Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/25195/2015

THE IMMIGRATION ACTS

Heard at Stoke	**Decision & Reasons Promulgated**
On 10.8.17	**On 16.8.17**

Before

DEPUTY UPPER TRIBUNAL JUDGE O'RYAN

Between

Ms U S F J
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Maqsood, Counsel, instructed by Trent Law Solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1 The above matter comes before the Tribunal following the decision of Deputy Upper Tribunal Judge Pickup dated 13.6.17 setting aside the decision of Judge of the First-tier Tribunal IJ Parker dated 27.10.16 allowing the Appellant's appeal against the Respondent's decision of 2.7.15 refusing leave to remain and refusing her human rights application. I shall refer to the parties as they were before the First tier.

2 I reiterate some of the issues before Judge Parker, as they are relevant to the issues which remain to be determined in the appeal before me. The Appellant first entered the United Kingdom on or around 1.11.07 and claimed asylum asserting that she was a Somali national, of minority Bajuni clan origin, born on [ ] 1985. She gave an involved account of the persecution that she and her family members had faced from majority clans in Somalia, including an account that her father and sister had been killed and that she had been raped. This account was accepted by the Respondent and she was recognised as a refugee upon first application in a decision made in October 2009.

3 On or around 9.9.14, the Appellant applied for indefinite leave to remain as a person having enjoyed five years leave to remain as refugee. Seemingly, during the course of the Respondent's consideration of that application, it became known to the Respondent that the Appellant had in fact been granted entry clearance to the United Kingdom on 12.4.07, in the same name, but as a person with Tanzanian nationality, and with a date of birth of 17.5.83. Before me, Mr McVeety suggested that it may simply have been an oversight on the part of the Respondent that a match in the bio data of these two identities had not been noticed when the Appellant first claimed asylum.

4 In a document from the Respondent dated 18.6.15, reasons were given for revoking the Appellant's refugee status on the basis of false representation, and on 2.7.15, her application for indefinite leave to remain, which was also treated as a human rights application, was refused, with a right of appeal. The Appellant's subsequent appeal to the First tier was treated as having been brought on grounds under s.84(3) NIAA 2002 as an appeal against revocation of refugee status, and under s.84(2) NIAA 2002 as an appeal against refusal of her human rights claim.

5 Before Judge Parker, the Appellant asserted that she was of Somali origin, and was of the Bajuni clan, but accepted that she had been born in Tanzania on 17.5.83 and that her account of events in Somalia had been untrue. She claimed to have been trafficked to the UK by one Sleyyum Nassor Mohammed ('SNM'), a Tanzanian national, who had also, she asserted, falsely asserted to the UK authorities to be Suleiman Cali Maxamaed, a Somali national. She had married him in Tanzania and had been brought to the UK by him. She claimed that this was an abusive relationship, and he had encouraged her to claim asylum in a false identity. The Appellant had a child in the UK by SNM; 'HSN', born in September 2008.

6 In his decision of 27.10.16, Judge Parker upheld the Respondent's decision to revoke the Appellant's refugee status, finding that the Appellant had made false statements in support of her protection claim. The Judge found the Appellant not to be a credible witness [22]; and 'without credibility' [25]. The Judge declined to make any finding as to whether or not the Appellant was trafficked to the UK, finding that if she wished to make a fresh submission for asylum on that basis to the Respondent, she should do so [22].

7 However, the Judge took the circumstances of the Appellant's daughter HSN into account, and purported to allow the appeal both under the immigration rules under paragraph 276 ADE(1)(iv) and (vi), and on ECHR grounds under Article 8.

8 There has been no appeal to the Upper Tribunal by the Appellant against Judge Parker's decision to uphold the revocation of the Appellant's refugee status.

9 The Respondent appealed to the Upper Tribunal against the Judge's decision to allow the appeal under the immigration rules and on human rights grounds. Following an error of law hearing on 5.6.17, Judge Pickup held that the Judge's decision was erroneous in law for the reasons given by Judge Pickup in his decision of 27.6.17, and he set aside Judge Parker's decision as it related to human rights grounds, but preserved Judge Parker's findings on the revocation of the Appellant's refugee status, up to paragraph 26 of Judge Parker's decision.

10 Although not expressly stated within Judge Pickup's decision, I would also venture to say that Judge Parker's decision, seemingly allowing the Appellant's appeal under the immigration rules, was made *ultra vires*; the grounds of appeal available to the Appellant in her appeal before Judge Parker were limited to human rights grounds, and whether the decision to revoke refugee status was contrary to the UK's obligations under the Refugee convention or to persons eligible for a grant of humanitarian protection. There was no power to allow the Appellant's appeal under the immigration rules.

