In the Upper Tribunal (Immigration and Asylum Chamber) Judicial Review

JR/4022/2019

In the matter of an application for Judicial Review

The Queen on the application of

Abu Sayem + 1

Applicant

versus

Secretary of State for the Home Department

Respondent

ORDER

BEFORE Upper Tribunal Judge Kebede

HAVING considered all documents lodged and having heard Mr S Karim of counsel, instructed by Shahid Rahman Solicitors, for the applicant and Mr R Harland of counsel, instructed by GLD, for the respondent at a hearing on 19 July 2021

IT IS ORDERED THAT:

(1) The application for judicial review refused for the reasons in the attached judgment.

(2) The Applicant shall pay the Respondent's costs of these proceedings, summarily assessed as £8468.66.

(3) Permission to appeal to the Court of Appeal is refused because there are no arguable errors of law in the judgment. The applicant's grounds are simply an attempt to re-argue the matters already fully and properly considered in the judgment.

Signed: *S Kebede*

Upper Tribunal Judge Kebede

Dated: **11 August 2021**

The date on which this order was sent is given below

For completion by the Upper Tribunal Immigration and Asylum Chamber

Sent / Handed to the applicant, respondent and any interested party / the applicant's, respondent's and any interested party's solicitors on (date): *13 September 2021*

Solicitors:

Ref No.
Home Office Ref:

Notification of appeal rights

A decision by the Upper Tribunal on an application for judicial review is a decision that disposes of proceedings.

A party may appeal against such a decision to the Court of Appeal **on a point of law only**. Any party who wishes to appeal should apply to the Upper Tribunal for permission, at the hearing at which the decision is given. If no application is made, the Tribunal must nonetheless consider at the hearing whether to give or refuse permission to appeal (rule 44(4B) of the Tribunal Procedure (Upper Tribunal) Rules 2008).

If the Tribunal refuses permission, either in response to an application or by virtue of rule 44(4B), then the party wishing to appeal can apply for permission from the Court of Appeal itself. This must be done by filing an appellant's notice with the Civil Appeals Office of the Court of Appeal **within 28 days** of the date the Tribunal's decision on permission to appeal was sent (Civil Procedure Rules Practice Direction 52D 3.3).

Case No: JR/4022/2019

IN THE UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

Field House,
Breams Buildings
London, EC4A 1WR

11 August 2021

Before:

UPPER TRIBUNAL JUDGE KEBEDE

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Between:

THE QUEEN
on the application of

Abu Sayem (+1)

Applicant

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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Mr S Karim, Counsel
(instructed by Shahid Rahman Solicitors), for the applicant

Mr R Harland, Counsel
(instructed by the Government Legal Department) for the respondent

Hearing date: 19 July 2021

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JUDGMENT

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Judge Kebede:

1. This in an application for judicial review of the decision of the Secretary of State for the Home Department dated 30 April 2019 refusing the applicant's application for leave to remain as a Tier 2 (General) Migrant and the decision of 18 June 2019 maintaining that refusal on an administrative review. The application also seeks to challenge the linked and corresponding decisions for the applicant's wife, Ummay Aimon, dated 21 May 2019 and 19 June 2019 respectively, refusing her application as the dependant of a points-based-system migrant. I shall refer to the main applicant as 'the applicant', since his wife's application stands or falls with his application.

