UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: HU/14895/2019

THE IMMIGRATION ACTS

Heard at: Field House	**Decision and Reasons Promulgated**
On: 30 March 2022	**On: 21 October 2022**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR
DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

MR JULIO ALBERTO BARBA RIVERO
(NO ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation
For the Appellant: Mr P V Thoree, solicitor from Thoree and Co Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. We shall refer to the parties as they were before the First-tier Tribunal: Mr Rivero as the appellant and the Secretary of State as the respondent.

2. In a decision promulgated on 24 September 2020, Upper Tribunal Judge Coker set aside the decision of First-tier Tribunal Judge Lal, allowing the appellant's appeal against the refusal of his human rights claim, in a decision promulgated on 4 November 2019.

3. Upper Tribunal Judge Coker directed that the decision be remade and that the factual findings of the First-tier Judge regarding the appellant's immigration status, his relationship with his partner, his partner's immigration status and the couple's finances, would not be subject to challenge.

4. We re-make that decision.

Background

5. The appellant is a national of Bolivia who entered the UK on a visitor visa on 15 May 2007, expiring on 16 November 2007. He did not leave the UK after his visa expired and has remained here ever since.

6. On 24 December 2018 he made an application for leave to remain on the basis of his family life as the partner of a person present and settled in the UK, namely Ms Zuzana Spanelova, a dual Czech/British citizen since May 2018. They met in February 2018.

7. His application was made under paragraphs 276ADE and EX.1 of the Immigration Rules.

8. He referred in his application to the length of time that he had been in the UK and the political situation in Bolivia. It was hard to find a job there and there were serious safety concerns. He stated that he occasionally worked as a chef.

9. They were a genuine couple and he only had limited contact with his family in Bolivia via social media.

10. On 26 July 2019 the respondent refused his human rights application. Whilst it did not fail under the suitability requirements, he did not meet all the eligibility requirements – R-LTRP.1.1.(d)(ii) of Appendix FM to the Immigration Rules, as it appeared that the couple had not been living in a relationship akin to marriage for at least two years prior to the date of the application. It was accepted that he met the eligibility immigration status requirements of E-LTRP 2.1 to 2.2.

11. He failed to meet the requirements of EX.1(b) as he did not have a partner as defined and therefore paragraph EX.1 did not apply to him.

12. Nor did he meet the requirements under paragraph 276ADE as there would not be very significant obstacles to his integration into Bolivia.

There were no exceptional circumstances rendering refusal a breach of Article 8 because it would result in unjustifiably harsh consequences for him and/or his partner.

The evidence

Evidence of the appellant

13. The appellant adopted his witness statement dated 17 October 2019 and his more recent statement, dated 19 March 2021.

14. In his earlier statement, he stated that he came to the UK in 2007 and has lived here since. He resides in Camberwell, London, with Ms Zuzana Spanelova. They met at a dance class in Westminster on 16 May 2018. They went on their first date on 31 May 2018 and their relationship started that day. They moved in together on 1 March 2019.

15. Ms Spanelova is a Czech National who was born on 16 October 1979 in the Czech Republic. She has worked in the UK since 2004 and has been granted permanent residence. (She has since become a British citizen).

16. She works as a nurse and supports him financially. She earns £58,000 a year. He loves her and wants to live with her forever. They live together in the same way as a married couple.

17. He approached his previous representative for advice on how to regularise his stay. They told him he could apply to stay based on his relationship despite their not living together or being married. They want to marry in the future.

18. In his seven-paragraph statement dated 19 March 2021, he stated that he relies on his 2019 statement. He and his partner have lived together since 1 March 2019. They are in a genuine and subsisting relationship akin to marriage and are very much in love.

19. The reason why they cannot go to Bolivia is due to his partner being a key NHS worker. "….She is a staff nurse and her skills are required in the UK in order to deal with Pandemic. She is assisting patients to be vaccinated for Covid-19 and she is also carrying out the PCR (Polymerase Chain Reaction) tests on patients".

20. Now that they have lived together for two years continuously, he believes that his application should be considered within the UK without the need for him to return to Bolivia to apply for entry clearance. His partner has sufficient income and accommodation. He has passed the English test.

21. Mr Thoree asked the appellant why he wants to remain in the UK. He said he has a settled life with his partner. They have been living for the past

three years together. She works in London. They have never lived anywhere else.

22. When Mr Thoree put to him that if he had to apply for entry clearance, he could obtain an appropriate visa, he responded that he would be a long time away. His partner needs his support. They have a dog. She relies on him. She is working. Things are solid. They have not been apart since they met. It would be difficult for her to manage on her own.