11 Judge Pickup adjourned the remaking of the Appellant's appeal to a further hearing before the Upper Tribunal, and gave directions *inter alia* that the Appellant was to ensure that all evidence to be relied upon at such hearing was to be contained within a single consolidated, indexed and paginated bundle of all objective and subjective material, together with any skeleton argument and copies of all case authorities to be relied upon. Principal Resident Judge Dawson made a Transfer Order pursuant to the Senior President of Tribunals Practice Statement, dated 25.7.17, permitting the rehearing of the appeal to be heard by a differently constituted tribunal. The matter thus came before me on 10.8.17.

12 The Appellant had filed a consolidated bundle of material for the purposes of the present hearing, the first part of which appears to replicate the Appellant's bundle before the First tier, and the second part of which contains a copy of the Respondent's bundle in these proceedings. The Appellant's witness statement within this consolidated bundle is dated 18.7.16, this being the same witness statement placed before Judge Parker. No further witness statement of the Appellant had been produced.

13 At the outset of the hearing, I raised before both parties the potential significance of the identity and immigration status of HSN's father. The Appellant had at one time asserted that SNM was HSN's father, and that SNM was settled in the United

Kingdom. Although Judge Parker held that there was no evidence that HSN's father possessed British nationality, HSN might also possess British nationality if born in the United Kingdom to a father possessing indefinite leave to remain (s.1(1)(b)) BNA 1981), or in the alternative, the child could apply to be registered as a British citizen, if the father gained settled status in the United Kingdom prior to the daughter reaching the age of majority (s.1(3)(a) and (b) BNA 1981). I therefore raised with the parties whether any further information was available as to the true identity, nationality, and immigration status within the United Kingdom, of the father of HSN. I allowed the matter to be stood down for Mr Maqsood to take further instructions on this matter.

14 On resuming the hearing, Mr Maqsood informed me that the Appellant accepted that the biological father of her daughter, irrespective of his true identity or nationality, did not hold settled status within the United Kingdom, and thus there was no question of the Appellant's daughter possessing, or potentially being entitled to, British nationality.

15 The matter therefore proceeded by way of oral evidence.

16 The Appellant adopted her witness statement dated 18.7.16. The Appellant needed no interpreter. Mr Maqsood asked if he could be permitted to ask number of additional questions by way of examinations in chief. I reminded Mr Maqsood that there had been a specific direction that all of the Appellant's evidence being produced in documentary form prior to the present hearing. He asserted that his instructing solicitors had been instructed relatively recently, and that they had not had the opportunity to prepare an additional witness statement. I asked Mr Maqsood to bear the direction in mind, but that permitted him to ask a number of additional questions by way of examination in chief.

17 It is part of the Appellant's account that she left Tanzania in 2004 to study in Turkey for a period of time. The Appellant stated that prior to her departure for Turkey, she had lived in Tanzania with her mother and father. Her father had died in 2003. She stated that the family home in which the family resided prior to her father's death had been sold, in part to fund her studies in Turkey. That accommodation was no longer available in Tanzania. She stated that she still had her mother and brother living in Tanzania. (She did not at this point mention a sister.) She stated that her mother lived with members of the community. When asked if the Appellant could live with her mother, the Appellant denied that this was possible, stating that her mother had no sustainable income and could not offer support to for her or her daughter.

18 The Appellant stated that her brother was living in a hostel, studying, and receiving support from the government.

19 The Appellant stated that her daughter spoke only English, and that the languages spoken in Tanzania were Swahili and Arabic, in her particular area. She stated that

she had no savings, and had not been able to afford to amass any savings in the United Kingdom because her outgoings took all of her earned income.

20 The Appellant stated that her daughter had no contact with her father. He had at one time applied to the courts for contact, and family lawyers acting for her daughter's father suggested mediation at one point, although the Appellant declined to take part in such mediation. The Appellant stated that her daughter's father wished to send her daughter to Tanzania, and it was that reason which made the Appellant reluctant to establish contact with her daughter's father. When Mr Maqsood asked why the Appellant was reluctant for contact, the Appellant started to explain that her daughter's father wished to take her daughter to Tanzania to arrange for her to be circumcised, and that he was under pressure from his family to have this done.

21 At this juncture of the evidence, I indicated to Mr Maqsood that the evidence now being given by the Appellant appeared to amount to a protection claim. Mr Maqsood repeatedly asserted that the potential risk of harm to the Appellant's daughter was relevant to the issue of whether or not it would be reasonable, under section 117B (6) NIAA 2002 to expect the Appellant's daughter to leave the United Kingdom, and therefore was a relevant matter before the Tribunal at the present hearing.

