Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/20791/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 16 March 2018	**On 13 April 2018**

Before

UPPER TRIBUNAL JUDGE SMITH

Between

S S

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Malhotra, Counsel, 12 Old Square instructed on a direct access basis
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
No anonymity order was made by the First-tier Tribunal. None has been sought. However, my decision contains a lot of medical and personal information in relation to the gentleman for whom the Appellant cares and for that reason I consider it appropriate to anonymise his name and, by extension, the name of the Appellant. I have for similar reasons, anonymised their details in the error of law decision which is appended to this decision.

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DECISION AND REASONS

Background

1. By a decision promulgated on 11 January 2018, I found an error of law in the decision of First-tier Tribunal Judge Geraint Jones QC promulgated on 23 March 2017 dismissing the Appellant's appeal. I therefore set aside the First-tier Tribunal decision and gave directions for a resumed hearing. My decision promulgated on 11 January 2018 is annexed hereto for ease of reference.

2. In short summary of the background to this appeal, the Appellant is a national of Bangladesh. He came to the UK on 26 August 2009 as a student and his leave was extended in that capacity until 30 March 2016. On 7 February 2015 he made an application to remain outside the Immigration Rules ("the Rules") principally on the basis that he cares for WM who is a British Citizen. They are not related in any way. The Appellant lives in the same house as WM. It appears that this is in accommodation provided by the Council. The Respondent refused the Appellant's application to remain on 22 May 2015. That is the decision under appeal.

3. I note that the Appellant's application was made prior to 6 April 2015 and was for further leave to remain. Accordingly, although the Respondent's decision was after that date, the previous appeal provisions of the Nationality, Immigration and Asylum Act 2002 apply (in other words, those which applied before the amendments made by the Immigration Act 2014). That is by reason of the relevant transitional arrangements (The Immigration Act 2014 (Commencement No. 4, Transitional and Savings Provisions and Amendment) Order 2015: SI 2015 No 371). As such the Appellant could appeal the Respondent's decision on the basis that this was not in accordance with the Rules or the law as well as on human rights grounds. As well as the human rights grounds which are addressed in the First-tier Tribunal's decision, the Appellant also appeals on the basis that the Respondent has failed to consider her policy on carers which appears at Chapter 17, section 2 of the Immigration Directorate Instructions ("the Care in the Community Policy").

4. For the purposes of this hearing I was provided with medical evidence relating to WM which I address in a separate section below. I also received written statements from the Appellant and WM and oral evidence from them both. I deal with that evidence so far as relevant below.

5. I have only drawn attention to that evidence which is relevant to the issues for me to determine. I have though taken account of all evidence before me whether or not that is expressly mentioned.

6. I received a skeleton argument on behalf of the Respondent. Ms Malhotra apologised for failing to provide one in accordance with the directions given. She had taken over conduct of the appeal at a late stage from previous Counsel (who was ill and unable to attend) and had not realised that there was a direction for a skeleton argument. I received oral submissions from her (and from Mr Walker) which I have taken into account in my discussion and conclusions.

7. Following the hearing, on 26 March 2018, Counsel who previously represented the Appellant (Mr Turner) purported to file a skeleton argument itself dated 23 March 2018. That was filed about ten days after the hearing but prior to the finalising of this decision. I have though disregarded that document for two reasons. First, Mr Turner was not Counsel who represented the Appellant at this hearing and it was inappropriate and unnecessary for him to file a skeleton argument when another barrister, Ms Malhotra, had attended and made submissions on the Appellant's behalf. Second, the content of that skeleton argument was targeted at reasons why the previous First-tier Tribunal decision was wrong in law. Since I had already set that decision aside, those issues were no longer of any relevance.

THE EVIDENCE

Medical Evidence

8. Since the position of WM and his medical conditions lie at the heart of this appeal, it is appropriate to deal with the medical evidence first.

9. WM was born on 27 April 1949 and is now aged nearly sixty-nine years. I begin with a description of WM's medical conditions which are helpfully summarised in a letter from his GP dated 26 September 2014 ([AB/46-47]) as follows (including the dates when those conditions began):-
    (a) Agoraphobia with panic attacks: 1 January 1959 ongoing
    (b) Obsessive compulsive disorder: 1 January 1988 ongoing
    (c) Panic disorder: 1 January 1992 ongoing
    (d) Registered disabled: 29 April 2003 ongoing
    (e) Blepharitis: 27 October 2003 ongoing
    (f) Mixed anxiety and depressive disorder: 10 November 2004 ongoing
    (g) Atrial fibrillation: 12 September 2007 ongoing
    (h) Primary open-angle glaucoma: 3 March 2011 ongoing
    (i) Anticoagulation monitoring in primary care: 18 April 2011 ongoing

10. According to his medical notes, WM has been prescribed eye drops from May 2003 onwards, Bisoprolol since November 2007, Citalopram since December 2007, Warfarin since May 2008 and eye drops for his glaucoma since March 2011. His current medication (as at September

2014), according to the letter from his GP, consists of eye drops for his glaucoma, Warfarin for his heart condition and Bisoprolol.

11. WM has been registered disabled since April 2003. According to a document dated 31 January 2014 ([AB/152-159]) WM is entitled to disability living allowance on the middle rate care component for help with personal care and lower rate mobility component for help with getting around. That entitlement is indefinite.

12. According to his evidence (which I accept), the Appellant was registered as WM's carer by Westminster City Council in January 2015. I deal in more detail with that when considering the Appellant's evidence below. The Appellant is not a qualified carer and has no qualifications obtained from his studies in the UK which are in any way relevant to that position.

13. I have received medical evidence from WM's GP, Westminster Adult Health Services, Imperial College Healthcare (in relation to WM's eye problems) and two individual reports from claimed experts.

Evidence from GP

14. The letter dated 26 September 2014 to which I refer at [9] above, also states as follows:-

> "[WM] has requested I write this letter. He tells me that [SS] DOB: 31.12.1989 who lives at the same address is his full time carer and that he cannot do without him.
> [WM] has significant physical and mental health problems (see list below [as appears at [9] above]) and is taking regular medication which [SS] helps him manage."

15. A further letter from Dr Robert Wormell, GP dated 10 December 2016 helpfully summarises the conditions from which WM continues to suffer as follows:-

> "1. He has had an obsessive-compulsory disorder for many years. In addition, he has had a panic disorder and agoraphobia (a fear of wide-open spaces). He also has acrophobia (a fear of heights).
> 2. In November 2004 he was diagnosed with a mixed anxiety and depressive disorder.
> 3. In 2007 he was diagnosed with atrial fibrillation, which is still present and which requires anticoagulation with Warfarin.
> 4. Since 2011 he has had primary open-angle glaucoma for which he takes Latanoprost eye drops."

16. A further letter dated 22 February 2018 was filed on 9 March 2018. That was outside the time period provided for by the directions. However, Mr Walker did not object to the Appellant's reliance on this letter. That letter is also written by Dr Robert Wormell. The letter is addressed to the Appellant's direct access barrister. Dr Wormell writes as follows:-

> "Thank you for your letter, requesting information about [WM], who is a registered patient in this practice and his carer, [SS].