23. When it was put to him that his partner could accompany him to Bolivia, he said she would not get time off. They would still have to wait for his application to be considered. They have a tenancy in the UK. They cannot just give this up and lose the dog. It is not possible for them.

24. He was cross examined by Mr Melvin. He confirmed that he came to the UK in 2007 on a travel visa. He denied that it had been his intention to remain here illegally. When asked why he did not return on expiry of his visa, he said “because I enjoy being in the UK. It didn't cross my mind to go back to Bolivia”.

25. Mr Melvin asked why he waited for some eleven years before seeking to regularise his status. He said they found out online that they could do something to regularise it and they started the process. If he had not met her, he would probably have gone home.

26. When asked what would have made him change his mind he said not being able to work and travel and have a family, had he not met her.

27. He was almost twenty-one when he came to the UK. In Bolivia he was a student. He did not work in Bolivia. When asked whether he has any skills, he said he was a chef in Bolivia.

28. He did not work in the UK. He lived with a family friend who supported him. He had lived in Camberwell before.

29. He stated that his partner would have difficulty being without him. When asked how she had managed before, he said that she had been single then. They have been together a number of years: “You cannot just put it away. She cannot do it again”.

30. There is nothing physically or mentally wrong with Ms Spanelova. She cannot go with him to Bolivia as she works for different companies. She works in two different places.

31. Mr Melvin asked him whether, apart from her job, there are any reasons why she could not accompany him there. He said they have a special life here. They plan to live in the UK. If she moved to Bolivia, she should have no job. She cannot speak the language.

32. He has parents and brothers and sisters in Bolivia.

33. Mr Rivero stated that there would be a wait of some six months for the visa application to be processed. When asked whether he has researched how long this would take in Bolivia, he said they need to visit for six months. They would have to make the application six months in advance of a decision. There is a website in Bolivia where the UK embassy gives advice. He repeated that the website stated that it would take six months for an interview. They have to apply and then attend an interview.

34. Mr Melvin put to him that the Home Office information is that that people in his position can get a quicker service. He said he does not know about this. He wants to finish the application in the UK: To go back home would be hard work. His home area is Santa Cruz. There is a two hour flight from La Paz where the Embassy is situated.

35. In re-examination he said that the application for the visa is made at the Embassy. The first thing is for the paperwork be processed. There is then an interview in La Paz six months later.

36. Ms Zuzana Spanelova attended that hearing and gave evidence. She adopted her witness statement signed and dated on 17 October 2019. She also wishes to rely on the appellant's witness statement dated 17 October 2019. She lives in, Camberwell, London, with her partner.

37. She was born on 16 October, 1979 in the Czech Republic. The appellant is her long-term partner. She has lived in the UK as a worker continuously since 2004. She supports the appellant “both financially and emotionally from my income”.

38. She is a staff nurse by profession. She works at UCLH hospital, a private hospital, situated in Marylebone Road, London.

39. She met the appellant at a dance class in Westminster, on 16 May 2018. They went on their first date on 31 May 2018. They started their relationship that day. They moved in together on 1 March 2019. He is her soul mate.

40. She loves him very much. They would like to marry in the future “...but not to regularise his stay in the country. We want to do it in front of our families both in Bolivia and Czech Republic”.

41. In cross-examination it was put to her that the appellant claimed that she could not manage on her own without him if he had to go to Bolivia to make an entry clearance application. She said that he meant that he is her emotional support. She has always taken pride in living independently. She has been living with him every day since they met. It would be heartbreaking for them to separate for an uncertain time.

42. When Mr Melvin put to her that she can go back to Bolivia with him, she said she has a permanent job here. There are two separate units. There are regular shifts. There is also the rent on the flat which needs to be

covered. They also have a dog which is needy. They have a twelve month tenancy in her name. The landlord is happy for them to extend the tenancy. They have never considered putting in sub-tenants whilst they are away.

43. She has 'not really' looked into the entry clearance visa process. She has friends from Latin America who are still waiting for visa clearance. There are delays because of the Covid situation. It is a long process. Even if the appellant went to sort out his status, there is no certainty that it would be achieved within twelve weeks.

44. When Mr Melvin asked whether she could use her leave to go to Bolivia, she said she would like to visit him and meet his parents. She has a flexible work contract with the company. She can do as many hours as she wants. There is no limit. If she is off for a long time, she will not be paid.

