Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/27909/2012

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 17 June 2013	**O 18 July 2013**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

RG

Respondent

Representation:

For the Respondent: Mr L Fransman QC and Mr S Sayeed, instructed by Gherson Solicitors
For the Appellant: Ms E Martin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The respondent (who will hereafter be referred to as the appellant, as he was below) is a national of Russia born in 1982. He appealed to a Judge of the First-tier Tribunal against the Secretary of State's (hereafter the respondent's) decision of 16th November 2012 refusing to vary leave to

remain and purporting to make a decision as to his removal to Russia. I say purporting since it is I think common ground that the decision on removal cannot be upheld in light of what was said by the Tribunal in Ahmadi, subsequently upheld by the Court of Appeal.

2. The appellant sought leave to remain as a Tier 1 (Entrepreneur) migrant. It was accepted that he could not satisfy the requirements of the relevant Immigration Rule, paragraph 245DD, in that he had not been previously granted entry clearance or leave to enter in one of the prescribed categories set out in that paragraph, but he asked that that requirement be waived. His application as originally formulated also failed to satisfy the requirements of the Rules concerning the bank letter which he had submitted which did not state the regulatory body for that bank, nor did it confirm that the funds held were transferrable to the United Kingdom. It seems that subsequently those defects in the application were remedied.

3. The appellant claimed to be at risk on return to Russia of being subjected to politically imputed charges and/or harassment on the part of the authorities. He had previously worked as the head of the executive office of the President of the Bank of Moscow. Three other people associated with the bank – AB, the President of the bank; DA, AB's deputy; and BS, the head of a property company related to the bank – had all come to the United Kingdom and sought asylum, on the basis on the case of the former two that criminal proceedings against them were unfounded and politically-motivated, and amounted to persecution, and in the case of the latter that the authorities had attempted to coerce him to give false evidence against AB and DA.

4. When the appellant was briefly in the United Kingdom on 6 November 2011 he had lunch with AB who warned him that the authorities might attempt to coerce him to give false evidence just as they had attempted to do in respect of BS. This led the appellant to abandon his plan to return to Germany, where he had moved intending to study, and he remained in the United Kingdom and made the application with which the judge was concerned.

5. Before the judge it was argued that the decision did not give proper respect to the appellant's rights to family life under Article 8 of the European Convention on Human Rights and with respect to the Immigration Rules on the basis that the decision was not in accordance with the law. The judge noted at paragraph 23 the point I have set out above that the removal decision was clearly unlawful, but it was of course proper to proceed to consider the refusal to vary leave decision.

6. I need say little more about the not in accordance with the law point. The judge found in the appellant's favour in that regard, and the Secretary of State did not take issue with that finding in her grounds, beyond noting it and remarking that it did not guarantee that the appeal would be allowed outright.

7. The issues with which I am essentially concerned are those in respect of Article 8. In this regard the judge accepted that the appellant and his partner had been in a relationship for some years and had been effectively living together as a married couple in the United Kingdom since December 2012 at which time the appellant's partner, EK, entered the United Kingdom, having been granted leave to enter by way of Tier 2 employment. The judge noted the fact that the family life in the United Kingdom had lasted for a period of just under three and a half months and commented that if that were the only consideration he would have great problems in finding that the interference was sufficiently grave to engage Article 8 because the family life enjoyed in the United Kingdom had been over such a brief period. However, he factored into the equation the fact that, as he found it, the appellant could cogently argue that he reasonably feared return to Russia on the basis that there was a real risk that he, like his colleagues, would be the subject of politically imputed charges and/or harassment by the authorities. He took into account remarks by the AIT in Nhundu (01/TH/00613), and concluded that although the actual family life enjoyed by the appellant and his partner in the United Kingdom as at the date of appeal was very limited in time, the fact that the appellant on the judge's view would face a real risk of significant harm or "serious obstacles" on return to Russia, was sufficient to establish on the evidence before the judge that Article 8 was engaged, especially as it was not established before the judge that the appellant would be able to obtain actual legal rights of residence for both himself and his partner in any other country, as distinct from being able to make visits to other countries.