[WM] suffers from agoraphobia, which is a fear of wide, open spaces and also bathophobia, which is a fear of high buildings. When he is in the vicinity of a high building, he loses his bearings and screams. He has to shut his eyes and follow the directions and instructions of [SS], his carer. This means he does not know where he is going, as he has a fear of a high building falling on him and crushing him. He also suffers from an obsessive compulsive disorder and can wash his hands for two to three hours every day. In addition, he has a mixed anxiety and depressive disorder.

As a result of his psychological illnesses mentioned above, [WM] has an extreme need for a carer to be with him wherever he goes, unless he is shopping in Tescos, which is next door to where he lives, or attending church, which is just around the corner. This means he is unable to go outside alone and must be accompanied by his carer.

In addition, his personal hygiene depends on his carer, as he needs [SS] to wash his hair twice a week and to help him take a shower twice a week. Because of his obsessive compulsive disorder and the frequent washing of his hands, [WM] can often flood the floor with water and he needs his carer to help mop up the wet floor.

[WM] also suffers from a hearing loss in both ears, for which he needs a hearing aid. As well, he has primary open-angle glaucoma, which requires drops to be inserted into both eyes every day by his carer and atrial fibrillation, for which he takes Warfarin to prevent a cerebrovascular accident.

It is quite clear that [WM] depends constantly and consistently on [SS] as his carer who has been with [WM] for seven years. [WM] says that [SS] understands him better than any other person and that [SS]'s support is better than any other person can provide.

[WM] is seen regularly and followed up by the Central and North West London NHS Foundation Trust and they are in full agreement that [SS] helps him with all aspects of daily living, such as shopping, cooking, cleaning etc. They say that [WM] benefits from his help and support and that, as a result, his symptoms of obsessive compulsive disorder have been considerably eased and reduced."

Imperial College Healthcare

17. A letter dated 11 November 2016, deals with WM's glaucoma. His visual acuity is said to be 6/6 in the left eye. His pressure is 17 mmHg in the right eye and 16 in the left eye. There is no detail about the level of WM's glaucoma. The recommendation is simply that WM should continue to instil his eyedrops every night "with the help of his carer [SS]" and should receive a routine review in six months.

Westminster Adult Mental Health Services

18. By a letter dated 21 April 2015, Westminster Adult Mental Health Services provided the following report:-

"I have been asked to prepare this report by the Home Office as requested by solicitors for [SS].

[WM] has been known to our services since 2011, with a longstanding history of fear of contamination, and washes his hands before and after touching anything. He is diagnosed with Obsessive Compulsive Disorder, which is a chronic enduring mental illness. His illness is managed with

medication and psychology input. He is followed up regularly in our outpatient clinic.
His GP is monitoring his physical health problems of Atrial fibrillation and glaucoma.
He was assessed by our occupational therapist (please refer to their report)"

19. The report to which reference is there made is one dated 20 April 2015 and reads as follows:-

"I saw [WM] today in the clinic along with [SS]. He complains of feeling dizzy very often. I gather he is on Warfarin for AF. He is trying to work on increasing the length of exposure to tall buildings but dizziness is holding him back. His washing has reduced to 20 to 15 minutes now. His OCD symptoms have improved slightly comparatively. He is [sic] medication compliance is erratic.
Today discussed the benefits and risks associated with his medication combination. Encouraged to take it regularly and reiterated the CBT techniques."

The report continues under the heading of "Follow Up":-

"- GP to investigate his dizziness further and do ECG (forward a copy to us)
- To continue Citalopram 20mg, advised to take it regularly
- Reiterated CBT techniques, [WM] to let us know when he is ready to address emotions relating to family with psychologist
- Monitor physical health
- Follow up appointment 29/06/2015 at 10:00am"

20. A review document dated 21 June 2016 provides the following information:-

"Seen [WM] for follow up appointment along with his Live in carer [SS] on the 21st of June 2016.
[SS] informed me that he has been living with [WM] for more than 5 years now and has been his carer. He provides support to [WM] by helping him with his activities of daily living ie shopping, cooking, cleaning etc. He said that [WM] derives benefit from his reinforcements against his unhealthy thoughts and behaviours in relation to his Obsessive compulsive disorder. As a result of his company, [WM]'s symptoms of OCD have been considerably under control. [WM] agreed that he has not been spending as much time as before in his cleaning rituals (used to spend up to 2-3 hrs before and now spends about half an hour).
In terms of his fear of tall buildings and open spaces, [WM] feels supported and comforted in [SS]'s company. [WM] rarely goes out unaccompanied as he would have fainting episodes due to anxiety.
[WM] was today neatly dressed and had good personal hygiene. He was anxious and frequently throwing up and pacing about at times when he wished to talk about his brothers who he believes have ill treated him. It took a while before he could tell me about his brothers who he said "hate me". He said that [SS] has been of immense benefit to him and he regards him as a member of the family. He said that he gets psychological help from [SS] and there has been no physical relation between them. There were no e/o depressive features and no e/o psychotic symptoms during the assessment."

21. Having listed WM' medications, the review continues that "[WM] would need reminders about his medication/timings from [SS]". The reviewing doctor comments that it is his impression that WM has "ongoing OCD symptoms but has benefited from consistent reinforcements from his live in carer…". I note at this juncture that I have no documents before me for the period April 2015 to June 2016 and this latter document is prepared by a different doctor to the one who prepared the April 2015 review when the Appellant's involvement in WM's care is scarcely mentioned. It is not clear therefore to what extent the doctor preparing the June 2016 review had seen WM and the Appellant previously in order to note the benefit derived from the Appellant's presence.

22. The June 2016 review suggests follow up action as:-

> "1. To request Dr Tracy Chotoo to review any further input from psychology this would help both [WM] and his carer [SS] to deal with [WM]'s anxiety in a healthier way. Probably develop a care plan to follow which would promote more independence for [WM] and also lessen the care burden.
> 2. [WM] was advised to continue with Citalopram 20mg OD.GP to please continue to prescribe at this dose.
> 3. [SS] has agreed to maintain a diary to monitor the response to his treatment.
> 4. Agreed to review response to Citalopram on the 26th of July 2016 @3pm
> 5. GP requested to review his Cough and frequency of micturition.
> 6. [SS] would continue to provide with the necessary psychological support for [WM] without which I believe [WM]'s mental health would deteriorate significantly. Therefore, I would support any application made for [SS] to be his official carer.
> 7. I have advised [SS] to seek appropriate advise [sic] from the Citizens Advise [sic] bureau Westminster to check his entitlement for any benefits."

23. On the day of the hearing, I was provided with an update report from Tonia Ibrahim who is an acting clinical lead/senior social worker with Westminster Adult Mental Health Services. She does not provide details of her qualifications but I understood the Appellant's and WM's evidence to be that she is the person in that organisation with whom they now deal. She does not say in her report for how long she has dealt with WM nor on what her opinion is based. Although the report was not filed and served in accordance with the directions I made on 11 January 2018, Mr Walker did not object to the Appellant's reliance on this report.

24. Ms Ibrahim reports as follows:-

> "I have been asked to prepare this report in support of [SS]. I can confirm [SS] is the recognised live in carer for our above named client [WM].
> [WM] has been known to our services since 2011, with a longstanding history of fear of contamination. He suffers with panic attacks, extreme anxiety and agoraphobia. His mental health is further complicated by

depressive episodes. He has an established diagnosis of OCD, and suffers with other complex physical health problems.

