IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2020] EWHC 3053 (Admin)

No. CO/2230/2020

Royal Courts of Justice

Wednesday, 28 October 2020

Before:

MRS JUSTICE FARBEY DBE

B E T W E E N :

THE QUEEN
ON THE APPLICATION
OF JS — Claimant

- and -

SECRETARY OF STATE
FOR THE HOME DEPARTMENT — Defendant

ANONYMISATION ORDER IN PLACE:
THE CLAIMANT'S NAME AND IDENTITY MUST NOT BE PUBLISHED

MR R. HUSAIN QC, MR J. POBJOY and MS E. MITCHELL (instructed by Duncan Lewis Solicitors) appeared on behalf of the Claimant by video.

MR G. LEWIS (instructed by the Government Legal Department) appeared on behalf of the Defendant by video.

J U D G M E N T

(Transcript prepared from Microsoft Teams recording)

MRS JUSTICE FARBEY:

1 By a claim form filed on 19 June 2020, the claimant seeks permission to apply for judicial review of a decision described as follows:

> "The Secretary of State's ongoing decision that parents and siblings of refugee children will not be entitled to family reunion on the same basis as the spouses and children of adult refugees under the Immigration Rules".

2 The date of the decision is said to be 21 May 2020, which is the date of the Secretary of State's response to the claimant's letter before claim; alternatively, 9 January 2020, which is the date of the Secretary of State's Family Reunion Policy. The decision is also said to be ongoing insofar as it relates to the absence of lawful provision in the Immigration Rules for family reunion for refugee children.

3 In amended Summary Grounds of Defence, the Secretary of State for the Home Department observes that the legal target of the claim is the conditions on which refugee children may and may not be granted reunion with family members. The claimant brings his claim and seeks relief as an adult. That fact was not conveyed in the grounds for judicial review, although his date of birth was mentioned in the chronology that accompanied the grounds.

4 The Secretary of State submits that the Statement of Facts and Grounds ("SFG") - in which the claim is set out - presents the claimant as a child. The claimant and/or his lawyers have breached the duty of candour and the court should refuse permission to apply for judicial review on that basis. In a reply to the amended Summary Grounds, the claimant maintains in equally trenchant terms that there has been no breach of duty.

5 The case came before me as vacation business for consideration of the question of permission to apply for judicial review on the papers. By order dated 29 September 2020, I directed that five preliminary issues should be considered at a hearing. Those issues are:

i. Whether the court should conclude that the claimant and/or the claimant's counsel and/or the claimant's solicitors are in breach of the duty of candour.

ii. Whether the court should permit the claimant to re-amend his grounds of claim in accordance with his application to do so.

iii. Whether the court should permit the claimant to amend his Reply in accordance with his application to do so.

iv. Whether the claim should be transferred to the Upper Tribunal, either on a mandatory or discretionary basis.

v. Case management directions for the further progress of the claim.

6 I heard submissions on 20 October 2020 from Mr Raza Husain QC (with Mr Jason Pobjoy and Ms Eleanor Mitchell) on behalf of the claimant and Mr Gwion Lewis on behalf of the Secretary of State. I should make it clear that Mr Husain had no role in drafting the original grounds for judicial review. He was instructed only after the question of the candour of the other instructed lawyers had been placed in issue. Mr Husain very properly made plain that

no blame could be attributed to his lay client. The question of candour relates only to those who prepared the SFG.

Summary of conclusions.

7 In summary, I have reached the following conclusion on each of the preliminary issues.

i. By a fine margin, in the particular circumstances of this case, a failure to mention the claimant's date of birth or age in the SFG falls below the standards that the court would expect of the claimant's lawyers but will not be treated as a breach of the duty of candour.

ii. The claimant's application to re-amend his grounds of claim is refused.

iii. The claimant's application to amend his Reply is refused.

iv. The claim will proceed in the Administrative Court.

v. The claim will proceed alone to a permission decision on the papers. Two other similar cases in which the claimant's lawyers are instructed will be stayed pending the outcome of this claim.

Background.