22 I reminded Mr Maqsood of the very specific directions given by Judge Pickup in the present matter, and invited him to indicate whether this protection claim relating to the Appellant's daughter had been mentioned at any prior stage of the Appellant's own asylum claim. He was unable to direct my attention to any reference to the risk of circumcision to the daughter at any point, prior to today's oral evidence. I pointed out to Mr Maqsood that there had been a number of opportunities for the Appellant to raise this matter; in her original application asylum; in the grounds of appeal against the Respondent's decisions bringing her appeal to the First-tier Tribunal; in her evidence before Judge Parker; and in any potential appeal from the First-tier Tribunal to the Upper Tribunal in relation to revocation refugee status. No such opportunity had been taken at any stage. Mr Maqsood again attempted to reiterate the fact that any risk to the Appellant's daughter would be relevant as to the reasonableness of her being required to leave the United Kingdom.

23 I invited the views of Mr McVeety who expressed the opinion that this protection claim would amount to the new matter, as defined under section 85 NIAA 2002, which would require the consent of the Respondent state in order for the Tribunal to consider the matter. He declined to give consent on behalf of the Respondent for such matters to be considered.

24 I ruled at the hearing that I was in agreement with Mr McVeety, that this matter represented a new matter as defined under section 85 NIAA 2002, and, in the absence of the consent of the Respondent, the Tribunal lacked jurisdiction to entertain this issue. Further and in any event, I would have ruled as part of my

general case management powers under Rules 5 and 7 (failure of a party to comply with directions) Tribunal Procedure (Upper Tribunal) Rules 2008, to limit the issues to be determined in the appeal to those raised in the Appellant's witness statement, and not to permit any further oral evidence about an alleged risk of harm to the Appellant's daughter in the form of circumcision in Tanzania. This Tribunal is of the opinion, given the history of this appeal, the directions issued by Judge Pickup, and my reference to such directions at the outset of the Appellant's oral evidence, that for this reference to a potential claim for protection in relation to the Appellant's daughter to be raised well into examination in chief of the Appellant, with no advance notice to the Tribunal, is an abuse of process, and a flagrant breach of directions. This Tribunal shall not consider the issue of potential harm to the Appellant's daughter any further within this decision. If the Appellant wishes to advance a protection claim on those grounds, she should do so to the Respondent, by way of fresh representations, if so advised, although the Respondent will no doubt query why this matter was not raised in response to the Respondent's notice under s.120 NIAA 2002 within her decision of 2.7.15.

25 Mr Maqsood's examination in chief of the Appellant continued. The Appellant stated that she had taken her daughter to Tanzania in 2011, and had also taken her to Kenya in 2013 so that her family members might visit the Appellant and her daughter there at that time.

26 The Appellant stated that her daughter had found it difficult whilst at school in the UK; she did not have a relationship with her father, as she noticed that other children had a relationship with their fathers. The Appellant confirmed that although her daughter met the father whilst an infant, she now had no functioning relationship with the father. It was said that most of the daughter's friends were English. The Appellant stated that she was in contact with her mother.

27 The Appellant stated that her job in the UK was as a cardiac physiologist. This involved undertaking angiography, and being involved in surgical procedures of inserting vascular implants and stents. She worked with GPs in the community carrying out relevant tests on patients, and she also undertook work for the DVLA in assessing lorry drivers' fitness to drive. She was employed at the Nottingham University Hospital.

28 The Appellant stated that she would not be able to utilise her skills in Zanzibar because the health care system there was undeveloped. There was only approximately 1 million people in Zanzibar. I asked whether the Appellant could utilise her skills by seeking employment on the mainland of Tanzania, for example in the capital Dar es Salaam. The Appellant replied that in 2016 a new ID card system was introduced, and she was not present to obtain such an ID card at the time. The Appellant asserted that she would not therefore be able to travel between Zanzibar and mainland Tanzania.

29 The Appellant asserted that her daughter would not be able to benefit from state education Tanzania, there being no state education in English, and the Appellant would be unable to afford private education in the English language, which she stated would only be available at a cost of US$7700 per year.

30 Cross-examined by Mr McVeety, the Appellant confirmed that she had a mother and brother in Tanzania. There were other relatives in Kenya, and other kinship in Somalia. The Appellant had in total two brothers, and one sister. One brother was in Congo, and one sister was living on the island of Pemba. I reminded the Appellant that she had just been asked what relatives she had in Tanzania and she mentioned only her mother and a brother. She confirmed that she also had a sister in the island of Pemba. That sister farmed, producing her own home-grown produce, and her husband was a teacher in a local school. The Appellant clarified that Tanzania comprised mainland Tanzania, and the region of Zanzibar, which was mainly comprised of the islands of Unguja and the smaller island of Pemba. She confirmed that there was no restriction of movement between Unguja and Pemba. The Appellant was born on Unguja.