[WM] would not be able to manage without his carer, who provides support around maintaining his nutrition, keeping his environment clean and safe, helping him to manage his laundry, personal care and supporting him to go to church etc. [WM]'s severe OCD impacts on every aspect of his life.

Without the support of his carer, [SS], [WM] would not be able to manage his medication. For example he would be at risk of becoming so over involved in his rituals that he would not remember to take his medication and begin to panic and become confused. [WM] is on Warfarin, which need careful monitoring and titration and has significant risks if not taken properly.

Another example of the support [WM] needs, is the reassurance of his carer whilst he is out and about in the community eg maintaining appointment with the CMHT, his GP, shopping, attending church etc. [WM] suffers with panic attacks and is at risk of becoming stuck in rituals, which stop him from attending appointments on time. He has a fear of high buildings and using toilets whilst out of his home. [WM] also suffers with poor memory and confusion brought on [sic] severe anxiety.

[WM]'s GP is monitoring his physical health problems which included Atrial fibrillation and glaucoma."

Professor S Lingam, MD (Hons), FRCPCH, FRCPS, DCH, DRCOG

25. Professor Lingam has provided a report in this matter dated 2 February 2018 based on one assessment on 23 January 2018. I note that Professor Lingam is a District Medical Appraiser appointed by the Tribunal Judiciary. He was also a Senior Medically Qualified Tribunal Member for fifteen years until April 2015. However, on his own account, his specialisms are in writing medical reports on victims of torture and in paediatric neurology and child developmental issues. He also says that he is an expert in vaccine damage issues and toxin damage including damage to the brain. He has reported on scarring and industrial injuries before Tribunals.

26. In spite of the lengthy statement of his expertise, I can find nothing in Professor Lingam's statement relating either to his previous practice experience or medico-legal experience which qualifies him as an expert to report on WM's conditions. His only relevant qualification is that of a Fellow of the Royal College of Physicians and Surgeons which is a general qualification. He is not, it appears, someone with particular expertise as a psychiatrist or psychologist.

27. Although, once again, this report was filed out of time on 8 March, I received it without objection from the Respondent.

28. The relevant part of Professor Lingam's report reads as follows (produced in identical form to the report itself):-

> "1. I REMAIN CONCERNED ABOUT [WM] COMPLEX MEDICAL NEEDS WHICH ARE GETTING WORSE. MY CLINICAL VIEW IS THAT HE WILL NEED AN ASSESSMENT BY SOCIAL SERVICES AND HIS CARE NEEDS WILL NEED TO BE REVIEWD (sic)
> 2. From the time I saw him I thought that he is now clinically depressed and this will need urgent attention. [WM] is also concerned about his future without [SS] and he is concerned what will happen to him. Social services should look into this element. My clinical assessment is that [WM] will not manage independent living as at present without the help of [SS]."

29. Although Professor Lingam says that he understands his duty to this Tribunal, it is far from clear that he does. He cites from "new research" in support of what causes depression which he says may be linked to a "higher level of inflammatory markers" and makes some quite outlandish suggestions based apparently on this research about how depression can be abated by reducing inflammation. He does not say what this "new research" is, who has published it or whether it is tested in any way. He does not explain what is the relevance of that research to this case. For example, his apparent suggestion that WM could carry out regular exercise of light walking for two to four hours per week takes no account of WM's condition of agoraphobia.

30. Nor does Professor Lingam say on what he bases his view that WM is "now clinically depressed" nor how he reaches the view that WM's "complex medical needs" "are getting worse" since it does not appear that he has ever reviewed WM in the past or been involved in his treatment.

31. For those reasons, whilst I take into account what Professor Lingam says about the need for Social Services to assist if WM is to be deprived of the Appellant's care, I cannot place any weight on this report as to WM's medical conditions.

<u>Dr Rozmin Halari, BSc, MSc, PhD, C.Psychol, DClinPsych, DClinHyp, AFBPSs</u>

32. Dr Halari is a Chartered Consultant Clinical Psychologist and Honorary Senior Lecturer at Kings College, London. His report dated 15 February 2017 was before the First-tier Tribunal Judge and it is largely on the basis of the Judge's failure to deal with this report that I found an error of law in the First-tier Tribunal Judge's decision.

33. Dr Halari's report is based on one interview of one and a half hours with WM and the Appellant. Dr Halari bases his assessment on observation of WM and what he is told by both WM and the Appellant. He also carried out some psychometric tests and appears to have had at least some of WM's medical records before him.

34. I do not need set out what is said by Dr Halari about how the Appellant knows WM as that is dealt with in the evidence of the Appellant and WM. It is though instructive to note what Dr Halari reports about the relationship between WM and the Appellant as follows:-

> "[18] [WM] told me that he is "entirely dependent" on [SS] "for my eyes" and with regards to his activities of daily living and emotionally. He emphasised that [SS] is like his family.
> [19] [WM] reported that he has two brothers. He became very distressed and shaky in the assessment. One of his brothers is a Professor at Greenwich University. He told me that his family have never been supportive of him. He has been living alone with very little to no contact with his family. He said that life became very difficult for him when his physical and mental health started to deteriorate."

35. Likewise, the Appellant reported to Dr Halari as recorded at [25] and [26] of the report that he "has formed a very food [good] friendship with [WM] who he cares for and he provides him with practical and emotional support". He says that this is a "genuine friendship", that "[WM] is very vulnerable" and that he (the Appellant) "has always tried his best to care for, and protect [WM]." The Appellant has apparently returned to Bangladesh on four occasions since knowing WM and although he asked friends to support WM in his absence he says that WM became depressed and lost weight.

36. WM reported to Dr Halari that "he is very dependent on [the Appellant} for practical and emotional support". The Appellant is said to ensure that WM takes his medication, helps him to exercise and cooks and cleans for him. It is also clear that they have a social relationship as friends and do some things together such as going to Church. WM has reported that he "would not be able to cope" if the Appellant were removed. He says he would feel depressed, lonely and socially isolated as he would have no friends or family to help him. WM describes the Appellant as "[his] family, [his] only family."

37. In terms of the psychological impact of the Appellant leaving the UK, based on what is said by WM and the Appellant and the "central role" which Dr Halari understands the Appellant to have in WM's life, Dr Halari says that the Appellant's uncertain immigration history has caused both the Appellant and WM "to feel very anxious and low in mood". He goes on to say however that WM feels low in mood because of his own physical health but his low mood "has been exacerbated by the fear" that the Appellant might leave. He considers the friendship between the Appellant and WM to be a "protective factor" for WM. The Appellant leaving "would have significant negative impact" on WM's physical, social and emotional wellbeing and a "significant detrimental impact" on his physical and mental health.

WM's Evidence

38. WM has provided a statement dated 6 February 2015 and contributed to the joint statement dated 15 March 2018 which was apparently written by the Appellant and part of which is that of the Appellant. WM adopted both statements. There is also a statement dated 17 May 2016 but that simply replicates the statement of 6 February 2015 and it was not necessary to deal with that separately.