8 The claimant is a national of Afghanistan born on 21 March 2002. On 6 April 2016, he arrived in the United Kingdom as an unaccompanied child. He claimed asylum on arrival. The Secretary of State refused his claim and an appeal to the First-tier Tribunal ("FTT") failed. On 26 June 2017, the claimant made a further claim for asylum which was refused. On 27 June 2019, he made a fresh claim which was refused with an in-country right of appeal. The claimant exercised his appeal right. By a determination promulgated on 18 November 2019, the FTT allowed the appeal. On 24 December 2019, the claimant was granted refugee status.

9 The claimant subsequently took steps to seek family reunion with his mother and two younger brothers who presently reside in Iran. On 20 March 2020, which was the day before his 18th birthday, the claimant's solicitors sent a postal application for entry clearance for his mother and two brothers to join him in the UK. Both parties have tended to refer to this application as being made by the claimant. For convenience, I shall do the same.

10 It is not in dispute that the application did not comply with paras. 27 to 29 of the Immigration Rules, which do not permit applications of this sort to be made by post, but require applicants to present the application at an appropriate Visa Application Centre ("VAC"). Owing to the Covid 19 pandemic, the VAC in Iran is closed. The claimant's solicitors contend that there were no alternative arrangements in place at the material time. Without giving the Secretary of State an opportunity to consider the application, the claimant's lawyers went straight to the stage of issuing a letter before claim, which was sent by post and email on 20 March 2020. The letter stated that, should a satisfactory response not be received by 3 April 2020, the claimant's solicitors would launch judicial review proceedings.

11 Standing back, much of the time and resources which this claim has already used up could have been avoided if the lawyers had waited. At that stage, the claimant and his family had not been the subject of any adverse decision. The threat of litigation was made (i) before

any decision relating to the claimant; and (ii) before affording the Secretary of State any opportunity to consider the relevant issues. I infer from these factors that the claimant's lawyers had a fixed intention to use the processes of this court to make a particular legal point with little to no heed for the facts of the particular case. That approach was ill-judged. The fixed mindset meant that the lawyers have shoehorned what ought to have been pre-action representations into successive letters under the Judicial Review Pre-action Protocol and into ongoing litigation. As a consequence, even before permission has been considered, the claimant has sought to amend his claim twice.

12 Continuing the chronology, by a letter dated 16 April 2020, the Secretary of State responded to the letter before claim. The Secretary of State told the claimant's solicitors that all entry clearance applications must initially be made online and then documents and fees are lodged at a VAC. The date of the application is the date on which the application fee has been paid. The fee may be paid online. As the claimant's application had not been made online, he had not made a valid application. The Secretary of State took the view that there was no need to consider the merits of the application or the merits of the arguments in the letter before claim.

13 In his forceful oral submissions, Mr Husain spent time construing this response and other parts of the correspondence. In my judgment, the Secretary of State's position is clear. There was no valid application to be determined and so there could be no challenge in relation to an application.

14 By a letter dated 1 May 2020, the claimant's solicitors responded to the letter before claim asserting that it was not possible to use the online facility without selecting a VAC from a dropdown menu. The need to pay a fee for a family reunion application was queried. The claimant's solicitors threatened legal proceedings if a satisfactory response was not forthcoming within seven days.

15 By a letter dated 6 May 2020, the Secretary of State sent a holding reply rejecting the claimant's deadline as impractical in light of pressure of work on Home Office officials. On 13 May 2020, a further holding reply was sent. On 21 May 2020, the Secretary of State sent a substantive reply to the claimant's solicitors which, among other things, said:

> "(iii) In your client's case the process for applications made to our Visa Application Centre in Tehran remains on the old visa4UK system - still in use for a very small number of locations which does require an appointment to be made before the application can be formally submitted. We are committed to enabling customers to still make applications on this system if they wish to do so . . . I can confirm that we have now requested that the appointment calendar for the Visa Application Centre in Tehran be reopened as soon as possible to enable applications to be made on the system . . .
> (v) [Government] policy is not designed to keep a child refugee apart from family members, but in considering any policy we must think carefully about its potential impacts.
> (vi) Where a family reunion application does not meet the requirements of the Immigration Rules, as set out in Policy Guidance . . . caseworkers must consider whether there are any exceptional circumstances or compassionate factors which may warrant a grant of leave outside the Immigration Rules. Each case is considered on its individual merits and includes consideration of the best interests of any child present in the United Kingdom in accordance with the duty under section 55 of the Borders, Citizenship and Immigration Act 2009 . . .