31 The Appellant confirmed to Mr McVeety that her father died in 2003, and she accepted that it was a lie when she stated in her asylum interview that he had been killed in Somalia in 2007. Mr McVeety referred the Appellant to the content of an entry clearance interview which had taken place prior to the issuing of entry clearance in April 2007. (The dates in 2011 and 2015 given on the two different printed copies of this interview are incorrect - Mr McVeety considered it likely that these dates may have been created electronically on occasions when the interview had been printed at one time or another. It is clear from the content of the interview that it related to the Appellant's application for entry clearance made in 2007.)

32 In that interview, the Appellant was asked what family she had in Tanzania, and she was recorded as saying that she had her mother and father there. Mr McVeety pointed out to the Appellant that notes recorded by the Entry Clearance Officer relating to this application at F2 referred to the application being supported by her father. The Appellant confirmed that the application had been made, and the interview had been carried out, in 2007, in Turkey, where she was residing at the time.

33 When asked to explain the reference to a father in 2007, the Appellant paused before stating that she had a stepfather, as her mother had remarried after her father's death in 2003, although the marriage did not last long. She stated her real father was called F J, who had been born in Somalia and had migrated to Tanzania in 1998, although she immediately corrected this to the 1980s. She accepted that the information recorded in her screening interview for her claim for asylum, that her father had died in 2007 in Somalia, was untrue.

34 Mr McVeety asked the Appellant what her stepfather's job had been. The Appellant stated that he had been a businessman. It was put to her that information in the

ECO's records at F2 was that the father being referred to was a doctor in Tanzania. The Appellant paused again before explaining that this information had been false. She stated that she had been living in a hostel for girls in Turkey and they would not have permitted her to come to the UK on her own, and she needed some evidence that she received financial support from other sources. She accepted that she had lied when making the entry clearance application. She could not remember what documentary evidence was submitted in support of the application.

35 Following the lunch adjournment the Appellant continued her evidence. The Appellant confirmed that the official languages of Tanzania included Swahili, Arabic, and English on the mainland. When it was put to her that her daughter could be taught in English on the mainland, the Appellant reiterated that she was from Unguja where Swahili and Arabic was spoken. The Appellant stated that on the mainland, English was taught as a subject in schools, but not as a medium of instruction. When asked why she could not get skilled employment on the mainland, the Appellant reiterated that she did not have an identity card to travel to the mainland, although the Appellant accepted that if she registered, she might be able to get such a card. She had not been in Tanzania since 2005, and she thought it may not be easy. She did not have any evidence as to the system of obtaining such an identity card.

36 The Appellant confirmed that she did not have any relatives in United Kingdom, and has never had any such relatives here. She was referred an extract within the ECO's notes at F2, which appeared to indicate that the Appellant had a sister in the United Kingdom. The Appellant explained that this was not the case, and that she had explained that this to the officer at the time of the application.

37 The Appellant stated that her salary in the United Kingdom was £22,665. Her witness statement stated that she was able to maintain herself and her daughter without recourse to public funds, (although I notice that paragraph 35 of the statement adds in handwriting, that she receives child benefit and tax credits). She confirmed that she had a child tax credit/working tax credit award of approximately £130 a week. During the time she was claiming asylum, she obtained NASS support of about £35 week plus accommodation. While studying in the UK, she took advantage of the student loan facility.

38 In response to questions from me, the Appellant confirmed that her mother lives in Unguja. After the original family home was sold, her mother bought a smaller property, which was a two bedroomed house with a sitting room, kitchen, and bathroom and toilet access through a back garden. Her mother rented this out for approximately $50 a month. Her mother lived in a suburb of Zanzibar Town called Mwembetanga, about 30 minutes walk from Zanzibar Town.

39 Her brother lived in Unguja, in Nungwi, in the north of the island. He has completed his studies, having a 'PCB' degree in general sciences (Physics, Chemistry and Biology). He was 29 years old, and is currently undergoing a period

of national service, including working in hospitals and schools. He is provided with accommodation and food as part of his National Service. He wants to be a teacher after completing his National Service. When asked what proportion of the population of Unguja and Pemba had degrees, the Appellant stated that this was a very minimal number. There was only one university in Unguja. The population was small in Unguja. People get grants to attend university. When asked what her brother's prospects of getting a job were, the Appellant stated that he will probably be able to obtain full employment after his National service, there being a need of teachers everywhere in Unguja. Her brother is not married and has no children. The Appellant has a good relationship with her brother.

40 Further regarding her mother, the Appellant confirmed that she was now approximately 65 years old. She had previously worked as a teacher although did so without having obtained a degree. She has a pension as a retired teacher. The Appellant agreed that both her mother and brother were educationalists. She explained that her mother lived with 'relatives in the community' in Fuoni, outside of Zanzibar town. Upon further consideration of her circumstances, it transpired that essentially, her mother resided in a female-run Madrassa, teaching religious studies. There were a number of women who lived there, each occupying their own small room, with some shared facilities. She did not know if her mother paid anything to reside there, but she agreed that her mother's duties as a teacher were part of the arrangement to allow her to reside there. The Appellant said it was a bit like a convent. When asked, if the Appellant got a job in Unguja, could the Appellant rent the property from her mother, the Appellant said yes, and the mother may well join the Appellant there.