39. Due to his medical conditions, WM clearly found it very difficult to give his oral evidence. At times, particularly when speaking about his family, he became very agitated and had to be given time to calm down. I agreed with Ms Malhotra before he gave evidence that we would take his evidence as slowly as needed, that he could be given breaks as often as was necessary and that, if she considered that any of the cross-examination was inappropriate in light of his anxiety, she should intervene. I did not though have any medical evidence to suggest that his mental or physical health conditions meant that he was unable to give oral evidence and be cross-examined.

40. WM explained his family circumstances. He has two brothers and one sister. His sister lives in USA. One of his brothers lives in Glasgow. The other lives, he thinks, in London. That brother was, when WM last heard, a Professor at Greenwich University. It was quite clear from WM's evidence that there is no love lost between siblings. He considers that his siblings have treated him cruelly and do not care about him at all. His mother, who was previously living in USA with his sister, has recently died. I accept that WM has no support from his family and could not rely on support from that source in future.

41. WM spoke about his medical conditions. Those are adequately dealt with by the medical evidence which I have set out fully above. He did though update the evidence in this regard. He said that he has regular monitoring in respect of his atrial fibrillation which is controlled by warfarin but recent readings have shown some deterioration which is being monitored by the nurse at his GP practice. He also confirmed in response to questions that he has a blood test with the nurse every three to four months, that he generally sees the nurse every three to four weeks but is presently seeing her every week and that he sees his care worker (apparently Ms Ibrahim) every two to three months.

42. In terms of the assistance which the Appellant gives to him, WM said that, whilst his physical condition is deteriorating, his psychological condition was helped by having the Appellant living with him. He does not get panic attacks when accompanied by the Appellant. He could not for example have attended to give evidence if the Appellant had not been with him.

43. WM said that, before the Appellant came to live with him, he had cleaners and people who came to take his laundry. He did not have help with his medication although he said that he had not been on warfarin long before the Appellant came to stay and his glaucoma had developed since. The Appellant helps him with his eye drops.

44. WM says in his written statement dated February 2015 that the Appellant "has become part of [his] family and when all [his] family members left [him] he has been [there for him]". He "started to treat him as [his] own younger brother as none of [his] natural brothers care for [him]". He says that the Appellant "treats and respects" him

as an older brother. In his more recent statement dated 15 March 2018, he says that the Appellant "is like a son".

45. WM was insistent that if the Appellant were forced to leave, he would not get adequate care from Social Services. It was a little unclear whether he had asked, at least whether he had done so recently. If he had, though, it was on the basis of wanting a "live in" carer. He had not explored other options. He was insistent that a carer visiting a few times per day would not assist and that he needed someone twenty-four hours per day. He said that the Appellant had to call an emergency doctor a few times (although no details were provided about when and why) and he would not feel safe without someone there to help him if necessary.

The Appellant's Evidence

46. The Appellant has provided three witness statements dated 6 February 2015, 17 May 2016 and 8 December 2017. He also contributed to (and apparently wrote for WM) the statement dated 15 March 2018. He adopted those statements.

47. The Appellant met WM in a coffee shop when the Appellant was with a friend. They chatted and exchanged numbers. The Appellant was at the time a student sharing a flat with others. He visited WM occasionally. The Appellant then had a problem with his housemates which led to the police advising him to move out. That he did and asked WM if he could stay with him temporarily. He moved in with WM in October 2011. WM then asked him to stay and he did. That version of events differs from what is said in the Appellant's written statement and the written statement of WM which suggests that the Appellant moved in with WM because WM was very ill. The date when he moved in is however consistent and nothing turns on that discrepancy.

48. Until about 2014/2015 the Appellant continued to study in accordance with his leave. However, his college licence was then revoked and he was unable to afford to complete his education. He says that he has not studied or worked since then. The Appellant confirmed that during the period when he studied and worked while he lived with WM, he worked ten hours per week and went to college three to four days per week. The college was not in the local area. When asked how WM had coped when the Appellant went to college and worked, the Appellant said that he taught WM to use a mobile phone and to call if he needed to and the Appellant would come back or try to arrange something (although it was not said that WM ever needed to rely on this facility).

49. The Appellant has family in Bangladesh. His mother calls him every day. He says that his family also know WM and sometimes speak with him. He confirmed that his family provide no monetary support. He referred to WM as being "his only family" in London. The Appellant's oral evidence that he remains in close contact with his family in

Bangladesh is contrary to his written statements dated 6 February 2015 and 17 May 2016 where he says that "with the passage of time my relationship with my family members has become distant and I do not consider my ties to Bangladesh to be subsisting at present." For that reason, I do not accept the assertion in that written statement that he and WM are "each other's sole guardian and next of kin."

50. It is also clear from the Appellant's evidence that, whilst he does live with WM, he is not there all the time. The Appellant confirmed that he has some friends and a girlfriend. He said that he has "enough time for himself". His friends know WM and sometimes come to visit and sometimes they visit his friends.

51. The joint witness statement dated 15 March 2018 provides a "week daily life diary" about the care which the Appellant provides. He says that he gets up and helps WM to get up and get dressed, makes breakfast for him and gives him medication. The Appellant then goes out alone for exercise or to play football. He sleeps at the weekend. Around 11-12am, the Appellant gives WM a bath twice per week. He accompanies WM if he has an appointment or wishes to go shopping. WM sometimes sleeps or watches television. The suggestion in the diary that WM needs help to use the lavatory was contrary to WM's own evidence that he does not, provided he is at home.

52. At weekends, the Appellant says that sometimes he takes WM out late morning for a coffee, or to go to Church or the library. Sometimes WM stays in bed.

53. The Appellant makes lunch for WM and sometimes feeds him. Occasionally they go out for lunch. After lunch, WM sleeps. Again, if WM wants to go out, the Appellant will accompany him. The Appellant makes dinner for WM, helps him undress for bed and gives him his eye drops.

54. The Appellant accepted that WM is able to collect prescriptions if he is feeling well because the GP surgery is close but, if WM could not go, he sometimes collects prescriptions. The Appellant's evidence about how often WM sees his care worker, Ms Ibrahim, was not consistent with WM's evidence. The Appellant said that he sees Ms Ibrahim once per week and WM and he see her every other week. When it was pointed out to him that WM said that he sees Ms Ibrahim only every two to three months, the Appellant said that "it depends" and that sometimes he goes to see Ms Ibrahim alone if WM was unable to go or that she calls him to make an appointment.

55. The Appellant is registered as WM's carer with Westminster Council. He gave evidence that he registered with them in 2015-2016. The documentation shows that the Appellant's registration with the "Carers Network" was completed on 20 January 2015. It appears from a letter of that date that this was registration for a "Carers Emergency Card". There is appended to that letter a questionnaire setting out

the "Emergency Care Plan Information" for WM. What is described as the "Emergency 24-hour Care Plan" is part of that questionnaire and is broadly consistent in outline form with what the Appellant says he does for WM. However, because this is in outline form, the fact that the Appellant is not providing twenty-four hours' care is the more evident. The plan describes how the Appellant helps WM to get up and go to bed, makes his meals, supervises his medication, and goes with him to appointments or if he wants to go out. It does not appear though that the Appellant is at home for seven days per week, twenty-four hours per day and indeed, that is consistent with the Appellant's oral evidence.