(vii) In light of the above the Pre-action Protocol is now considered to be concluded."

By a letter dated 21 May 2020, the claimant's solicitors requested urgent confirmation that the claimant's application for family reunion "will be considered under Article 8 ECHR."

16 Against this unedifying chronology of successive pre-claim letters, which do not strike me as prioritising a practical solution for getting the application considered, proceedings in this court were launched. A claim form was filed with the SFG signed by Mr Jason Pobjoy and Ms Eleanor Mitchell of counsel, and Ms Sulaiha Ali of Duncan Lewis Solicitors. The SFG ran to 28 pages and was accompanied by documents running to over 1,100 pages. It is common ground that the claimant's age is not mentioned in the SFG, but it appears as an item in the chronology that follows it.

17 In support of his claim, the claimant provided a witness statement dated 19 June 2020. In that statement he used the title "Master" as if he were still a child. Mr Husain informed me that that was an error on the part of his lawyers for which they apologise. The error is serious because it gives the impression that the claimant was a child at the date of the statement which is not correct. The claimant indicated at para. 21 of the statement that he turned 18 in "March 2020." The statement did not set out the date on which he turned 18. His age or date of birth is set out in other documents in the bundle.

18 On 10 August 2020, the Secretary of State lodged Summary Grounds of Defence. By order dated 4 September 2020, Cavanagh J granted permission to the claimant to amend his claim form and his SFG. In light of the Secretary of State's criticism of the lawyers' candour, permission was granted to the claimant to lodge a Reply to the Secretary of State's Summary Grounds. The Secretary of State was granted time to amend her Summary Grounds in light of the claimant's amendments and Reply. Amended Summary Grounds were filed on or around 11 September 2020. On 15 September 2020, the claimant applied to re-amend his grounds of challenge, and to amend his Reply in the light of the amended Summary Grounds.

Issue 1: Duty of candour.

The parties' submissions

19 Mr Husain directed my attention to the 18 different places within the bundle in which the claimant's age or date of birth are mentioned. Five of those passages were brought to the court's attention in the claimant's essential reading list. He submitted that the numerous references to the claimant's age in the documents demonstrate that: (i) the claimant's lawyers did not hide any information from the court or from the Secretary of State; and (ii) there was no intention to mislead. Judicial review proceedings are adversarial. It was at all times plain that the Secretary of State would lodge an Acknowledgement of Service and Summary Grounds of Defence in which she could make any points she wished about the claimant's age. The court would have each party's documents, and so would have the full picture when taking a permission decision. The prospect of the court being misled was, in practical terms, non-existent. The Secretary of State's portrayal of the lawyers as lacking candour was overblown.

20 Mr Husain further submitted that the claimant's age was legally irrelevant to the claim as presented to the court. He went so far as to say that anyone who had applied as a child for family reunion could make such a claim which did not turn on its facts. The only relevant fact is that the claimant had applied for family reunion as a child. That he turned 18 before

commencing the present claim is irrelevant because he will fall to be treated as a child for all material purposes before this court.

21 Dealing in more detail with the question of whether the claimant's 18th birthday marked a cut off point for seeking relief, Mr Husain blamed the Secretary of State for lack of clarity in the correspondence and in the amended Summary Grounds of Defence. References in the Secretary of State's documents to the absence of a valid application from the claimant as a child (which he called the "validity" point) did not imply that the Secretary of State was not seized of an application (which he called the "seizure point"). Even if invalid under the Immigration Rules, the Secretary of State was seized of the application under her conventional public law duty to consider the exercise of discretion outside the Rules. The Secretary of State has never said in terms that she is not seized of the matter in that she has never said that she will not consider the application actually made, which was for family reunion as a child. The court will consider whether the claimant is entitled to relief on the basis of the application at the time and in the form it was made. The claimant's age now is not relevant to the task which the court will perform.