2. Permission to apply for judicial review was granted on the papers on 24 March 2021 by Upper Tribunal Judge Sheridan.

3. The applicant is a national of Bangladesh, born on 22 December 1981. He first entered the UK on 27 October 2009 with leave to enter as a Tier 4 (General) Student and was granted further periods of leave to remain until 30 April 2017 on the same basis. His wife entered the UK as his dependant on 27 November 2013 and was granted leave in line as a Tier 4 dependent partner. Prior to their leave expiring, on 28 April 2017, they made FLR (HRO) applications for further leave to remain, which they subsequently varied to FLR (FP) applications on 4 September 2017 and then to Tier 2 leave applications on 21 November 2017. The applications were refused on 30 November 2017 and, following a request for an administrative review, the decisions were maintained on 11 January 2018. The applicants' 3C leave came to an end at that point. On 24 January 2018 the applicants made fresh applications under the Tier 2 (General) Migrant category, but their applications were refused again, on 5 July 2018. The decisions were, however, reconsidered following a successful administrative review on 11 August 2018, although they were refused again, on 30 April 2019 for the applicant and 21 May 2019 for his wife. Requests for an administrative review were made on 21 May 2019 and 3 June 2019 respectively, but were rejected, with the relevant decisions being 18 June 2019 and 19 June 2019 respectively.

4. It is necessary, by way of background, to give some details about the applicant's Tier 2 applications. I take these details from the Respondent's Detailed Grounds of Defence and the documents in the bundle.

5. The first Tier 2 application made by the applicant on 21 November 2017 was in relation to his prospective employment as a public relations officer with Sphinx Fine Art. That application was refused on 30 November 2017 on the basis that the Certificate of Sponsorship (CoS) he had provided had been cancelled by UKVI after the sponsor surrendered their licence and were no longer permitted to sponsor migrants.

6. The second Tier 2 application, made on 24 January 2018, was in relation to prospective employment as a business consultant with 1st Contact Money Limited

T/A 1st Contact FX & Sable FX. The respondent, before making a decision in that application, decided to interview the applicant as there were concerns about an ETS certificate previously provided and, furthermore, there were concerns that the applicant's intended role in the sponsoring company was potentially a non-genuine vacancy as a result of which further investigation was required. The applicant attended an ETS interview on 3 April 2018 and the respondent was satisfied with the answers he gave and did not take matters further in that regard. However, on 25 June 2018, the respondent was informed by the applicant's sponsor that they did not know him and that they had not assigned the CoS to him. The respondent's GCID notes reflected that and the applicant's application was then refused, on 5 July 2018, on the basis that the respondent was satisfied that the CoS was false because the sponsor had stated that they did not know him and had not assigned a CoS to him. Nevertheless, on 11 August 2018, following an administrative review request made by the applicant in which he claimed that he was the innocent victim of some unknown events, that he had obtained the CoS legitimately and that he had no idea of the allegation, the respondent withdrew the decision of 5 July 2018. The applicant's application was then re-considered and re-refused on 30 April 2019.

7. In that decision, of 30 April 2019, the respondent noted that the fact that a CoS had been assigned to the applicant by the sponsor 1st Contact Money Limited T/A 1st Contact FX & Sable FX was contradicted by the information received from the key contact at 1st Contact Money Limited T/A 1st Contact FX & Sable FX on 25 July 2018 [this should read 25 June 2018], but in any event the sponsor had surrendered their licence on 30 October 2018 and were no longer permitted to sponsor migrants. The CoS provided was therefore no longer valid and accordingly the applicant was awarded zero points for sponsorship and salary under Appendix A: Attributes and zero points under Appendix C: Maintenance (funds). His application was accordingly refused under paragraph 245HD(f) of the immigration rules.

8. In the applicant's application for an administrative review of that decision, it was submitted that the respondent had failed to apply common law fairness and he should have been given an opportunity to submit a new CoS, by way of a 60-day letter. It was asserted that unfairness had arisen as a result of him having made his application via a super priority service in January 2018, yet not receiving a decision until 30 April 2019; as a result of the respondent previously refusing an application on a ground of alleged deception but then withdrawing that decision without explaining why the existence of a CoS had been denied; and as a result of contradictory information arising from the respondent stating the sponsor had contacted the Home Office on 25 July 2018 confirming they had no record of assigning a CoS or offering employment but the application being refused before that date on 5 July 2018.