56. There is a letter in support of the Appellant from the Carers Network dated 16 April 2015 which states as follows:-

> "His caring role includes helping [WM] getting out of bed, getting dressed, preparing his meals and sometimes helping to feed him, supervising his medication, accompanying [WM] at appointments and when he goes out, making sure [WM] has everything he needs before he goes out such as his keys and freedom pass, helping [WM] sit on and get up from the toilet, helping him get up from any sitting position and putting [WM] eye drops in his eyes before he goes to bed, and supervising [WM] when he is washing as he suffers from falls. [SS] states that he also carries out household tasks such as cleaning and the shopping, and dealing with the paperwork.
>
> [SS] states that he has to carry out the above as [WM] suffers from Atrial Fibrillation of the heart, Glaucoma (vision impairment), difficulty walking due to stiffness in his limbs and spells of dizziness, Obsessive Compulsive Disorder (OCD), for example repeated hand-washing and fear of open spaces and tall buildings, which causes him to suffer from panic attacks and disorientation. [WM] states that he is seeing a therapist for this. [SS] and [WM] state that [WM] needs to be accompanied at all times for his own safety for the above reasons.
>
> [WM] also states that he does not trust anyone else to carry out the above tasks for him."

57. The Appellant confirmed that he has no relevant qualifications to act as a carer. His qualifications are in business administration. He had an interview when he registered with Westminster Council and has had some classes on how to care for people. He has contact with the Carers Network if he needs it. He also said that he was brought up in a family where elders are respected and the disabled are cared for and as such, WM is like an "elder brother" who should be cared for and respected.

58. The Appellant confirmed that he is not paid by WM for his care. However, he is clearly supported by him in terms of board and lodgings and he confirmed that if he needs money, WM will give it to him.

59. The Appellant confirmed that he and WM had asked Social Services about what assistance they could offer. Contrary to what is suggested by the medical evidence and WM's evidence that the Appellant does everything for him now, the Appellant said that WM is still currently

being provided with help with cleaning and weekly laundry. His evidence about the care which Social Services said they would be able to provide if the Appellant were not there is that they could not provide live-in care, twenty-four hours per day. It is not said that any other more limited options have been explored.

DISCUSSION AND CONCLUSIONS

Care in the Community Policy

60. There is no immigration rule which provides for the situation of carers of British citizens. The Care in the Community Policy provides the only route. That policy provides only for a short period of leave to remain in order for arrangements for future care of the sick relative to be put in place. Although the policy refers only to relatives in relation to the initial period of leave to remain, it does go on to refer to additional periods being sought in order to look after a sick relative or friend. As such, the policy is sufficiently wide to cover the circumstances of this case.

61. I do not though need to deal with the provisions of this policy in any detail because Ms Malhotra accepted that the Appellant cannot show that he falls within the policy because he has failed to provide the necessary evidence. He has not provided evidence from Social Services (or indeed any other medical professional) to show why suitable alternative care arrangements are not available. As such, it was not suggested on the Appellant's behalf that the Respondent's decision is not in accordance with the law for failure to have regard to her own relevant policy.

Article 8 ECHR

62. The basis on which the Appellant seeks to succeed therefore is, as it was before the First-tier Tribunal Judge, that he should be permitted to remain based on his rights under Article 8 ECHR and/or those of WM.

63. It is accepted that the Appellant cannot meet the Rules in relation to his Article 8 rights. Appendix FM very clearly does not cover the circumstances of this case. The Appellant does not say (or at least does not now say) that there are very significant obstacles to integration in Bangladesh where he has family members with whom he now admits he remains in close contact. He has not been in the UK for twenty years. Paragraph 276ADE of the Rules is not met.

64. The Appellant submits however that he can succeed based on Article 8 outside the Rules because he says that removal will disproportionately interfere with his family and/or private life and that of WM.

Family Life

65. I can deal with this aspect of the appeal very shortly in light of what I say at [9] to [11] of my error of law decision appended to this decision. In common parlance a “family relationship” is one based on either blood ties (or similar ties based on adoption) or a marriage or partner relationship akin to a marriage. The relationship between WM and the Appellant is neither. The case of Lama to which I refer in my error of law decision is based on highly unusual circumstances. It is an extreme case. The facts there go way beyond the level of dependency which exists in this case. Such cases are inherently fact sensitive as the decision in Lama makes clear. I am not in any event bound by the decision in that case.

66. WM’s reliance on the Appellant is based on the care which the Appellant provides to him. WM says that he views the Appellant as a younger brother and says that the Appellant sees him as an elder brother because that is the way in which he considers the sibling relationship should work. His assertions about the familial nature of the relationship are based on the care which the Appellant gives. As I have noted, WM became very agitated when he spoke of his brothers who do nothing for him. He expects that they should do so. That the Appellant is willing to provide the care which WM believes that family members ought to provide is the reason why he views the Appellant as a brother (or a son).

67. Similarly, the Appellant’s evidence that he sees WM as an elder brother is based on his experience of Bangladeshi culture where younger people respect their elders and take care of them or others who suffer from some disability. Although the Appellant referred to WM as his only family in London, it is clear that the Appellant retains close contact with his family in Bangladesh and I do not accept that his relationship with WM is of the same nature.

68. Put simply, the factors on which the Appellant and WM rely as showing a family relationship are not sufficient to show that such exists. WM’s dependence on the Appellant arises from the Appellant’s position as a carer. WM would probably rely on anyone who cared for him in the same way. It is not based on emotional ties akin to a family relationship. Similarly, the Appellant would probably help any person in WM’s position in the same way because of his cultural upbringing and desire to help. This is a relationship of cared for person and carer.

69. The medical professionals who have provided evidence speak of the relationship being a close friendship. I am prepared to accept that the relationship is a close one based on the level of dependency which WM has on the Appellant. However, where those professionals speak of any other form of family relationship, they do so in the context of reporting what they are told by WM and the Appellant. It does not appear from the evidence that they have addressed their own minds to whether the relationship is of that nature. I do not accept that the evidence shows that the relationship goes that far.

70. For the above reasons, I do not accept that Article 8 (family life) is engaged in the circumstances of this case.

Private Life

71. I accept that Article 8 (private life) is engaged. The issue in this case is whether the removal of the Appellant would disproportionately interfere with the private life of the Appellant and that of WM. The Appellant does not rely on other aspects of his private life nor could he do so. He said he has other friends but provides no details. He mentioned a girlfriend but provided no particulars and did not say that he could not be removed due to that relationship. As I have already noted, he has provided no evidence of very significant obstacles to integration in Bangladesh where his family members live.

72. The main impact of the interference caused by removal of the Appellant will be on the private life of WM linked to WM's medical conditions and I begin therefore with that aspect.

73. I start with the medical evidence. None of the medical professionals/experts who have provided letters/reports in this case attended to give oral evidence. I do not suggest for one moment that their evidence is anything less than truthful but the absence of oral evidence from them whether as witnesses or experts means that the extent of their evidence cannot be tested by cross-examination.

74. This is particularly pertinent where, as appears to be the case here, the evidence is largely based on what the medical professionals are told about the nature of the care relationship. There is no suggestion that any of those professionals have attended WM's home to observe the care which he needs and the extent to which the Appellant provides that care. This has led to a degree of exaggeration in some of what is reported. For example, it has been assumed by the GP and Westminster Adult Mental Health Services that the Appellant carries out all the daily living needs for WM. However, it became clear in evidence that WM still has other help with cleaning and laundry.