8. On this basis the judge then went on to consider the proportionality of the decision. He noted a clear benefit to the United Kingdom in that the Tier 1 application as an entrepreneur was necessarily based on the investment of considerable funds in the United Kingdom and to that extent there was a clear benefit to the United Kingdom. He noted that no point was taken against the appellant in relation to any aspect of character, and that it appeared to the judge that on the evidence any application from abroad would be bound to succeed, given his findings that the appellant on a balance of probabilities had the necessary funds for investment in the UK as a Tier 1 Entrepreneur. He said that it was clear that the decision of the House of Lords in Chikwamba [2008] UKHL 40 was not restricted to cases where one partner had refugee status in the United Kingdom but applied generally to the essential question whether, in terms, there was any sensible reason for insisting on an appellant seeking lawful entry clearance from abroad, especially when he was bound to succeed in that application in circumstances where family life in the United Kingdom would be disrupted. He concluded that the appellant established that the decision breached his rights to family life under Article 8 of the Convention, relying upon the Human Rights Act, rather than the recently amended Immigration Rules, and also stated that the respondent had failed to satisfy him that the decision was necessary for the purposes of

immigration control and that it was proportionate in relation to that aim. He therefore allowed the appeal under Article 8.

9. The Secretary of State sought permission to appeal on several grounds. The grounds are set out in six paragraphs, but the sixth point is the Immigration Rules point to which I have referred above, which did not contain a ground of appeal but rather an acknowledgment of that particular point.

10. In the first paragraph of the grounds the Secretary of State argued that the Tribunal had failed to consider the relevant sections of the Immigration Rules but had considered exclusively Article 8 of the ECHR. In the second ground it is argued that the Article 8 sections of the Immigration Rules reflect the Secretary of State's view as to where the balance lies between the individual's rights and the public interest and therefore a Tribunal considering an individual appeal should consider proportionality in the light of this clear expression of public policy and the Secretary of State would expect the courts to defer to her view.

11. In the third ground it is argued that the findings on the Article 8 assessment are speculative in concluding that an application for entry clearance by the appellant would be bound to succeed. In the fourth ground it is argued that the Tribunal inappropriately extended Chikwamba to a case where there were no children and in so doing failed to give appropriate weight to the legitimate objectives set out in the Immigration Rules of requiring some applications to be made from abroad. It was argued that though weighting was usually a matter for the decision maker, where the effect of that weighting was to render the Immigration Rules invalid, that made the decision irrational.

12. In the fifth ground it was argued that the Tribunal had allowed the appellant to use the European Convention on Human Rights to circumvent the Immigration Rules. It is argued that if the appellant had concerns which were tantamount to an asylum claim it was up to him to make such a claim and he had specifically not done so and therefore should not benefit from failing to make such an application.

13. Permission to appeal to the Upper Tribunal was granted by a Judge of the First-tier Tribunal. With regard to the argument that the judge erred in law by failing to consider Article 8 within the Immigration Rules, it was said that this argument appeared to be misconceived as the appellant was not asserting in his appeal that he could succeed by relying on those provisions and there was therefore no need for the judge to consider them. Thereafter it is said that the grounds go on to argue that the judge failed to take account of the respondent's view as to where the Article 8 balance should be struck as expressed in the provisions of the Immigration Rules dealing with Article 8. The judge granting permission considered that although there was no necessity to deal with those provisions as a substantive part of the appeal it was nevertheless arguable that the judge

was required to take account of the respondent's views, and reference was made to the decision of the Tribunal in MF [2012] UKUT 393 (IAC). It is suggested however that the submission that the judge was required to defer to the respondent's view seemed to go too far. Finally the judge granting permission considered it arguable that the finding that an entry clearance application by the appellant would be bound to succeed was speculative.

14. In Mr Fransman and Mr Sayeed's skeleton argument, it is contended, in light of what was said by the Court of Appeal in DK (Serbia) [2006] EWCA Civ 1747, that permission was refused in respect of paragraph 1 of the Secretary of State's grounds, permission was granted in respect of paragraph 2, in paragraph 3, but not with regard to paragraphs 4 and 5. The skeleton did, however, deal with all the matters raised in the grounds as did Mr Fransman and Mr Sayeed's oral submissions.