41 The Appellant confirmed that her first language was Swahili. She stated that she had not spoken Swahili with her daughter whilst she was young, as her daughter had stayed with childminders for much of her infancy.

42 There was no re-examination of the Appellant.

43 I then heard submissions from the parties, which are set out in my written record of proceedings.

Relevant law

44 The issue before me is whether the refusal of the Appellant's human rights claim is unlawful under s.6 Human Rights Act 1998. Having excluded the potential argument regarding risk of harm to the Appellant's daughter from my considerations, for reasons set out at paragraphs 21-24 above, I proceed to consider whether the decision amounts to a disproportionate and therefore unlawful interference with the private and family lives of the Appellant and her daughter.

45 It is relevant to consider whether the Appellant or HSN meet any relevant immigration rule. If they do, this would be a weighty consideration when assessing

the proportionality of the decision impugned (Mostafa (Article 8 in entry clearance) [2015] UKUT 112 (IAC)). There would need to be compelling circumstances to justify a grant of leave to remain outside the rules: SSHD v SS (Congo) & Ors [2015] EWCA Civ 387, para 33. I take into account as a primary consideration the best interests HSN (ZH (Tanzania) v SSHD [2011] UKSC 4). I also take into account the considerations set out in Part 5A NIAA 2002.

46 Is this case involves the best interests of a child in the UK, I take into account the guidance provided in EV (Philippines) [2014] EWCA Civ 874, in which the Court of Appeal held as follows:

> (i) The Court rejected the proposition advanced at [21] by the appellants that where it was established that the best interests of children lay in their continuing their education in the UK, that only 'the most cogent countervailing considerations' could justify the removal of the family; insofar as Lord Kerr's judgment in ZH Tanzania v SSHD [2011] UKSC 4 appeared to advance the proposition that the best interests of a child 'must rank higher' than any other factor, the Court noted that he was there dealing with British children, that he had agreed with Lady Hale, and the Court should be guided by the formulation which she adopted which was that the best interests of a child was a primary consideration which could be outweighed by others provided that no other consideration was treated as inherently more significant (see Christopher Clarke LJ at [32]).
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> (ii) The best interests of the child are to be determined by reference to the child alone without reference to the immigration history or status of either parent (Christopher Clarke LJ at [33]).
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> (iii) "34 In determining whether or not, in a case (where none of the family are British and they are relying on private and family life grounds to remain in the UK), the need for immigration control outweighs the best interests of the children, it is necessary to determine the relative strength of the factors which make it in their best interests to remain here; and also to take account of any factors that point the other way.
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> 35. A decision as to what is in the best interests of children will depend on a number of factors such as (a) their age; (b) the length of time that they have been here; (c) how long they have been in education; (c) what stage their education has reached; (d) to what extent they have become distanced from the country to which it is proposed that they return; (e) how renewable their connection with it may be; (f) to what extent they will have linguistic, medical or other difficulties in adapting to life in that country; and (g) the extent to which the course proposed will interfere with their family life or their rights (if they have any) as British citizens .

> 36. In a sense the tribunal is concerned with how emphatic an answer falls to be given to the question: is it in the best interests of the child to remain? The longer the child has been here, the more advanced (or critical) the stage of his education, the looser his ties with the country in question, and the more deleterious the consequences of his return, the greater the weight that falls into one side of the scales. If it is overwhelmingly in the child's best interests that he should not return, the need to maintain immigration control may well not tip the balance. By contrast if it is in the child's best interests to remain, but only on balance (with some factors pointing the other way), the result may be the opposite.
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> 37. In the balance on the other side there falls to be taken into account the strong weight to be given to the need to maintain immigration control in pursuit of the economic well-being of the country and the fact that, *ex hypothesi*, the applicants have no entitlement to remain. The immigration history of the parents may also be relevant e.g. if they are overstayers, or have acted deceitfully. " (Christopher Clarke LJ at [34-37])

(iv) The approach to the assessment of best interests set out in paragraphs 23-24 of MK India (Best interests of the child) [2011] UKUT 475 (IAC) was approved, which emphasises a fact sensitive, 'overall' balancing of factors (Christopher Clarke LJ at [39]).

(v) In answering the question whether one has to assess the best interest of the children without regard to the immigration status of the parent, the assessment of the best interests of the children must be decided on the basis that the facts are as they are in the real world; the ultimate question will be: is it reasonable to expect the child to follow the parents with no right to remain to the country of origin? (Lewison LJ, [50] and [58]).