75. Similarly, there is a suggestion that WM told Dr Halari that he needs the Appellant "for his eyes" and yet the medical evidence in relation to his glaucoma does not suggest that WM's sight is unduly affected. Insofar as that relates to WM's anxiety condition and that he closes his eyes when he is outside to avoid things that frighten him, there is some conflict within the evidence about what WM can do. His GP for example, accepts that WM can go to the local shop or church without needing the Appellant and the Appellant confirmed that, provided WM is feeling well, he is able to go to the GP practice to collect prescriptions.

76. Insofar as the evidence suggests that WM needs the Appellant to assist his mobility (see in particular the letter from Carers Network), that evidence is exaggerated based not only on my observations of WM when he attended the hearing to give evidence but also on the

assessment of his disability allowance for which he receives only the lower rate component for mobility.

77. It is also notable that the medical evidence has expanded over time. Westminster Adult Mental Health Services do not appear to have had any involvement with WM until the Appellant went to live with him in 2011. I accept that may be because WM was unaware of the option of such help. However, it also suggests that WM was able to manage his several psychological problems without any help until that stage. He had been living with those conditions in some cases from childhood. In relation to the evidence from that organisation, it is not until the letter of June 2016 that one finds mention of the contribution which the Appellant makes to WM's care.

78. Although I recognise and accept the relevant expertise of Dr Halari, his report is based only on observation of the Appellant and WM during one quite short meeting, their reports of the care relationship, WM's medical records and psychometric testing. Dr Halari has not been involved in WM's treatment over time. That is particularly important because Dr Halari has no knowledge of how WM was able to cope before the Appellant came to live with him.

79. I accept what Dr Halari says about the likely negative impact of removal of the Appellant on WM's mental health, at least in the short term. It is less clear that Dr Halari has the relevant information on which to base any assessment of the impact on WM's physical well-being and, indeed, WM himself accepted that his physical health is in decline even with the presence of the Appellant.

80. I do not accept Dr Halari's suggestion that removal of the Appellant would impact to any significant degree on the Appellant's own mental health. Although Dr Halari says that "the Appellant is displaying the signs and symptoms of low mood", there is no other supporting evidence to suggest that the Appellant has become depressed, has consulted any medical professional on that account or has been prescribed any medication to deal with depression.

81. The medical evidence is also to some limited extent inconsistent with the oral evidence given by the Appellant. The impression given by the medical professionals (or perhaps more accurately in reporting to those professionals) is that the Appellant is present in the home with WM all day every day. That is not the Appellant's own evidence. He was able to work and study until 2014/15 and WM was left in the house without him during that time. The Appellant has returned to Bangladesh on four occasions and although he says that this adversely affected WM's well-being, it did not prevent the Appellant leaving WM on subsequent occasions when he wanted to visit his home country.

82. The medical evidence makes clear that WM is already receiving assistance from various organisations and there is no reason to

suppose that such assistance with his physical and mental well-being would not continue if the Appellant were removed. I recognise that WM would prefer to have the Appellant (or another carer) living with him full-time but, if the Appellant were not there, WM's needs would be assessed and provided for by Social Services as necessary by those Services or other relevant organisations.

83. I was unimpressed by the evidence of WM and the Appellant that WM would not be provided with adequate care if the Appellant were removed. The only enquiries which either of them appears to have made of Social Services is whether Social Services would provide a live-in carer for twenty-four hours per day seven days per week. I have no difficulty in accepting that Social Services have said that they would be unable to provide that care. However, no-one has asked that department to assess what care WM would need and how that could be provided. WM could, for example, be provided with regular meals. He could be provided with qualified carers to visit to administer medication. He already has assistance with laundry and cleaning.

84. One of WM's objections to not having a carer living with him full-time is that he may need emergency medical assistance overnight. However, I was given no examples of occasions when WM or the Appellant have had to call for such emergency assistance and there is no mention of any such occasions in the medical evidence. The Appellant says that, when he worked and studied, he taught WM to use a mobile phone to contact him if necessary. There is no reason why WM could not use a phone in an overnight emergency by calling the emergency services himself.

85. None of the medical evidence addresses one of the main issues which arises in this case, namely how it is that WM was able to manage before the Appellant came to live with him in 2011. That affects the weight which I can give the medical evidence. Prior to 2011, WM already suffered from most of the health conditions from which he now suffers. Indeed, as I have already noted, some of those date back to his childhood. WM's own evidence is that he has had little or no contact with his family for some time. He describes himself in his written statement as "a singleton" who has never been married, and has only a few friends. However, it appears from his statement that this has been the position for most of his life. I appreciate that he is getting older and may need more assistance but he is already receiving that assistance from those who are qualified to give it.

86. It is of course also far from certain that if the Appellant were given leave to remain he would stay living with WM. He has already developed friendships of his own and has a girlfriend. I have already observed that he is not at home for twenty-four hours, seven days per week and said himself that he gets enough time for his own life. He is a relatively young man who is unlikely to want to tie himself to caring for an elderly person full-time, particularly since that is not his

profession and he has other qualifications which would enable him to obtain a job outside the home.

87. For the above reasons, although I accept that the Appellant's removal would have a detrimental effect on WM's mental health and to a lesser extent physical well-being, I am not persuaded by the evidence that the effect is so significant that it could not be managed with input as necessary from the organisations who assist him already together with Social Services and other similar services, particularly since many of WM's health conditions are long-standing and he has managed those alone or without the assistance of the Appellant for many years.

88. Although I have found that the relationship between WM and the Appellant does not amount to family life, I accept that they are friends even if that friendship is borne out of the carer relationship. There is a significant age gap between them. The Appellant is aged twenty-eight years. WM is aged sixty-eight years. However, they live in the same house, there is some evidence to show that they sometimes attend social functions (with the Appellant's friends) and that they do some things together in the house such as watch TV or talk. I have no reason to disbelieve that evidence.

89. The Appellant is a companion to WM as well as a carer. I accept WM's evidence that he would feel lonely if the Appellant is removed and might become socially isolated. However, I come back to what I say above. WM has never had the close support of his own family members. He has apparently lived alone for most of his adult life. I note also that he attends church which is nearby and which, according to the GP's evidence and that of the Appellant, WM is able to go to unaided. WM also says that he has a few friends. I do not accept therefore that WM would be completely isolated if the Appellant were removed. It is likely that, at least, the church community would rally to his aid if he needed them.

90. I also accept that the Appellant would be upset about having to leave WM as they have developed a friendship of sorts and he says he would feel guilty about leaving him behind. However, the Appellant is a young man. Even in the UK, he has other friends with whom he socialises. His family members are all in Bangladesh. There is no suggestion that he would not be able to reintegrate into the community there. He could form (or resume) his life there in the same way as he would if he remained in the UK. He has qualifications which would assist him to obtain employment.

91. I have no doubt that those who provide local adult care services, whether it be mental health care or social services care, would prefer that a friend or relative provide that care where possible to ease the pressure on public services. I do not consider it to be stretching judicial notice too far to note the resource difficulties within the social care system at present. However, as a British citizen, WM is entitled to social care if he does not have any other care available. It appears

that he lives in council accommodation at present and receives publicly funded support as necessary. That could be extended to include social care so far as necessary if the Appellant were removed.