22 Mr Gwion Lewis, on behalf of the Secretary of State, submitted that the claim, as drafted, gives the impression that the claimant is aggrieved by the Secretary of State's policy not to allow him as a child to sponsor family members to join him in the United Kingdom. However, the claimant is not a child and his family never made a valid application for family reunion while he was a child. In seeking a remedy from the court on the basis of his claimed status as a child, he is seeking a remedy on a false basis. Even if a remedy were granted, he could never benefit from it given his adulthood. The question of the claimant's age is also relevant to his standing to bring judicial review proceedings and so should have been specifically brought to the court's attention by the claimant's lawyers.

23 Mr Lewis submitted that the court should have been directed to all relevant issues in the SFG. The chronology comes too late. Nor does the chronology expressly say when the claimant turned 18. The court should not have to ascertain the claimant's age for itself, whether by looking at the chronology or at other documents in the bundle. The Secretary of State does not maintain that the claimant's lawyers have intentionally misled the court, but Mr Lewis emphasised that the failure to mention the claimant's age is a curious lacuna in the otherwise lengthy SFG.

Analysis and conclusions

24 Claimants and their lawyers in judicial review proceedings are subject to a duty of candour. They must disclose all material facts of which they are aware, including those which are or appear to be adverse to the claim. They must do so prior to applying for judicial review (*R (Mohammad Shahzad Khan) v Secretary of State for the Home Department* [2016] EWCA Civ 416, para. 35, per Beatson LJ with whom Ryder LJ and Longmore LJ agreed). In other words, as Mr Lewis submitted, the duty will have crystalised by the time the claim form is issued.

25 The duty of candour means that a party's lawyers have a duty to ensure that the judge dealing with the application has the full picture. It does not suffice to provide a bundle of undigested documents, particularly in a document-heavy case (*Khan* above, paras. 45 to 46). The parties must enable the judge to perceive and be cognisant of all issues without having to read disparate parts of the bundle. It is the duty of claimants to put the pieces of the jigsaw together. They must not expect that a judge will allot time to spotting the matters that need to be considered.

26 Those who practise in the Administrative Court have free and ready access to information about the duty of candour which is covered in the Administrative Court Judicial Review Guide (5th Edition, July 2020, published online). It is a duty owed to the court. It must be discharged in a way which reflects the practical reality that judges must consider applications on the papers in a limited time as part of a heavy case load (*Khan* above, para. 45). Moreover, the court is concerned with individual claimants in individual cases. A parade of legal learning without proper regard to the facts of the case carries the risk that the judge will be prevented from focusing on what is really needed for a just and fair decision.

27 The failure of the claimant's lawyers to mention his age in the SFG is mysterious, because it would have taken only a few moments to include it. As Mr Lewis said, it is common in immigration cases for the SFG to start by setting out the claimant's nationality and date of birth. Despite full submissions from Mr Husain, I have been provided with no proper explanation as to why that did not happen in this case. Even if the essential reading list included documents showing the claimant's age, the court should not be expected to wonder why the claimant's title is printed as "Master", or why the SFG indicates that the core participant in the process "is a child." Nor should the court be left with the impression that the claimant will find legal proceedings stressful as part of the group of refugee children.

28 Those who drafted the SFG have said, through Mr Husain, that they did not regard the age of the claimant as relevant to the way in which they proposed to argue the claim. That misses the essential purpose of the duty of candour, which is to consider and draw to the court's attention information which undermines the claim. It would have been plain to anyone versed in the law of judicial review that, irrespective of how the claimant chose to put his case, the Secretary of State would be likely to argue that the claimant had no standing to bring the claim and/or that the court should refuse relief on the grounds that the claimant did not make a valid application for family reunion while he was a child. That much emerges from a proper reading of the pre-action correspondence. I reject Mr Husain's submission that the Secretary of State should be blamed for unclear correspondence or that the foundation of the claim would be so obvious to the court that the claimant's age would not need stating. The claimant can make his points in the claim. They do not diminish the duty to be candid about a material fact.