47 I specifically find that the most often quoted passage of EV (Philippines) "Just as we cannot provide medical treatment for the world, so we cannot educate the world" (Lewison LJ at [60]) does not form part of the ratio of the case; it does not seek to approve or disapprove a proposition in law; it is something of an overall observation but which should not be treated by the Respondent as some indefeasible mantra.

48 In MA (Pakistan) & Ors, R (on the application of) v Upper Tribunal (Immigration and Asylum Chamber) & Anor [2016] EWCA Civ 705 it was held that when considering para 276 ADE(1)(iv) of the immigration rules and section 117B(6) NIAA 2002, a court or tribunal should not simply focus on the child but should also have regard to wider public interest considerations, including the conduct and immigration history of the parents; the significance of section 117B(6) is that where

the seven year rule is satisfied, it is a factor of some weight leaning in favour of leave to remain being granted (para 45).

Findings of fact

49 To determine whether any interference with the private and family life of the Appellant and her daughter would be disproportionate, findings need to be made about their circumstances in the UK, and their likely circumstances in Tanzania. In the context of this appeal, the Appellant has the burden of establishing those facts on a balance of probabilities.

50 Insofar as Judge Parker held that the fact that the Appellant lied in her asylum application renders here evermore 'without credibility', I would not necessarily agree with that analysis. The fact that a witness has been found to have lied about matters 10 years ago, would not automatically justify a finding that the witness is lying about all later matters.

51 However, I find that there are further reasons, aside from the Appellant's deception in her asylum claim, for finding that the Appellant has been less than candid about her circumstances in the UK and likely circumstances in Tanzania. She accepted that she also lied in her entry clearance application of 2007. When challenged about the evidence in the entry clearance interview about a father, who was a doctor, being alive in 2007, the Appellant gave the impression of making her evidence up as she went along. In oral evidence, she initially failed to disclose that she had a sister in Pemba. Her witness evidence and oral evidence in examination in chief did little to provide a full and frank description of her family circumstances in Tanzania. None of her assertions about prospects of employment, freedom of movement or education opportunities for her daughter are supported by any country information whatsoever.

52 In relation to her circumstances in the UK, I accept that the Appellant is employed as a cardiac physiologist. The Appellant has provided evidence of her obtaining a BSc in Healthcare Science from De Montford University Leicester in Cardiovascular, Respiratory and Sleep Science in June 2015. There is also documentary evidence her employment at Nottingham University Hospital NHS Trust. Neither the Appellant nor HSN have any kind of relationship with HSN's father, whatever his true identity may be. He is not British or settled and no question arises in this appeal that HSN may be British.

53 HSN was born in the UK and has resided here for 8, nearly 9 years, although at the date of the Appellant's application for leave to remain on 9.9.14, she had resided in the UK for just less than 6 years. There are end of year reports from July 2015 (year 1) and May 2016 (year 2) from HSN's school stating that she is doing well, and is a bright and intelligent girl. There is no copy of any school report for this most recent academic year ending July 2017. I assume that she has recently completed year 3. I take judicial notice that this would be the end of Key Stage 1 and that she will

recently have undergone any relevant assessments at the end of Key Stage 1. She would have a further 3 years of primary education in years 4, 5, and 6, representing Key Stage 2. I find that HSN is not presently at any crucial stage of her education. I am prepared to accept that most of HSN's friends may be 'English', but that says little in itself about their ethnic background or HSN's familiarity of a variety of cultures.

54 I make no findings on the Appellant's alleged past abusive relationship with HSN's father or the circumstances in which the Appellant entered the UK; Judge Parker declined to make findings on those matters, and there is no appeal brought by the Appellant in relation the 'protection' element of Judge Parker's decision. The Appellant gives no evidence about her own ties to the UK eg her friendships, other than providing evidence about her employment.

55 Regarding the Appellant's likely circumstances in Tanzania, I find that the Appellant, now 34, lived in Tanzania for the first 20-21 years of her life, before travelling to Turkey, and was accustomed to its culture, language, traditions, and norms. I accept what the Appellant said in answer to questions from me about her family; she has a mother, who is a retired teacher, with a pension, living in the outskirts of Zanzibar Town. She lives and works in a Madrassa. The mother owns a 2 bedroomed property (described in more detail above) which is currently rented out. The Appellant has a sister in Pemba who is married to a teacher. The Appellant has a brother currently living in the north of Unguja who is a graduate, currently undertaking national services but who has good prospects of gaining employment as a teacher. Given the various conflicts in the Appellant's evidence regarding her father, I do not accept that she has established that he has died.