92. I turn then to consider the public interest in removal of the Appellant. I accept that the Appellant has been in the UK lawfully since he arrived albeit on a temporary basis. He had leave as a student but as he stated in evidence, he did not continue his studies after his last college's licence was revoked in 2014/15 because he could not afford to do so. When he made the application leading to the decision under appeal, therefore, he had no basis of stay under the Rules. Since his last leave expired, he has remained only on the basis of statutory leave which is precarious by its nature.

93. Although section 117B (5) requires that only little weight be given to a private life formed whilst a person is in the UK on a precarious (temporary) basis, the circumstances in this case are unusual. In any event, "little weight" is not synonomous with "no weight". On the other hand, the main interference of the Appellant's removal is with the private life of WM rather than that of the Appellant who is unlikely to be affected as much by separation from WM.

94. Section 117B (3) provides that the public interest requires persons to be financially independent. The Appellant says in his statement that he is not reliant on public funds. It might be said that he is in fact obtaining a benefit from the public purse albeit indirectly. He gave evidence that he is not working. His family in Bangladesh do not provide any monetary support. His only income derives from WM who is himself dependent on public funds. However, I also note that no additional cost is claimed from the public purse for the Appellant, that he has been assisting with the care of WM for which otherwise a paid carer might have to be provided and that the Appellant would undoubtedly work if he were given leave to remain. This is not therefore a consideration which weighs against the Appellant.

95. I have already noted that, based on the current evidence, the Appellant cannot meet the Carer in the Community Policy or the Rules. Section 117B (1) provides that maintenance of effective immigration control is in the public interest, that is to say, the system favours allowing immigrants to remain, in general, only if they are able to meet the legal requirements of that system.

96. I have regard to what is said by the Supreme Court in Agyarko and Ikuga v Secretary of State for the Home Department [2017] UKSC 11, that, in a case where the appellant does not meet the Rules, removal of the person with no entitlement to remain in the UK is likely to be disproportionate only where the effect of that removal is "unduly harsh". The question whether the interference has an unduly harsh effect in this case applies equally to the effect on WM as to the effect on the Appellant (in fact probably more so).

97. I have set out at [71] to [90] above, what I assess to be the effects of the removal of the Appellant on the private lives of the Appellant and WM. I have regard to the potential impact on social care resources of the need to provide WM with alternative care at public expense. However, the Appellant is not a person who is a qualified carer and seeks to remain in that capacity within the Rules. He seeks to do so outside the Rules on the basis that, if he is allowed to stay, he might continue to care for WM. As I have already observed, though, he might not do so. At the very least, he is likely to want to find work suited to his qualifications so that he can support himself (as he did when he was entitled to work until 2014/15).

98. Furthermore, the fact that there may be a gap in the resources of one area of public services does not justify the undermining of the immigration control system. It is in the interest of a firm and fair system of effective immigration control that those who are permitted to remain do so within the Rules and are only permitted to do so outside the Rules where the consequences of removal would be "unduly harsh". Although I accept that there are likely to be detrimental consequences in particular to WM, caused by the Appellant's removal, those consequences are capable of being alleviated by assistance from public authorities and are not of a level which is so significant as to be "unduly harsh".

99. Having balanced the interference with the private lives of the Appellant and WM against the public interest in removal of the Appellant, I am satisfied that the decision to remove the Appellant to Bangladesh is not disproportionate. The Respondent's decision does not involve a breach of the Human Rights Act 1998. Nor is her decision otherwise unlawful. For those reasons, I dismiss this appeal.

DECISION

The Respondent's decision does not involve a breach of the Human Rights Act 1998 (Article 8 ECHR). Nor is it unlawful on any other basis. I therefore dismiss this appeal.

Signed

Upper Tribunal Judge Smith Dated: 11 April 2018

ANNEX: ERROR OF LAW DECISION

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/20791/2015

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On Friday 15 December 2017	.........**11 January 2018**.........

Before
UPPER TRIBUNAL JUDGE SMITH

Between

[S S]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Turner, Counsel, Imperium Chambers instructed on a direct access basis
For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
No anonymity order was made by the First-tier Tribunal. There is no good reason to make an anonymity direction in this case.

[SEE ANONYMITY ORDER IN MAIN DECISION]

DECISION AND REASONS

Background

1. The Appellant appeals the decision of First-tier Tribunal Judge Geraint Jones QC promulgated on 23 March 2017 dismissing his appeal against the Respondent's decision dated 22 May 2015 refusing his application for leave to remain outside the Immigration Rules on human rights grounds ("the Decision").

2. The Appellant is a national of Bangladesh. He came to the UK on 26 August 2009 as a student and his leave was extended in that capacity until 30 March 2016. On 7 February 2015 he made an application to remain which was refused by the Respondent's decision under appeal. That application is based on his relationship with [WM] for whom the Appellant claims to act as an (unpaid) carer.

3. The Judge did not accept that Article 8 was engaged in terms of the Appellant's (or [WM]'s) family life. He accepted that the Appellant's private life was engaged but not that of [WM]. The Judge concluded that the interference with the Appellant's private life occasioned by his removal would be proportionate.

4. The Appellant seeks permission to appeal on essentially two grounds. The first challenges the Judge's finding that the Appellant's family life is not engaged by his relationship with [WM] and submits in the alternative that the impact of the Appellant's removal on [WM]'s private life needed to be assessed. Reliance is placed on Beoku-Betts v Secretary of State for the Home Department [2008] UKHL 39. In relation to the proposition that an impact on the private life of another person needs also to be factored into the Article 8 assessment the Appellant relies on the starred decision of Kehinde v Secretary of State for the Home Department [2001] UKAIT 00010 which is not only a somewhat dated decision but also does not appear to support the proposition which the Appellant puts forward.

5. The second ground is that it was not open to the Judge to find that [WM]'s evidence was exaggerated given the extent of the documentary evidence before the Judge. Specific mention is made of the report of Dr Halari which report is not mentioned by the Judge.

6. Permission was granted by First-tier Tribunal Judge PJM Hollingworth in the following terms:-

> "1. It is arguable that the Judge should have dealt more fully with the extent of the evidence submitted in relation to the role played by the Appellant, taken into account the conditions suffered by [WM].
>
> 2. It is arguable that the Judge should have considered the question of the extent of real support provided and whether the friendship went beyond normal emotional ties. It is arguable that the Judge should have dealt with or dealt with more fully the report of Dr Halari.

> 3. It is arguable that a fuller analysis of the range of factors put forward on behalf of the Appellant, together with the weight to be attached to those factors is material to the carrying out of the proportionality exercise and that the proportionality exercise has been flawed by an insufficient analysis of all the relevant factors."

7. The appeal comes before me to determine whether there is a material error of law in the Decision and if so either to re-make the decision or to remit to the First-tier Tribunal to do so.

Discussion and conclusions

8. The Judge dealt with the claim that family life exists between the Appellant and [WM] at [6] of the Decision as follows:-

> "... At the outset, Mr Gajjar optimistically suggested that this appeal should be dealt with as though it was a "family life"case under article 8. When I pointed out that there was no familial relationship between the appellant and [WM] he contended that there was a relationship "akin" to a familial relationship. I reject that submission. There is no family connection whatsoever between the appellant and [WM]. It has not been suggested that they are in any kind of relationship."