29 I have weighed these factors - which tell in favour of a breach of duty - against the otherwise sophisticated SFG. It seems to me that the lawyers were doing their best to produce what they believed was a legally robust claim. Their client is a recognised refugee, and I am persuaded that they wished to pursue his interests to the best of their professional ability. There is no suggestion that they intended to mislead or gain an unfair advantage. It would be unreal to suppose that the Secretary of State, faced with lengthy pre-action correspondence and a challenge to the scheme of the Immigration Rules, would not serve an Acknowledgement of Service and Summary Grounds dealing with the claimant's age. The judge dealing with permission will not be misled. Despite the pugilistic approach adopted by the claimant's lawyers, there are points to be made in favour of stopping the clock when the application for entry clearance was made, which was before the claimant turned 18, albeit by only one day. The court also recognises the pressures under which these busy lawyers work, particularly in the conditions of the current pandemic. It is not necessarily in the interests of the administration of justice for the court to become involved in detailed points of drafting which is, to some extent, what has happened here.

30 Looking at matters in the round, the omission of the claimant's age from the SFG was a serious oversight. In my judgment, the error should, on this occasion, be treated as innocent. It strikes me as a case in which the claimant's lawyers, in their efforts to press a point of law, lost sight of the wood for the trees. As I have said, my conclusion is finely

balanced. I have, however, decided that the lawyers' conduct is not so poor as to amount to a breach of duty to this court. The case will proceed to permission on the basis that there has been no breach of the duty of candour.

31 As to the claimant himself, I reject Mr Lewis's submission that he should bear responsibility insofar as he is an adult with capacity to take decisions about his case. There is no evidence before me that the claimant is personally to blame. This means that the practical effects of any lack of candour are diminished. It would be unusually draconian to prevent a party from having access to this court as a consequence of a single error of judgment by his otherwise competent lawyers.

Issue 2: Application to re-amend the grounds of challenge.

32 By Application Notice dated 15 September 2020, the claimant seeks to:

> "re-amend his Claim Form and his amended Statement of Facts and Grounds in response to the Secretary of State's Amended Summary Grounds of Defence . . . dated 11 September 2020."

By this re-amendment, the claimant seeks to challenge a different decision of the Secretary of State which is expressed to be:

> "the . . . apparent decision, on or around 11 September 2020, to treat the application for family reunion dated 20 March 2020 as invalid such that the Secretary of State is not required to consider and determine it."

33 Elsewhere, the claimant says that he seeks to challenge the apparent decision insofar as relevant. It is submitted that the decision is inconsistent with the Secretary of State's position in pre-action correspondence and that it has "emerged" in the Secretary of State's amended Summary Grounds. Still elsewhere, the claimant appears not to add to his grounds for judicial review but to make additional submissions on the question whether, if the claim succeeds, the claimant should obtain relief as an adult.

The parties' submissions

34 Mr Husain submitted that the central question is whether the Secretary of State accepts that she is "seized of" the 20 March application made by the claimant while still a child, and is required to consider and determine it. By "seized of" he means that the application is pending for decision before the Secretary of State. As I have indicated above, the claimant's position is that the Secretary of State was seized of the application irrespective of whether it complied with relevant immigration rules. The claimant invokes the general public law principle that the Secretary of State is under a duty to consider an entry clearance application both within the terms of the Rules and also outside the Rules.

35 As I understand it, the claimant's case is that at some point the Secretary of State has taken a decision that the application should not be considered outside the Rules. It is submitted that the claimant does not know when the decision was taken. If it was taken more than three months ago, there would be good reason for this court to extend time to bring a challenge. The decision was not clearly communicated to the claimant's lawyers. As soon as the possibility arose that the Secretary of State regarded herself as not seized of the application the claimant acted promptly in seeking to amend his grounds. The Secretary of State has not identified any prejudice to her that would ensue if the amendment application were to be granted. The merits of the challenge encapsulated by the new ground are strong.