45. In re-examination she said that she has two positions. She prepares patients for chemotherapy for cancer treatment or for transplants. Mr Thoree asked whether someone else could do her job if she left. She said there is a shortage of jobs. It is a job in demand. It is a speciality position. She took three years to study. She worked at the same time and got a small bursary.

Submissions

46. Mr Melvin relied on his skeleton argument, dated 30 March 2022. There did not appear to be any submissions as to why Ms Spanelova could not enjoy her family life with the appellant in Bolivia, other than asserting that she is indispensable in the NHS.

47. Further, the government website and guidance relating to waiting times for visa decisions outside the UK, reveals that in Bolivia a family visa takes at most twelve weeks. There is a priority service that can take five days and a "super" priority service which for an additional charge can be the next day.

48. The appellant cannot meet the requirements of Appendix FM as he fails to meet the eligibility requirements and there are no insurmountable obstacles under EX.1(b) of Appendix FM to family life being enjoyed by the appellant and his partner in Bolivia.

49. It would not be disproportionate in the circumstances to require the appellant to leave the UK to make an application for entry clearance. The maintenance of immigration control requires an entry clearance application even if the appellant could meet the requirements of the Rules. Nor were there any exceptional circumstances warranting a grant of leave outside the rules.

50. Mr Melvin expanded on written submissions at the hearing. The issues are whether the appellant meets the requirements of Appendix FM; whether there are very significant obstacles to family life which can be enjoyed in Bolivia and whether there are exceptional circumstances which would lead to unjustifiably harsh consequences which show the decision to be disproportionate.

51. The appellant cannot meet the requirements under Appendix FM as he fails to meet the eligibility requirements and there are no insurmountable obstacles to family life being enjoyed in Bolivia – EX.1 (b), that is to say difficulties that would entail very serious hardship for the appellant or his partner - EX.2.

52. The appellant will be able to find a job in order to continue family life. There is no reason why the sponsor cannot learn Spanish in order to obtain employment. The fact that there might be a shortage of employees in the sponsor's position does not alone amount to insurmountable obstacles to family life being enjoyed. There must be very significant difficulties that would entail very serious hardship for the appellant or Ms Spanelova.

53. With regard to the public interest considerations in s.117B of the 2002 Act, the maintenance of effective immigration controls is in the public interest. The appellant has spent eleven years in the UK without seeking to regularise his status here. Anything other than a requirement to make an entry clearance application from abroad would be to reward his continued illegal status in the UK. Their relationship was formed when the appellant had no leave to remain in UK.

54. When weighing up the competing considerations, whilst Ms Spanelova is in a position to be helpful to the NHS in the UK, the interest in securing immigration control shows that the decision to refuse leave to remain is proportionate.

55. With regard to the making of an application for entry clearance, the waiting times referred to in the Home Office guidance reveals that in Bolivia, a family visa takes at most twelve weeks. There is also a priority service that can take up to five days and for an additional charge, there is a next day service available.

56. He referred to the Upper Tribunal decision in Younas (s.117)(B)(6(b); Chikwamba; Zambrano [2020] UKUT 00129 (IAC). This notes that Chikwamba predates Part 5A of the 2002 Act and it does not follow that if an entry clearance application was going to succeed, that it will be disproportionate to require the appellant to leave the UK to make such an application. In Younas at [70] it was held that a separation of between four and nine months did not amount to an indefinite or lengthy separation.

57. In the appellant's case a visa could be obtainable in twelve weeks, where the documents provided are in order. This can be expedited on further payment. The assertion by the appellant that he has looked at a website, has no evidential value. There is no proper evidence adduced in respect of the website in question. It is not for the Tribunal to engage in research on this issue.

58. There is nothing preventing the appellant's solicitors 'putting in order' all the necessary evidence, including evidence of Ms Spanelova's savings account, so as to reduce the length of time required.

59. However, family life can be enjoyed in Bolivia: "the Chikwamba point does not bite here". This is a case where the public interest justifies removing a person from the UK even assuming he will be granted entry clearance when applying for it abroad (Younas, [86]). The appellant has family in Bolivia. He will not be destitute. It is a safe country.

60. Nor would there be any exceptional circumstances warranting a grant of leave outside the Rules. The decision is accordingly proportionate.

61. On behalf of the appellant Mr Thoree adopted the submissions set out in his skeleton argument dated 24 March 2022. There is no challenge to the relationship between the appellant and Ms Spanelova; nor is there any concern raised about the couple's finances.

62. The appellant now satisfies R-LTRP.1.1(d)(ii) as he has now lived with his partner for over two years. It is open to the Tribunal to consider whether the appellant would meet the requirements under the Immigration Rules if he applied at the date of hearing, as part of the overall human rights assessment.