15. In her submissions Ms Martin relied on the grounds. It was argued that the judge had clearly failed to consider the Immigration Rules in respect of Article 8. However, Ms Martin accepted after some discussion that the judge who granted permission had refused permission on this particular ground. She argued, however, that the judge had failed to consider the Secretary of State's view of where the balance was to be struck in this case. The appellant was in a relationship with his partner and had been in the United Kingdom for a very limited amount of time. The judge had noted what was said in Nhundu, and there was little assessment of why the appellant had refused to apply for asylum and why he could not return to Russia and this seemed to outweigh the balance. There was a failure to give appropriate consideration. The appellant could not meet the requirements of the Rules under the PBS and as such it seemed the judge had allowed the appeal under Article 8 in order to circumvent the Rules. Ms Martin relied on NM [2009] UKAIT 00037 where it was said in the headnote that a student in the United Kingdom on a temporary basis had no expectation of a right to remain in order to further social ties and relationships if the criteria of the points-based system were not met. The appellant had no expectation of a right to remain in this case. There was very little reason why his family life right should outweigh the immigration control provisions put forward by the Secretary of State.

16. As regards the point in paragraph 4 of the grounds, the situation in Chikwamba was very different from the appellant's case. There were children in that case and not in this, and there was little reason why, the appellant having refused to claim asylum, he could not return to Russia if the claim was not such as to reach the threshold. It was accepted that the judge had concluded that the appellant had a reasonable fear of return to Russia, being the subject of politically imputed charges and/or harassment by the authorities, but his situation was compared to that of asylum seekers in the United Kingdom and he did not say that he had an asylum claim. So for him to be compared to two people who were seeking asylum was a misdirection on the facts before the judge. That led him to put the

proportionality balance at too high a level. He had accepted the appellant was a refugee without calling him such.

17. As regards the third paragraph of the grounds, paragraph 26 of the determination was very speculative. As regards the Record of Proceedings put in by the appellant and including the questions to the Presenting Officer, there was in particular to be noted the answer at page 9 where the Presenting Officer had said that he could not speak for the decision maker. So although it would appear the application would succeed it was for the decision maker to decide so it was not a concession on the part of the Secretary of State, and therefore the finding at paragraph 26 was speculative.
18. Mr Sayeed made submissions in respect of grounds 1 to 2, in respect of the former of which I will say little since I accepted that it was ruled out by the judge who granted permission. The new Rules were not in force at the time when the application was made and though they were in force at the time of his appeal, the appellant did not argue that he could bring himself within the Rules. The point had not been argued by the Presenting Officer at the hearing before the judge. The matter was only raised in generic terms in the application for permission to appeal.

19. As regards ground 2, Mr Sayeed read that as indicating that the Secretary of State said that wherever Article 8 was engaged the Rules still informed her views on how the balance was to be struck in an Article 8 case, as was said at paragraph 23 of MF [2012] UKUT 393 (IAC), where among other things it was said that in this type of case the primary decision maker would still have to undertake much the same type of two stage of process of assessment described earlier and to do so ungoverned by any Article 8 specific criteria set out in the Rules. It was argued that there was no new Immigration Rule covering the particular scenario in this case. It was not a case where the claim was in respect of a relationship with a British citizen or a refugee and it was clear that the new Rules did not cover every Article 8 situation. The Presenting Officer at the hearing before the judge had not sought to argue that the new Rules applied. The Article 8 argument had been based on traditional Article 8 grounds. It was clear from paragraph 27 that the judge was cognisant of the new Rules but they did not apply.

20. With regard to the other points in the grounds, Mr Fransman first of all set out the factual background. It was not the case, with regard to ground 3, that the judge had concluded that an entry clearance application would be bound to succeed. It could be seen from the Record of Proceedings provided that the Presenting Officer had accepted that were the appellant to make an application from abroad he was likely to meet all the requirement for an entrepreneur application and that if the further letter from the bank had been produced at the time of the application it appeared that it would have satisfied the Secretary of State. That was the proper context for the judge's findings. As was pointed out at paragraph 23 of the skeleton, the words "would be bound to succeed" were qualified by "it appears to me that" and "on the evidence" and "given my findings".

