatives to detention are used … (in) cases concerning foreign national offenders … the starting point … remains that the person must be granted immigration bail unless the circumstances of the case require*
- *the use of detention”*

Legislative amendment

- Para 11

- *When considering whether to grant immigration bail, and the conditions of immigration bail, the Tribunal must have regard to the matters listed in para 3(2) of schedule 10 to the 2016 Act, as amended by section 48 of the Nationality and Borders Act 2022. These are...*

para 11 (contd) : new sub para (ea)

(***ea) <u>Whether the person has failed without reasonable excuse to cooperate with any process—</u>***

- ***(i) for determining whether the person requires or should be granted leave to enter or remain in the United Kingdom,***
- ***(ii) for determining the period for which the person should be granted such leave and any conditions to which it should be subject,***
- ***(iii) for determining whether the person's leave to enter or remain in the United Kingdom should be varied, curtailed, suspended or cancelled,***
- ***(iv) for determining whether the person should be removed from the United Kingdom, or***
- ***(v) for removing the person from the United Kingdom,***

The likelihood of the person :
1) Absconding, 2) failing to comply with a bail condition, or 3) committing offences whilst on bail

- **Greater emphasis on FNO Licence conditions as a mitigiating factor**

- **para 39**. The risk of absconding is likely to be low where the applicant is subject to criminal licence, which will provide for supervision and monitoring by the probation authorities.

- **para 49.** The fact a person has been convicted of an offence may raise a safeguarding issue but, if the person is subject to a criminal licence, the licence conditions should normally be sufficient to address any concerns.

- **para 53.** Where the person is subject to a criminal licence the licence conditions should normally be sufficient to address any concerns, particularly as recall is likely to be a stronger sanction than any restrictive bail conditions.
- **para 42.** Where there is **no mention in the bail summary of previous adverse conduct** issues it should be accepted that the history of interaction has been positive.

Home Office Risk Asessement

- ***"The OASys report assesses Mr XX as posing a low risk of offending however the Home Office would consider him to pose a medium risk of offending based on the nature of the offence and the length of sentence"***

- para 51 : A risk assessment by the Home Office is not a professional risk assessment and is unlikely to be afforded <u>any weight</u>.

Bail conditions

- **Electronic monitoring condition**
- para 81 :
  - GPS based supported by Mobile sim
  - no need for residential installation
  - 2 types of devices
    - fitted (ankle tag)
    - non-fitted -- non- fitted: is hand-held , takes fingerprints , must be carried at all times
  - both require charging
  - choice of device is for the secretary of state
  - **Immigration Bail Version 16.0 pulished 8/8/2023** for further guidance

Bail conditions

- **Financial Condition**

- **general rule :** should only be imposed with a view to ensuring that the person complies with the other bail conditions and not imposed instead of a bail condition.

- **para 46 :** The condition(s) which the financial condition is intended to support should be specified.

- **para 82 : ”. …”**Accordingly a financial condition should be the
- exception and not the rule”

Miscellaneous

- **Para 17:** Bail hearings now heard within 3-6 days rather than 3 working days
- **Para 20:** By end of 2023 B1 bail form dispensed with in favour of MyHMCTS for all bail applications
- **Para 28:** written reasons should be drafted and served on the parties immediately as opposed to the end of ther day
- **Para 41 :** Is removal actually imminent ?? Home Office Country Returns Guide : Available at : https://www.gov.uk/government/publications/country-returns-guide

Misc: The likelihood of the person failing to comply with a bail condition

- Is the address a “stable address?”

- **PARA para 38 & 43**
  - **factors relevant to whether** proposed bail address is a **'stable address'**
    - Active support by friends / family
    - existing appeal / JR
    - previous residence at the address
    - “...people in the property have an interest in ensuring compliance..” eg FCS/ spouse/ children

If bail address not viewed as ‘stable’

- **para 63 'Residence conditions'** are only required if the **proposed 'bail address'** is not viewed as **'stable'**
- therefore standard home office request that applicant reside at a specified address does not follow the correct approach.

opposition to bail address by the respondent :

- Assumptions (a judge should make) vs 'suspicion or speculation’ (by the Home Office}

‘Speculation or suspicion’ about the suitability of a bail address

- **Specualtion or suspicion**
  - **para 67:** If the immigration authorities oppose a proposed bail address, they must provide **evidence to substantiate their objection**. **Speculation or generic arguments** will not be sufficient. Judges will examine concerns raised by the immigration authorities about the suitability of a bail address but **should not** make decisions based on **suspicion or speculation.**

- **Tenancy agreements can be a double edged sword!**

‘Assumptions’

Accommodation:

- **para 68.**

In the absence of any evidence to the contrary, judges will assume:

(a) landlords will give permission for an applicant to live in a property, and

(b) where a person is subject to a licence that a probation officer will approve the bail address if the immigration authorities have no specific concerns about that **address other than the absence of express approval from a probation officer.**

- **Licence conditions**
- **Para 70**.
- Judges should not be concerned as to whether release will breach licence conditions.
- The criminal authorities **will not release a person in breach of licence conditions**. **This**
- **is not a matter that should affect immigration bail.**

Thank You & Questions

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