9. In support of this aspect of the appeal, Mr Turner relied heavily on the case of Lama (Video Recorded Evidence – Weight – Article 8 ECHR: Nepal) [2007] UKUT 16 ("Lama") (a decision of the former President of this Tribunal) which found family life to exist between a severely disabled man and his adult carer. As I pointed out to Mr Turner, this was an extreme case on its facts. As Mr Wilding also pointed out, the former President himself recognised at [37] of that decision that his finding in relation to family life in that case might be viewed by some as controversial. As that decision makes clear in any event (and consistently with Court of Appeal jurisprudence in this area), whether family life exists between adults depends in large part on the factual evidence. Reliance on the facts in another case even if it might appear analogous therefore is unlikely to be determinative.

10. In this case, the highest the case on family life can be put is the statement of [WM] that he treats the Appellant as a younger brother because his own brothers do not care for him. However, that appears from his statement to be due to the relationship of carer which the Appellant has undertaken. Otherwise, the statements of [WM] and the Appellant speak of their relationship in terms of a friendship albeit a close one and a dependency of sorts which turns on [WM]'s illnesses.

11. The other independent evidence does not assist the Appellant's case in this regard either. I will consider the medical evidence in more detail when dealing with the second ground. However, the evidence of those who treat [WM] is that the Appellant is his carer. The evidence of Dr Halari, albeit taken from a short interview of the Appellant and [WM] rather than direct observation of the relationship over time, speaks of the relationship as one of a "live in carer" and a "great friend". Again, based on [WM]'s reporting, Dr Halari says that [WM] considers that the

Appellant is his family and his only family. However, that again appears to depend on the fact that [WM]'s own family do not look after him in the same way as does the Appellant. On the evidence here, there is no error of law made by the Judge in rejecting the submission that family life exists between the Appellant and [WM].

12. As the former President observed in Lama, however, the relationship can still be one which needs to be considered in the context of private life. The Judge did take into account the impact of removal on the private life of the Appellant in terms of the disruption to the relationship between him and [WM]. The Appellant's complaint in this regard is that the Judge completely discounted the impact on [WM]. The Judge dealt with this issue as follows:-

> "[8] The next issue is whether [WM]'s private life comes into play. In the case of family life the higher courts have held that it is not only the family life of the immediate appellant, but also the family life of his immediate family members that needs to be taken into account. That is understandable in the context of family life. Implicitly, but not expressly, Mr Gajjar submits that when private life is considered, I have to take into account the private life of persons associated with the appellant and not simply the private life of the appellant himself.
>
> [9] I reject that submission. If it is correct, it would mean that when determining a private life article 8 case, the Tribunal would be obliged to take into account, if an appellant expected to depart the United Kingdom, the impact that that might have on the private life of all manner of people with some kind of association with the appellant. The various degrees and types of association would be numerous and no doubt ever more inventive submissions would be advanced to justify the private life of some friend or acquaintance being taken into account in such an appeal.
>
> [10] Thus I direct myself that it is only the appellant's private life that is relevant and that the *Razgar* questions must be answered by reference to the appellant alone."

13. I have some sympathies with the views expressed by the Judge in this context. It cannot possibly be right that in considering whether a person's removal from the UK involves a breach of human rights, a Tribunal Judge is bound to consider the impact on others such as friends and acquaintances. In a "family life" case, by contrast, it goes without saying that the impact on other family members must be considered. However, the question for the Tribunal is whether removal of an appellant involves a breach of human rights and that must involve consideration of the interference which removal entails. It is therefore relevant in this case that [WM] will lose a great friend and his full-time carer.

14. All that said, though, I am not satisfied that the Judge has made a material error of law in this regard in spite of the express self-direction at [10] of the Decision. At [13] to [24] of the Decision, the Judge considers the evidence relating to the care which the Appellant gives to [WM] and

considers in the context of the Article 8 assessment the impact of removal of the Appellant on that care. The Judge takes that aspect of the Appellant's private life into account when dealing with both the interference caused by the removal and the proportionality of that interference. As I observed to Mr Turner in the course of his submissions, it matters not that the Judge did not expressly refer to the impact of the Appellant's removal on [WM] as the impact on the Appellant's private life is the other side of the same coin since it is the care which the Appellant provides to [WM] which forms the central tenet of the Appellant's own private life claim.

15. I turn then to the second ground which concerns an alleged failure by the Judge to have proper regard to the medical evidence as to the care provided by the Appellant. Mr Wilding accepted as he had to that the Judge has failed to refer to or deal with the report of Dr Halari. Mr Wilding submitted however that this failure was not a material error as that report did not take matters any further.

16. When I finally succeeded in focussing Mr Turner's very lengthy submissions concerning the evidence before the Judge, he submitted that there were in fact four central documents which the Judge ignored (apart from Dr Halari's report). The first is a care plan dated 21 June 2016. That refers to the contribution made by the Appellant to [WM]'s care. It also refers to the impact which the Appellant's presence has had on his care. The second is a letter from the Appellant's GP which was written at the instigation of [WM] and which reports [WM] saying that the Appellant is his "full time carer" and that "he [WM] cannot do without him". The third is a letter from the local CMHT again stating that [WM] relies on his "live-in carer". The fourth indicates that the Appellant assists [WM] with administering eye drops for [WM]'s glaucoma. If this ground were based on those documents alone, I would have no hesitation in finding any error not to be material. The Judge took into account [WM]'s evidence about the contribution which the Appellant makes to his care although he did not necessarily accept all of it. Those documents simply reflect that evidence.

17. However, I am unable to accept Mr Wilding's submission that the failure to have any regard to Dr Halari's report is not material. True it is that the report is based only on an interview of one and a half hours and the doctor's observations about the care which the Appellant provides are therefore necessarily limited. There is however evidence not contained in the other documents about the impact on [WM]'s psychological health of the Appellant's removal. That evidence does need to be considered and given appropriate weight.

18. For those reasons, I am satisfied that there is a material error of law in the Decision and I set it aside. Mr Turner submitted that the appeal should be remitted as it would be necessary to consider further evidence as it is said that [WM]'s health may have deteriorated since the last report. This is not though a case where there are adverse credibility findings (although the Judge did find some of the evidence to be

exaggerated). The re-making of the decision depends on an analysis of the evidence and an Article 8 assessment based that evidence which this Tribunal is undoubtedly qualified to carry out. This is not a case which needs to be remitted for a re-hearing. In light of Mr Turner's submission that further evidence is likely to be required, however, I have given directions below for a resumed hearing.

DECISION

The First-tier Tribunal Decision involves the making of a material error on a point of law. I therefore set aside the First-tier Tribunal Decision of Judge Geraint Jones QC promulgated on 23 March 2017 and make the following directions for the re-making of the decision.

DIRECTIONS

1. **Within 28 days from the promulgation of this decision, the Appellant is to file with the Tribunal and serve on the Respondent any further evidence on which he wishes to rely at the resumed hearing.**
2. **Within 21 days from the service of evidence at [1] above, both parties are to file with the Tribunal and serve on the other party a skeleton argument dealing with the legal issues which are said to arise in this appeal.**
3. **The appeal will be relisted for a resumed hearing after 56 days from the date of promulgation of this decision with a time estimate of half day.**

Signed

Upper Tribunal Judge Smith Dated: 9 January 2018