As a consequence what was said by the judge was not speculative. It was also relevant to bear in mind that on 21 February 2013, AB, DA and BS had been granted asylum. In making his application the appellant had put forward a great deal of evidence concerning all their cases, but the Secretary of State, wrongly in the view of the judge, had said that only the evidence directly concerning the appellant's case itself would be considered. It was relevant to bear in mind that there had been no challenge to the appellant's credibility before the judge and a number of relevant facts had been found in his favour. It was also relevant that his partner had re-established herself in the United Kingdom so as to be with the appellant, having entered in December 2012 as a Tier 2 entrant, it having previously been intended that they would be together in Germany. It was clear from what the appellant had said, in particular as recorded at paragraph 19 of the determination, that the appellant had his views about asylum applications. He could have applied for asylum but had not wished to do so. Alternatively he could have applied as the dependant of a Tier 2 migrant. He however had a wish to pursue his original application.

21. As regards ground 4 it was clear that Chikwamba was not limited to children. This could be seen from the quotation in MA [2009] EWCA Civ 953 in the skeleton and also in what was said by Mr Justice Turner in Zhang [2013] EWHC 891 (Admin). It was clear from what was said in these cases that a mandatory entry clearance requirement was dealt a considerable blow by Chikwamba as subsequently interpreted.

22. As regards ground 5, reliance was placed in particular on what was said in the skeleton which made such points as the absence of a requirement in domestic or international refugee law that a person should apply for asylum whenever they were eligible. The point was also made that there are many reasons why a person eligible for immigration status under the Immigration Rules might prefer to rely on that status to pursuing an asylum claim; for example, for them to make a claim might exacerbate problems for them or their family at home. Also there were different legal tests and evidential requirements. It was accepted that there was no authority directly on the point that it was not mandatory for a person claiming a risk in their home country or prejudice there to claim asylum and be barred otherwise. Reliance was placed, as the judge had properly done, on what was said in Nhundu.

23. By way of reply Ms Martin relied on what had been said by the Court of Appeal in Razgar [2003] EWCA Civ 840 at paragraphs 24 and 60. It could be seen for example from paragraph 24 that the degree of likelihood of the adverse effect occurring in an Article 8 case in the context of risk of harm was no less than that required to establish a breach of Article 3. That was not so in this case, as could be seen from the final sentence of paragraph 24 of the judge's determination. The point in Nhundu was refuted by what was said in Razgar.

24. There would be an applicable Rule if the appellant applied and that was paragraph 319C as considered in Zhang. When the application was completed the Rule would be considered. The arguments in respect of Zhang were speculative. It could not be said that because the three other people had succeeded in asylum claims the appellant would, in particular since he was yet to be charged, so the risk was substantially different. The outcome of a PBS dependency claim was again uncertain. Zhang was in any event High Court authority and therefore persuasive only and also the two cases were not on all fours. All the evidence had to be taken in the round. Zhang involved a person who had entered the United Kingdom in 2003 who lost a job but got a new job which required leave in the United Kingdom and she had married here also. Those facts were very different from the facts in the instant case. With regard to the claimed concession, the fact that something was "likely" did not mean that it would happen. It was not a concession that the appellant met the requirements of the Rules. The Presenting Officer made it clear that he could not speak for the decision maker. It was clear from paragraph 78 of Zhang that the High Court could not redraft the Rules but they were the expression of Parliament's will. There was a substantial Article 8 case there but the instant case was very different. It was not a case of a switch from general to partner as was the case in Zhang.

25. By way of response Mr Fransman referred to paragraph 1 of Razgar which made it clear that it was concerned with the context of Article 8(1) in contrast to the appeal before the Tribunal which involved Article 8(2) proportionality, entailing the consideration of all relevant matters, including whether it was sensible for the appellant to go and obtain entry clearance. There was a wide range of relevant matters including a risk which was less than Article 3 risk.

26. By way of response Mr Martin referred to paragraph 24 of the judge's determination. There was a finding that the appellant would face a real risk on return. Consideration of physical and moral integrity risk was dealt with in the context of a real risk of harm.

27. I reserved my determination.

28. I will deal with the grounds in the order in which they have been argued before me. It is common ground that ground 1 did not receive permission from the judge who granted permission. The reason for that is, as he put it, that the appellant was not asserting in his appeal that he could succeed by relying on Article 8 within the Immigration Rules and therefore the judge was not required to consider them. The point is also made that at the time of the application the Rules were not in place. But in any event, particularly for the reason given by Judge Brunnen in refusing permission, I consider that it is clear that that ground is unarguable and no more needs to be said about it.