36 Mr Lewis submitted that it is disingenuous for the claimant to assert that any decision of the Secretary of State emerged in the amended Summary Grounds of Defence. He relies on the history of the correspondence. The Secretary of State's position on validity was covered in the original Grounds of Defence such that the claimant would have been aware of all issues by the time of the application to amend his Grounds of Challenge as permitted by Cavanagh J. The proposed additional challenge would be out of time. In any event, the second set of amendments which the claimant now seeks to make is incoherent. The proliferation of avoidable applications by the claimant - so soon after the claim was issued - has already unreasonably extended the duration of the permission stage in conflict with the overriding objective of the Civil Procedure Rules to deal with cases efficiently.

Analysis and conclusions

37 In the defendant's letter of 16 April 2020, the Secretary of State stated that the claimant had not made a valid application. There can be no doubt that the claimant's lawyers appreciated at that stage that the Secretary of State considered that the application was not valid because, in their response to the letter, the solicitors made representations under the heading: "The Treatment of Our Client's Application as Invalid". The solicitors ought to have known that they could request that the application be decided outside the Rules. The letter may, indeed, be regarded as a request that that should happen.

38 In the letter of 21 May 2020, the Secretary of State responded to the claimant's solicitors, setting out that the VAC in Tehran would re-open as soon as possible and stating that any application outside the Rules would be considered on an exceptional basis. The letter stated that: "The pre-action protocol is now considered to be concluded".

39 In their letter of 21 May 2020, the claimant's solicitors requested clarification of whether the claimant's application for family reunion would be considered under Article 8 of the European Convention on Human Rights, pending the re-opening of the Tehran VAC. There was no response to that letter.

40 In my judgment, it ought to have been plain to the claimant's solicitors by the time that the claim was launched that the Secretary of State had rejected the claimant's application as being invalid under the Immigration Rules. It was also plain that the Secretary of State had not considered the substance of the application, i.e. she had failed to consider it outside the Rules. If the claimant wished to challenge the failure to consider the exercise of discretion outside the Rules, he should have done so in his original SFG.

41 The claimant made pre-claim representations as to why the procedural requirements of the Rules should be waived. It is difficult to comprehend why, if there was any meritorious challenge to the Secretary of State's position, his lawyers did not make a challenge in the original SFG. I do not accept that this ground of challenge arose after the amended Summary Grounds were served. The amended Summary Grounds respond to the claimant's amended grounds which invite the court to grant a mandatory order that the Secretary of State consider the claimant's application. In response to the claim for a mandatory order, the Secretary of State made the point that there is no procedural challenge to warrant an order because:

> "There is no pleaded ground challenging the Secretary of State's conclusion that the application sought to be made by the claimant's family by post was invalid, indeed, none of the grounds relate to the facts of the claimant's own case."

42 It is, in my judgment, impossible to discern any fresh decision, or fresh line of thinking, by the Secretary of State in this or any other passage of the amended Summary Grounds. Nothing in the amended Summary Grounds adds anything material to the Secretary of State's longstanding position that the claimant's application was not made in accordance with the Immigration Rules, and that there has been no proper application on which the issues in the claim may bite. The amended Summary Grounds cannot properly be used as a hook on which to hang a new ground of challenge. Nor do I accept that the Secretary of State will be subject to no prejudice if the court allows this amendment at this time. The Secretary of State is entitled to invoke the overriding objective of the Civil Procedure Rules.

43 For reasons which are of the claimant's own making, the court and the Secretary of State have been faced with a multiplicity of applications to amend the case before the court has taken a decision on permission. The court appreciates the gravity of the issue for the claimant. However, the overriding objective applies in public law proceedings. It is not in the interests of the overriding objective, or the administration of justice, for the court to entertain numerous application notices prior to a permission decision. The purpose of the permission stage in judicial review proceedings is to identify whether the claim raises any arguable points of law. It is the duty of the claimant's lawyers to put forward a detailed statement of the claimant's grounds for bringing the claim (CPR 54A PD para. 5.6).