56 With regard to the matters on which the Appellant relies to suggest that life would be difficult in Tanzania, I do not accept that the Appellant has established to the required standard that she would encounter difficulties in freedom of movement from Zanzibar (i.e. Unguja and Pemba) and the mainland. There is no documentary evidence before me about any new ID card system, or its relevance to travel within the country, and the Appellant ultimately accepted that she may be able to obtain such a card in any event. I find that the Appellant could, if necessary, travel to, and live and work in mainland Tanzania. Further, I am not prepared, given the Appellant's past deceptions, her lack of candour in these present proceedings, and lack of corroborative evidence, to accept her oral evidence that there are no English language state schools in either mainland Tanzania or Zanzibar. In any event, I find that it has been convenient for the Appellant to suggest that HSN speaks only English, and I find it unlikely that the Appellant would not have spoken some Swahili, the Appellant's first language, to HSN whilst she has been growing up. I find that HSN is likely to have some understanding of Swahili and would be able to learn the language within a reasonable period of time if residing in Tanzania.

Conclusions

57 The consequence of the Respondent's refusal of the Appellant's application for leave to remain and refusal of her human rights claim is that the Appellant and HSN have no leave to remain in the UK and will stand to be removed from the United Kingdom to the country of their nationality, Tanzania. Such removal, together, raises no question of a breach of family life between them. They have no family life with HSN's father.

58 However, I accept that their removal engages the question of the proportionality of any interference with their private lies in the UK. In respect of HSN, I find that the requirements of para 276ADE(1)(iv) are not met; quite aside from the requirement it would not be reasonable to expect HSN to leave the UK (a question to which I return, below), the rule requires HSN to have lived continuously in the UK for at least 7 years at the date of application. This was not the case.

59 Further, in relation to the Appellant's entitlement to leave to remain under para 276ADE(1)(vi), the Appellant has been on notice since the hearing before Judge Parker (see the Judge's decision, paragraph 27) that the Respondent raised the question of whether the Appellant met the suitability requirements for entitlement to leave to remain on the grounds of private life. Judge Pickup was clearly correct in finding that Judge Parker erred in law in suggesting that 276ADE(1) was not subject to suitability requirements; it is - see 276ADE(1)(i), which requires that the applicant "does not fall for refusal under any of the grounds in Section S-LTR 1.2 to S-LTR 2.3. and S-LTR.3.1. to S-LTR.4.5. in Appendix FM".

60 Those provisions provide, insofar as relevant to the present appeal:

> "S-LTR.1.1. The applicant **will be** refused limited leave to remain on grounds of suitability if any of paragraphs S-LTR.1.2. to 1.8. apply.
>
> S-LTR.1.6. The presence of the applicant in the UK is not conducive to the public good because their conduct (including convictions which do not fall within paragraphs S-LTR.1.3. to 1.5.), character, associations, or other reasons, make it undesirable to allow them to remain in the UK.
>
> S-LTR.1.7. The applicant has failed without reasonable excuse to comply with a requirement to-
>
> (a) attend an interview;
> (b) provide information;
> (c) provide physical data; or
> (d) undergo a medical examination or provide a medical report.

S-LTR.2.1. The applicant **will normally be** refused on grounds of suitability if any of paragraphs S-LTR.2.2. to 2.5. apply.

S-LTR.2.2. Whether or not to the applicant's knowledge –

(a) false information, representations or documents have been submitted in relation to the application (including false information submitted to any person to obtain a document used in support of the application); or

(b) there has been a failure to disclose material facts in relation to the application.

S-LTR.4.2. The applicant has made false representations or failed to disclose any material fact in a previous application for entry clearance, leave to enter, leave to remain or a variation of leave, or in a previous human rights claim; or did so in order to obtain from the Secretary of State or a third party a document required to support such an application or claim (whether or not the application or claim was successful).

S-LTR.4.3. The applicant has previously made false representations or failed to disclose material facts for the purpose of obtaining a document from the Secretary of State that indicates that he or she has a right to reside in the United Kingdom.

61 The Appellant's most recent application for leave to remain, i.e. on 9.9.14 for ILR as a person having had refugee leave for 5 years, contained an explicit or implied assertion that she was a refugee. She was not. Therefore, both in her current application, and in her past applications, for entry clearance, and for asylum, the Appellant has made false representations. I find that the Respondent has met the burden of establishing the precedent fact of the Appellant's deceptions (see JC (Part 9 HC395, burden of proof) China [2007] UKAIT 00027). I further find that there are no sufficient reasons as to why the presumption in S-LTR2.2 and 2.3 (with reference to S-LTR 2.1) that the applicant's application for leave to remain would normally be refused on grounds of suitability, is displaced. I find that the Appellant fails to meet the suitability requirements that are imported into 276ADE(1).