9. In the decision of 18 June 2019, the respondent rejected the administrative review request on the basis that the application ought to have been, but was not, accompanied by the relevant fee.

10. Following the pre-action protocol process, the applicant lodged a judicial review claim on 29 July 2019 seeking to challenge the decision to refuse his application for leave to remain on the grounds that the respondent's decision was procedurally unfair, substantively unfair and unreasonable and that it unlawfully interfered with his Article 8 human rights.

11. In the first ground, asserting procedural unfairness, it was submitted that, given the earlier incorrect refusal of 5 July 2018 and the withdrawal of the allegation of deception, and considering that the applicant had made his application via a super priority service in January 2018 yet had not received a decision until 30 April 2019, the respondent ought to have alerted the applicant to the concerns before making a decision. The case of Balajigari v The Secretary of State for the Home Department [2019] EWCA Civ 673 was relied upon in that respect, in relation to the absence of a 'minded to' process. In the second ground, asserting substantive unfairness, the applicant again relied upon the delay in his application being decided and the prejudice caused as a result. He also referred to the Supreme Court having granted permission in Pathan & Anor v Secretary of State for the Home Department [2018] EWCA Civ 2103 on the basis of the argument that a similar policy should be applied in Tier 2 cases to that set out in Patel (revocation of sponsor licence - fairness) India [2011] UKUT 211 and Thakur (PBS decision - common law fairness) Bangladesh [2011] UKUT 151 in relation to Tier 4 applications. Reference was also made to the contradiction in the respondent claiming that the sponsor had contacted the Home Office on 25 July 2018 stating that they had no record of assigning a CoS or offering employment, but then stating that the application was refused before that date on 5 July 2018. It was asserted again that the respondent ought to have given the applicant an opportunity to find another employer and make another application. In the third ground the applicant, relying upon Ahsan v The Secretary of State for the Home Department (Rev 1) [2017] EWCA Civ 2009, asserted that he had raised a human rights claim which the respondent ought to have considered and to have found in his favour.

12. The respondent responded to those points in the summary grounds of defence, noting as a preliminary matter that, by virtue of having failed to pay the fee for the administrative review, the applicant had not exhausted his remedies before bringing this claim. In regard to the first ground, the respondent noted that the Supreme Court had since issued a judgment in the case of Pathan, R (on the application of) v Secretary of State for the Home Department [2020] UKSC 41 but contended that it did not assist the applicant and set out three main differences between Pathan and the applicant's case: firstly, in Pathan, the SSHD had unilaterally revoked the sponsor's licence, whereas in the applicant's case the sponsor had surrendered its licence and

therefore the binding authorities in EK (Ivory Coast) v The Secretary of State for the Home Department [2014] EWCA Civ 1517 and Raza, R (on the application of) v The Secretary of State for the Home Department [2016] EWCA Civ 36 applied; secondly, Pathan concerned an applicant who was seeking to extend his leave with the same employer when the revocation happened, whereas the applicant was not historically an employee of the sponsor company who would be continuing work for the same employer if he was granted leave; and thirdly, the applicant did not have valid leave at the time of the application for leave to remain and was an overstayer, like the applicant Raza and like the co-appellant in Pathan, Islam, who was refused permission to appeal by the Supreme Court. As for the second ground, substantive unfairness, the respondent noted that the Court in Pathan made it clear that substantive unfairness was not a self-standing head of judicial review and the respondent asserted that the applicant could not succeed on the basis that the decision was irrational. With regard to the third ground, the respondent submitted that the applicant had not made a human rights application and his PBS application could not be considered as a human rights claim.

13. The applicant then filed a reply to the summary grounds, reiterating the points previously made and asserting, *inter alia*, that the preliminary point raised by the respondent was incorrect as there was no payment required for the administrative review.