44 Part 54 and its Practice Directions are designed to ensure fairness to all parties, including the Secretary of State, and to ensure the wider public interest in the efficient administration of justice. There needs to be good reason for successive assaults on a non-moving target. No good reason has been advanced to me.

45 For these reasons, the application to re-amend the grounds is refused. I do not need to consider Mr Lewis' submissions about the coherence of pleading a ground which is relevant only to an “apparent decision” with which I have sympathy.

Issue 3: Application to amend the Reply.

46 Chapter 7 of the Administrative Court Guide deals with the provision of a reply to the Acknowledgement of Service as follows:

> “The judicial review procedure does not make provision for the claimant to respond to the Acknowledgment of Service during the paper application process. Replies are rarely if ever necessary and are not encouraged. The ACO will not delay consideration of permission on the basis that the claimant may wish to reply. Any reply that is received before a case is sent to a judge to consider permission will be put before the judge, but it is a matter for the judge as to whether he/she is willing to consider the document.”

47 In permitting the claimant to lodge a reply, Cavanagh J gave particular consideration to the Secretary of State's contention that the claimant had failed to disclose important information when the SFG was lodged. The claimant was entitled to respond to that criticism. However, the substance of the amendments to the Reply, which are now placed before me, revert to the attack on the Secretary of State's treatment of the claimant's application as invalid, asserting that the position under the Immigration Rules is no barrier to relief. There is no proper reason for these points to be made in a Reply, and no good reason for this court to give the claimant a second chance to rely on a document outside the scope of Part 54. In the

interests of proportionality and the overriding objective, the application to amend the Reply is refused.

Issue 4: In which venue should the claim be decided?

48 When considering the claim on the papers, I was concerned that the claimant had commenced proceedings in the wrong venue. By virtue of the Lord Chief Justice's Direction, an application for judicial review must be heard in the Upper Tribunal (Immigration and Asylum Chamber) ("UTIAC") if it relates to an immigration decision (see Consolidated Direction given in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005 and s.18 of the Tribunals, Courts and Enforcement Act 2007; 21 August 2013 amended 17 October 2014).

49 The Direction makes an exception for claims which challenge the validity of Immigration Rules but it was not clear to me on the papers that any rule is said to be invalid in this claim. I heard both parties on this question and they agreed that the reference to "validity" in the Direction is sufficiently wide to encompass the lawfulness of the scheme of the Rules. I was informed by Mr Lewis that this reflects the Secretary of State's longstanding position on the scope and meaning of the Direction. Challenges which will affect what is and what is not in the Immigration Rules will be determined in the High Court with its constitutional specialism. This claim purports to be such a challenge in so far as it relates to what is said to be a lacuna in the rules relating to family reunion.

50 I have serious reservations about that position. It seems to me to be arguable that the "validity" of rules is something different to the lack of a rule about family reunion.

51 This court should not accept jurisdiction if it considers that it has none, irrespective of the agreed position of the parties. Nevertheless, I do see some sense in what the parties are saying. If another judge takes a different view in light of any further developments, he or she can assume the jurisdiction of the UTIAC. On this basis, I am content for the claim to proceed in the Administrative Court, and I need not consider the question of discretionary transfer.

Issue 5: Case management directions.

52 Mr Husain submitted that the papers in this claim and two other, similar claims should be placed together before a judge for permission decisions. The claims should proceed together, not least because the claimant's solicitors need to progress a number of claims in order to ventilate the legal points; otherwise the Secretary of State may tactically compromise one or more claims to avoid a decision of the court. Mr Lewis submitted that this claim should proceed and that the other two claims should be stayed.

53 By asking the court to consider the parties' possible litigation strategies, Mr Husain's submission has the effect of asking the court to step into the arena. In the interests of proportionality, the other two claims will be stayed (CO/3506/2020 and CO/3534/2020). I will hear counsel on consequential matters. The papers will then be returned to a judge for a decision on permission to apply for judicial review on the papers, in the usual way.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.