62 Further and in any event, I find, with reference to my findings of fact at paras 49-56 above that the Appellant has not established that there would be very significant obstacles to her integration in Tanzania were she to be required to leave the UK. I find that the Appellant has purposely downplayed her prospects of gaining employment in Tanzania. She claims, essentially, to be overqualified and that there would no market for her skills. However, in this regard, she made specific reference to Zanzibar. I find that there would be no significant obstacle to the Appellant living and working in the mainland of Tanzania. Further, I find that the Appellant could live and work in Zanzibar, and live in her mother's property for

any period whilst she set herself up in employment either in Zanzibar or the mainland. Her mother's rental income from the property is $600 per year. I find that the Appellant has not established that she would not, from her salary of £22,665 per year in the UK, be able to bring with her to Tanzania sufficient funds to support herself and to pay rent to her mother, if demanded, for a sufficient period in which to obtain gainful employment in Tanzania.

63 In relation the private life interests of the Appellant and HSN under Article 8 ECHR outside of the rules, I find, by a narrow margin only, that it would be in HSN's best interests to remain in the UK. This is because the UK is the place which HSN is familiar; she has lived her whole life here. There is at least some clarity of what HSN's educational future might hold in the UK, whereas there is, at its highest, uncertainty as to what that future may be in Tanzania. I accept that for HSN, the prospect of leaving a country which she is familiar with, and likely treats as her home, and travelling to a country that she has only visited as an infant, but not lived in, may seem daunting and unsettling, and that this uncertainty is likely to cause HSN some distress.

64 I consider the various factors set out in EV (Philippines) [2014] EWCA Civ 874. Acknowledging the time spent by HSN in the UK, I have found above that she is not at any critical stage of her education. I find that although she has not lived in Tanzania, she will have some familiarity, from her mother, with the cultural norms in that country, and for the avoidance of doubt I find that the Appellant has in her evidence purposely downplayed HSN's familiarity with and connections to Tanzania. There are family members in Tanzania with whom HSN may have a family life; her grandmother, an aunt and an uncle (even if not all living in the same location). She has no family in the UK. She has no medical issues which I have been told of.

65 I have held above that the Appellant has failed to establish by corroborative evidence (her own testimony not being sufficiently reliable on this point) that there would in fact be any educational disadvantage, significant or otherwise, to HSN, if they were to both return to Tanzania, to either the mainland or to Zanzibar. The fact that the Appellant is herself educated to a high standard, her mother is a retired teacher, her brother in law is presently a teacher, and her brother has good prospects of becoming a teacher, means that this family would be in a good position in Tanzania to know how to best utilise the education system that exists there. I find that there is no reliable evidence that there would be deleterious consequences to HSN if required to live in Tanzania (EV (Philippines) para 36).

66 I take into account that the Appellant is engaged in employment which is beneficial to her patients. However, I find that, in balancing on the one hand the private life of the Appellant and HSN, and HSN's best interests, and on the other the maintenance of immigration control, the Appellant's past deceptions and immigration history. It is not overwhelmingly in HSN's child's best interests that she should not return Tanzania.

67 I accept, applying s.117B NIAA 2002, that the Appellant is financially independent and speaks English. (I do not count against her that she receives CTC/WTC. The Appellant earns more than the sum deemed adequate under Appendix for even a couple with one child, and many families earning over the sums specified in Appendix FM might still be entitled to CTC/WTC.) However, the positive satisfaction of s.117B(2)and (3) do not bring a positive entitled to leave to remain - AM (S.117B) [2015] UKUT 260 (IAC).

68 Further, I find that any private life developed by the Appellant and HSN in the UK has been developed whilst present precariously, as such leave was gained by deception (ibid) and thus is to be given little weight (s.117B(5)) although I attach some weight to it (Treebhawon and Others (NIAA 2002 Part 5A - compelling circumstances test: Mauritius) [2017] UKUT 13 (IAC) headnote no 2).

69 In Treebhawon [2017] UKUT 13 (IAC), the Tribunal was also obliged to apply the reasoning in MA (Pakistan) (see para 48 above). I do not simply consider the best interests of HSN, but the Appellant's immigration history as a whole. I find, applying s.117B(6) NIAA 2002, that whilst HSN has, at the date of hearing, been living continuously in the UK for more than 7 years, (and I find that that is a matter deserving of some weight), it has not been shown, taking into account all the circumstances of the case, that it would not be reasonable to expect her to leave the UK.

70 Therefore, whilst I accept that the Appellant has a genuine and subsisting parental relationship with HSN, HSN is not a qualifying child as per s.117D NIAA 2002, and s.117B(6) does not establish that it is not in the public interest to remove the Appellant.

71 The removal of the Appellant and HSN from the United Kingdom would not, I find, amount to a disproportionate and therefore unlawful interference with their right to private life in the UK. There are no compelling circumstances justifying allowing the Appellant's appeal under Article 8 ECHR outside the rules.

Decision

72 I remake the decision, by dismissing the appeal.

Direction

As this decision relates to the welfare of a child, Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court

proceedings. We do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim.

Signed: Date: 14.8.17

Deputy Upper Tribunal Judge O'Ryan