14. Permission was granted by UTJ Sheridan on the papers, on 24 March 2021, on the following basis:

> "It was arguably procedurally unfair that the respondent did not notify the applicants that the sponsor had surrendered its licence and that the Certificate of Sponsorship (CoS) had been cancelled. Although there are significant differences between the factual matrix in these proceedings and in *Pathan, R (on the application of) v Secretary of State for the Home Department [2020] UKSC 41* it is arguable that there was procedural unfairness in this case given that the applicants did not know about the cancellation of the CoS and that they did not do anything improper or unlawful."

15. Mr Harland filed detailed grounds of defence for the respondent. With regard to the preliminary matter, the respondent considered that the administrative review was not still pending as it had been properly rejected for non-payment of the relevant fee. The respondent set out the same arguments as previously stated in the summary grounds, but expanded upon those arguments, relying on the line of authorities which had been preserved by the Supreme Court in Pathan, including EK (Ivory Coast) v The Secretary of State for the Home Department [2014] EWCA Civ 1517, Mudiyanselage v The Secretary of State for the Home Department [2018] EWCA Civ 65 and Raza, R (on the application of) v The Secretary of State for the Home Department [2016] EWCA Civ 36, and referring to the subsequent cases of Topadar, R (On the Application Of) v Secretary of State for the Home Department [2020] EWCA Civ 1525 and Taj, R (On the Application Of) v The Secretary of State for the

Home Department [2021] EWCA Civ 19 where reliance upon Pathan in arguing procedural unfairness was rejected.

16. The matter then came before me for a substantive hearing. Both parties made submissions relying on, and expanding upon, their skeleton arguments and I shall refer to those submissions in the discussion to follow.

Discussion

17. The fundamental issue in this case, and the main ground of challenge, concerns the principle of procedural unfairness, where the relevant requirements were set out by Lord Mustill in the case of R v Secretary of State for the Home Department, ex p. Doody [1993] UKHL 8. Both parties are agreed on those principles and the fact that it is a fact-sensitive matter, but they disagree on how those principles are applied.

18. It is the applicant's case that fairness requires that the Secretary of State should have informed him of the sponsor having surrendered their licence and thus provided him with prior notice of the intention to refuse his application for leave to remain so giving him an opportunity to rectify the situation by finding a new sponsor. However, as Mr Harland submitted, the relevant line of authorities in such cases makes it clear that, as a general principle, there is no duty upon the Secretary of State to notify an applicant of factors adverse to his application prior to refusing it. That is subject to the exception in the line of authorities commencing with Patel and Thakur, which addressed the situation, in Tier 4 cases, where the respondent was responsible for the application failing. The exception was also extended by Balajigari to cases involving allegations of fraud and deception where fairness required that there be a 'minded-to-refuse' process, as well as in ETS cases where an interview was required in order for matters to be put to the applicant.

19. It is Mr Karim's submission that Pathan extended the exception further to Tier 2 cases and that the applicant's case fell within that exception, since it was not his fault that his application failed, that it could not be said that he acted improperly in any way and that the circumstances which led to the failure of his application were outside his control. Furthermore, it was the Secretary of State's fault that led to the current situation, through her failure to notify him of the sponsor's surrender of their licence on 30 October 2018, some six months before the decision of 30 April 2019, and the delay in considering his application contrary to the expectations of a super priority service. He submitted that if the applicant had had notice between those six months, he would have had ample time to do something about his situation.

20. However, I agree with Mr Harland that the applicant's case was, rather, determined by the line of authorities which made a distinction in cases where the Secretary of State bore no responsibility for the failure of the application. Mr Harland relied, in that respect, upon the case of Mudiyanselage which made it clear that that exception