29. There was some debate about the ambit of ground 2. In many ways this is a development from ground 1 in which it refers to the Article 8 sections of the Immigration Rules reflecting the Secretary of State's view as to where the balance lies between the individual's rights and the public interest. Proportionality is to be considered by the Tribunal in the light of this clear expression of public policy. Insofar as this is simply a rewording of ground 1, I do not consider it to be a ground with any merit. The appellant's skeleton argument quotes from what was said in Izuazu [2013] UKUT 45 (IAC) to the effect that there can be no presumption that the Rules will normally be conclusive as to the Article 8 assessment or that a fact-sensitive enquiry is not normally needed. The Tribunal went on to say that the conclusion under the Rules may often have little bearing on the judge's own assessment of proportionality. It is relevant to note that the Immigration Rules in respect of Article 8 were not argued before the judge, though he referred to them at paragraph 27 in concluding that the decision in the case breached the appellant's rights to family life under Article 8 of the Convention relying upon the Human Rights Act rather than on the Immigration Rules.
30. The point is also made that there is no corresponding provision in the Rules purporting to cover the particular situation in this case. That is right in the sense that the Rules do not, as I understand it, govern the situation of a person who is enjoying family life in the United Kingdom as a long time partner who is in the United Kingdom as a Tier 2 (General) Migrant, as opposed to joining such a person, but in any event the issue was not argued before the judge and I consider that there was no error of law as set out above in not addressing the issues in respect of the Immigration Rules for the reasons already explained.

31. Insofar as ground 2 is concerned rather with the need to place in the balance the Secretary of State's views as to the public policy issues involved in the proportionality exercise, I consider that this was done by the judge at paragraph 26. I note that no point was taken against the appellant in relation to any aspect of character; the judge bore in mind that the appellant met all the requirements of the Immigration Rules as it was now clear that the missing element, i.e. the bank evidence, had now been supplied; and there was also the fact that his application was necessarily based on the investment of considerable funds in the United Kingdom. The judge gave, in the circumstances, proper consideration to the relevant factors to be balanced in concluding as he did.

32. Ground 3 addressed the claimed speculative nature of the judge's findings. I see force in what has been argued by Mr Fransman and Mr Sayeed in this regard. What the judge had to say about this at paragraph 26 has to be seen in the context of such terms as "it appears to me", "on the evidence" and "given my findings". The judge was entitled to express a view as to the likelihood of a successful application upon the Rules in considering the proportionality exercise under Article 8(2) and I do not think it can properly be said that he engaged in excessive speculation. He was not saying that an appeal was bound to succeed. It is relevant to note

what was said by the Presenting Officer at the hearing as recorded in the Record of Proceedings that has been provided, including the acceptance by the Presenting Officer that were the appellant to make an application from abroad he was likely to meet all the requirements for an entrepreneur application and that it appeared the bank letter would have satisfied him if it had been produced at the time. The Presenting Officer, properly, did not provide absolute assurances in this regard and at page 9 is recorded as saying that he could not speak for the decision maker, although this was in the context rather of the point about the matter which was found to be not in accordance with the law with the decision maker addressing only what the appellant had put forward in respect of his own case rather than the evidence as a whole that had been submitted.

33. As regards paragraph 4 of the grounds, I am satisfied, and indeed it is clear from the authorities, that Chikwamba is not concerned with children only. For example, as was said at paragraph 7 in MA (Pakistan) by Sullivan LJ,

> "The view that return should be insisted upon simply in order to secure formal compliance with entry clearance rules 'only comparatively rarely' is not confined to cases where children are involved. While the suggested approach in Chikwamba 'certainly' applies in such cases, it also applies to family cases more generally."

This approach was further endorsed in Zhang at paragraph 66, for example, where it is said:

> "Nevertheless, there is no suggestion from the opinion of Lord Brown that the absence of children should mean that it would only be in rare cases that Article 8 rights would prevail. On the contrary, the sort of exceptions he was particularly willing to entertain were those where the applicant had a poor immigration record and thereby fell squarely into the category of those for whom the deterrent effect of the threat of having to leave the UK in order to make an application would be the most proportionate."

It is relevant in this context to bear in mind that the appellant was found to be credible and there is no suggestion of any adverse issues concerning his character or conduct. Accordingly, I consider the judge was entitled to say as he did at paragraph 26 that the principles in Chikwamba apply generally to:

> "… the essential question of whether, in terms, there is any sensible reason for insisting on an appellant seeking lawful clearance from abroad, especially where he is bound to succeed in that application and in circumstances where family life in the UK would be disrupted."