did not apply where the applicant had failed to supply correct information and the cases such as EK (Ivory Coast) and Rahman v SSHD [2014] EWCA Civ 11, where the sponsor had made an error. He also referred to Lord Underhill's comment, at [53] of Talpada, R (On the Application Of) v The Secretary of State for the Home Department [2018] EWCA Civ 841, that when it came to considering fairness and who was responsible for mistakes, the sponsor and the applicant were indistinguishable: "*But the issue is not whether the outcome is hard on him but whether the Secretary of State has acted unfairly; and from that point of view it is not appropriate to distinguish between him and his sponsor*". As Mr Harland submitted, the principles in those cases were not overruled or distinguished in Pathan and indeed EK (Ivory Coast) was specifically cited at [190] of Pathan. Furthermore, those principles were relied upon in cases subsequent to Pathan such as Topadar and Taj, in the former case where the sponsor had failed to reply to the respondent's enquiry and in the latter where there were concerns about the genuineness of a business following an interview with the applicant. Although those cases vary in their facts, the principles remain the same and I do not agree with Mr Karim that they can be distinguished from the applicant's case.

21. As Mr Harland submitted, the applicant in Pathan succeeded on the basis of his case falling within the category of those where the respondent was responsible for the application failing, having revoked the sponsor's licence, as in Patel and Thakur and was thus distinguishable from the applicant's circumstances. Whilst Mr Karim submitted that there was no real distinction between the revocation of the sponsor's licence by the respondent and the surrender of the licence by the sponsor leading to the cancellation of the CoS, I agree with Mr Harland that it was in fact a material distinction. Although the Secretary of State cancelled the CoS, that was not an exercise of discretion to revoke the licence but was the inevitable consequence of the sponsor surrendering their licence. The Secretary of State's role was therefore limited and, as Mr Harland submitted, was passive.

22. Mr Harland relied upon two further reasons for distinguishing the applicant's case from Pathan, both of which, like the first, are persuasive.

23. Firsly, unlike Mr Pathan, the applicant was an overstayer at the time of his application and, as such, his circumstances are similar to those of Mr Islam, the other applicant in the case of Pathan [2018] EWCA Civ 2103 in the Court of Appeal. In the Court of Appeal, Lord Justice Singh said at [51] and [52]:

> "51. The other decision of this Court is *R (Raza) v Secretary of State for the Home Department* [2016] EWCA Civ 36; [2016] Imm AR 682. That case too concerned a Tier 4 student. It is clear from para. 13 and paras. 27-30 that submissions were made on behalf of the Secretary of State to the effect that the decision in *Patel* was wrong and had subsequently been disapproved by this Court. In giving the main judgment Christopher Clarke LJ rejected that submission: see para. 38. However, he did not think that *Patel* assisted the appellant in that case because it was distinguishable on its

> facts. This is because, at the time when the appellant made his application to extend leave to remain, he was not any longer lawfully present in the UK with leave to remain as a student: see paras. 14 and 16-18.
>
> 52. The decision of this Court in *Raza* presents a formidable difficulty for the Second Appellant, Mr Islam, as Mr Biggs fairly acknowledged. Mr Biggs sought to distinguish *Raza* but I am not persuaded that it is possible to do so."

24. Notably, permission was denied to Mr Islam to appeal to the Supreme Court. In so far as the applicant relies upon the fact that he had made his application during the 14 days 'grace period', Mr Harland pointed out that that was also the case with Mr Islam and, further, that that did not prevent him from being an overstayer once his 3C leave expired on 11 January 2018. Contrary to Mr Karim's assertion, the applicant is clearly not assisted by the case of Hoque & Ors v The Secretary of State for the Home Department (Rev 1) [2020] EWCA Civ 1357, as his is a case of 'open-ended overstaying' and not 'book-ended gaps' in his leave. As for Mr Karim's submission that being an overstayer was immaterial as the applicant had still laid down roots in the UK and lived here for many years, the fact is that his last period of actual leave expired as long ago as in April 2017. Since that time his presence in the UK has been solely on the basis of extended 3C leave and a second attempt to apply for Tier 2 leave. The distinction of his status as an overstayer is, in the circumstances, a relevant and material factor.