This was the point in which he went on to say in slightly more measured terms that he thought the appeal was one that was bound to succeed, having already found that there was family life which would be disrupted.

34. Accordingly, I reject the contention at paragraph 4 of the grounds that the judge erred in what he said about Chikwamba and the proper approach to be taken in an entry clearance case. As was said by Turner J in Zhang at paragraph 69:

> "… it is also evident that in a succession of recent decisions the courts have recognised that the application of Razgar principles, as seen through lens of Chikwamba, leads to the conclusion that an Article 8 compliant requirement for an applicant to leave the UK before making an application is the exception rather than the rule."

For example, in VW (Uganda) [2009] EWCA Civ 5, at paragraph 43, Sedley LJ said:

> "The likelihood of return via entry clearance should not be ordinarily treated as a factor rendering removal proportionate; if anything, the reverse is the case."

36. I do not read what was said by the judge as in any way inconsistent with this.

37. The final ground concerns the argument that the Tribunal had allowed the appellant to use the ECHR to circumvent the Immigration Rules.

38. In this regard I see force in the argument that an appellant is not bound just because he has fears of significant ill-treatment on return to make an application to be considered as a refugee or in respect of Article 3 of the Human Rights Convention. It can be seen from paragraph 19 of the determination that he had not applied for refugee status because he saw it as a serious step which people chose as a last resort, he would prefer to obtain status in another way and considered there was an element of stigma attached to the obtaining of refugee status. The judge at paragraph 34 found that in relation to the Article 8 grounds the appellant was the subject of interest from the Russian authorities in connection with criminal proceedings which three of his colleagues had successfully claimed to be persecutory within the meaning of the Refugee Convention. At paragraph 24 he accepted that there was a real risk that the appellant, like his colleagues, would be the subject to politically-imputed charges and/or harassment by the authorities. He noted what was said in Nhundu and considered that the appellant would face a real risk of significant harm or "serious obstacles" (a term used in Nhundu) on return to Russia and that that was sufficient to establish on the evidence before him that Article 8 was engaged. This was, as noted above, in the context of the finding that though there was family life it was for only a very limited period, since the appellant's partner had only come to the United Kingdom three and a half months before the hearing.

39. I do not read what was said in Razgar, as quoted by Ms Martin, as going against the judge's findings on this. At paragraph 24 the submission was accepted that in respect of seriousness of harm in Article 8 cases the degree of likelihood of the adverse effect occurring was no less than that required to establish a breach of Article 3. That is to do with the degree of likelihood rather than the level of harm. As regards the degree of harm, that was dealt with at paragraph 23 where it was said that it had to be sufficiently serious to engage Article 8 and that there must be a sufficiently adverse effect on physical and mental integrity, and not merely on health. The other paragraph on which Ms Martin relied, paragraph 60, seems to me to be essentially fact-specific. The judge had held that the Secretary of State could not reasonably conclude that the appellant's case under Article 8 was clearly bound to fail. The case under Article 3 was far more difficult but it was not necessary to reach a final conclusion on the issue in the light of the judge's decision in relation to Article 8. It is relevant to bear in mind that the case was concerned with the lawfulness of decisions by the Secretary of State to certify under section 72(2)(a) of the Immigration and Asylum Act 1999 as "manifestly unfounded", human rights claims raised by asylum seekers whom he had decided to remove to other European Union states under the Dublin Convention. Paragraph 60 does not seem to me to support the contention that in some way the Court of Appeal was saying that it is illegitimate to assess under Article 8 matters that might cross the Article 3 threshold. The test is essentially that as set out at paragraph 23, and the judge's findings at paragraph 24 and subsequently at paragraph 34 seem to me to be essentially consistent with the proper test.
40. As noted above, there is no challenge to the judge's decision at paragraph 6 of the grounds which is rather concerned with a recognition of the force of the conclusions in respect of the not in accordance with the law finding.

41. Bringing these matters together, I consider that it has not been shown in any respect that the judge erred in law. He gave careful consideration to the evidence in the context of the proper legal tests and came to findings which were properly open to him. His decision allowing the appeal on the basis on which he did is, in all respects, maintained therefore.

Signed Date 17th July 2013

Upper Tribunal Judge Allen