25. Secondly, Pathan concerned an applicant who was already an established employee for the sponsor when he applied for leave to remain, whereas the applicant in this case had not yet started working for the sponsor. The relevance of Mr Pathan's established employment was made clear in Pathan at (70] and [71]:

> "The Secretary of State has accepted an obligation to give a window of opportunity to migrant workers who become unemployed when their sponsor loses his licence. It seems to me that fairness demands that the Secretary of State accepts some similar obligation to tell the applicant, who is also an employee of a sponsor, of the revocation to give him too time "to sort his affairs out". It is not really an answer to say that his leave had expired. He would have been planning his affairs on the basis that he would be granted a new Tier 2 Migrant visa. He is likely to have engaged the same sort of commitments as other migrant workers of the sponsor. Moreover, employees who have already obtained their Tier 2 leave are allowed to look for other sponsors which suggest that the stated aim of Tier 2 to match migrants to particular vacancies can, as one would expect, equally be satisfied by matching resident labour market shortages to migrants.
>
> We are not concerned with a new applicant or an applicant for a new position. It would not be reasonable to expect the Secretary of State to assume that such applicants would have commitments."

26. As for Mr Karim's submission that the applicant had done nothing wrong and that the situation in which he found himself was due to the sponsor and the Secretary of State, with him having no knowledge of the situation, I refer again to the line of authorities including EK (Ivory Coast) and Talpada which pre-dated but survived Pathan, and Topadar and Taj which followed Pathan, all of which made it clear that, irrespective of wrongdoing by the applicant himself, any mistake or failing by the sponsor was attributable to the applicant when it came to the question of the SSHD's duty to notify. Furthermore, I agree with Mr Harland in his submission that the applicant must have been aware of the precariousness of his situation from the refusal of his previous Tier 2 application, whereby he was specifically warned in the administrative review refusal decision of 11 January 2018 (page 110) that the onus was on him to keep in contact with his sponsor. He would also have been aware from the refusal decision of 5 July 2018 that there was an issue with the sponsor claiming not to know him and ought reasonably to have been expected to make contact with the sponsor to confirm the offer of employment, irrespective of the decision and the allegation of fraud having subsequently been withdrawn. Further, as Mr Harland submitted, the fact that the sponsor subsequently surrendered their licence because they no longer had a need for one, provided additional reason to conclude that the sponsor did not wish to sponsor the applicant.

27. With respect to Mr Karim's assertion that the respondent was ultimately responsible for the applicant's situation as a result of "delay and dithering", Mr Harland properly referred to the GCID notes showing that the Secretary of State was not aware of the relevance of the sponsor having surrendered their licence until she came to consider the applicant's application. I agree with Mr Harland, furthermore, that the fact that the applicant applied under the super priority process adds very little to his case as the process did not guarantee a fast resolution in every case and certainly not where there were, as in this case, proper reasons for further investigations to be carried out. The fact that the decision of 5 July 2018 was withdrawn did not negate the fact that there were concerns raised by the sponsor denying knowledge of the applicant which required investigation. Clearly the respondent was progressing the matter and accordingly I reject Mr Karim's suggestion that any delay in deciding the application resulted in responsibility of the failure of the application laying with the respondent.

28. In any event, as Mr Harland submitted, the challenge made by the applicant in regard to the issue of delay was in fact entering the territory of substantive unfairness rather than procedural unfairness, whereas the Court, in Pathan, made it clear that substantive unfairness was not a self-standing head of judicial review and that it would therefore have to be shown that there was unlawfulness or irrationality. There was clearly nothing unlawful, irrational or unreasonable in the respondent seeking to clarify matters where there were significant concerns about the applicant's application and his circumstances. The respondent was perfectly entitled to seek further information on ETS matters by way of an interview and, as already stated, to

undertake investigations into the genuineness of the sponsorship when information suggested that there were issues of concern. As Mr Harland submitted, all the steps taken by the respondent which delayed the outcome of the applicant's application were sensible and reasonable ones and the period of delay was, in any event, not a significant one. I find nothing in the case of Suny, R (on the application of) v The Secretary of State for the Home Department [2019] EWCA Civ 1019, as relied upon by Mr Karim, to undermine that conclusion.

29. Also argued under the second ground of substantive unfairness in Mr Karim's skeleton argument, albeit not raised at the hearing, was the apparent contradiction in the refusal decision in the respondent claiming that the sponsor had contacted the Home Office on 25 July 2018 stating that they had no record of assigning a CoS or offering employment, but then stating that the application was refused before that date on 5 July 2018. However it is clear from the Detailed Grounds of Defence and the GCID notes that that was simply a typographical error and the date of contact by the sponsor was 25 June 2018 and not 25 July 2018. No doubt that is the reason why Mr Karm did not pursue the matter before me.

30. The second ground pleaded by Mr Karim at the hearing related to the rejection of the applicant's administrative review application for non-payment of the fee, in the decision of 18 June 2019. His submission was that the administrative review was wrongly rejected as the evidence in the bundle, at pages 39 to 49, showed that no fee was required and that the decision rejecting the administrative review was accordingly unlawful and irrational. I agree with Mr Harland that that challenge had not been made timeously, as there was no such challenge in the original grounds of claim. However, even if it was, there is no merit in the arguments made. The documents referred to by Mr Karim at pages 39, 40, 43, 44, 45 and 49 which made mention of no fee being payable were generated as a result of the information inputted by the applicant and were clearly not instructions from the SSHD. The documents referred to by Mr Harland were, however, proper instructions from the SSHD and clearly showed that a fee was payable following the return of the fee paid for the previous, successful administrative review, as shown at page 66 of the bundle. At page A91, the GCID notes show that the applicant's representatives were emailed on 21 May 2019 to request the fee. Further, at page 32 of the bundle, the administrative review rejection decision of 18 June 2019 made it clear that the requirements of paragraphs 34L to 34Y of the immigration rules and the exemptions therein were not met, as the previous fee had been refunded, and that the fee was therefore payable. The applicant's failure to pay the fee was, therefore, a valid and proper reason for the administrative review request to be rejected and there was nothing unlawful, unreasonable or irrational in the respondent's decision in that respect.

31. As for the third ground, alleging that the respondent's decision unlawfully interfered with the applicant's Article 8 rights and those of his dependents, Mr Karim simply

relied upon his skeleton argument and other pleadings and had no response to Mr Harland's submission that the ground was not made out. I agree with Mr Harland that there is no merit in the ground. Not only had the applicants not made a human rights application, but there was nothing in the cases of Balajigari or Ahsan v SSHD [2017] EWCA Civ 2009 which would apply to the applicant's circumstances so as to justify treating his PBS application as a human rights claim. In any event, there was clearly nothing in the applicant's circumstances or his private life in the UK that would possibly give rise to an arguable case under Article 8.

32. For all of these reasons, I reject the assertion that the respondent acted unfairly in refusing the applicant's application by failing to notify him of the sponsor having surrendered their licence. There was no obligation or duty upon the respondent to do so and the Supreme Court judgment in Pathan did not provide a basis for any such duty in the circumstances of the applicant's case. The respondent was entitled to make the decision that she did and there was no procedural unfairness in the procedure by which she made her decision. The decision was, furthermore, a lawful, rational and reasonable one which was in accordance with the immigration rules and the relevant legal framework. The applicant's application for judicial review is accordingly refused.

Costs

33. The applicant, being the losing party, bears the respondent's costs. There is no merit in the submissions made by the applicant that those costs ought to be reduced by 50%: neither reason given by the applicant at [10] and [11] of the submissions justifies a reduction in the costs to be paid. Accordingly, the applicant is to pay the respondent's reasonable costs of £8,468.66.