63. Under EX.1 , the refusal would result in very significant difficulties for the appellant and his partner in continuing their family life together outside the UK. If the appellant leaves the UK, his British partner would also leave. Her nursing skills are required in the UK to "plug the skills gap".

64. His application should be considered under GEN.1.2 as he has now lived continuously with Ms Spanelova for three years since March 2019.

65. In oral submissions, Mr Thoree made the following points. As the appellant has now lived with his partner for three years, since March 2019, his application should be considered under GEN.1.2. There would be very significant obstacles continuing family life in Bolivia.

66. With regard to the contention that the sponsor can learn Spanish and obtain employment in Bolivia, the question is why she would have to use skills paid for in the UK, in Bolivia. Why take a UK trained nurse and allow Bolivia to benefit when the UK has a need for such skilled workers?

67. In answering question 4 of Lord Bingham's approach to the assessment of Article 8 in Razgar v SSHD [2004] INLR 349, he submitted that it would not be in the economic well being of the UK for the appellant to be expected to return to Bolivia as his partner would need to accompany him there as a couple to enjoy family life together. The undesired effect would be the loss of a valued member of society in the UK which would lose a valuable nurse. Ms Spanelova has lived in the UK for eighteen years and is now used to the appellant.

68. The contention regarding a twelve week timescale for the entry clearance applications to join a family member in the UK, might apply to a "normal application" where a person is not in breach of UK immigration laws. Overstaying may constitute an aggravating factor which could add to the length of time.

69. He accepts that as stated in Younas a period of between four and nine months is reasonable. It would however be unreasonable for his partner, who would accompany him to deprive the UK of her services.

70. His sponsor's services in the UK are in reality irreplaceable.

Assessment and conclusions

71. The appellant is a national of Bolivia. He was almost twenty one years old when he entered the UK on a visitor visa on 15 May 2007, expiring on 16 November 2007. He did not seek to extend his to leave following its expiry. It did not cross his mind to go back to Bolivia. He remained here unlawfully for some eleven years before seeking to regularise his status. He applied for leave to remain on the basis of family life with Ms Spanelova.

72. He remains in a genuine and subsisting relationship with Ms Spanelova who is now a British citizen. They have lived together since 1 March 2019 and she has been supporting him.

73. He stated that the reason why they cannot go to Bolivia is that Ms Spanelova is a key NHS worker. He now has a settled life with her in the UK. They have been living together for three years. She relies on him.

74. Mr Thoree contends first, that Section EX of Appendix FM applies in his case. There would be insurmountable obstacles to family life with Ms Spanelova continuing outside the UK. Secondly, there is no public interest in requiring him to leave the UK to make an application for entry clearance. This constitutes a disproportionate interference with the right to respect for their private and family life.

75. We have considered whether there would be very serious difficulties to either the appellant or Ms Spanelova in continuing their family life in Bolivia.

76. Insofar as the appellant is concerned, he will be able to find employment in Bolivia. He has skills and used to be a chef in Bolivia. He has parents as well as siblings who live in Bolivia. There has been no suggestion or evidence that his family are, or would be, unable or unwilling to assist them by providing accommodation and financial assistance until they become financially self sufficient and obtain their own accommodation. Neither he nor Ms Spanelova have any medical problems.

77. When she gave evidence at the First-tier Tribunal, Ms Spanelova was asked whether she would go to Bolivia. She stated that it was very difficult for her to say, but that she would follow him – [12].

78. In her evidence before us she stated that the appellant has been her emotional support. She has always taken pride in living independently. She would like to visit him and meet his parents in Bolivia. She has a flexible work contract with her employers. She can do as many hours as she wants. There is no time limit. If she does not work for a long time, she will not be remunerated.

79. Ms Spanelova has transferable skills as a specialist nurse and will be able to learn sufficient Spanish in a short period, to enable her to obtain employment in Bolivia.

80. We find on the evidence that although there might be some practical problems for them at the outset, they would not face very significant difficulties in continuing their family life together in Bolivia which could not be overcome or would entail very serious hardship for either of them.

81. Mr Thoree further submitted that there is no public interest in requiring the appellant to leave the UK in order to make an application for entry clearance. In line with Lord Bingham's fourth question set out in Razgar v SSHD [2004] UKHL 27, the proposed interference is not necessary in the interests of the economic well being of the UK, or for the protection of health, or the protection of the rights and freedoms of others.

82. He contended that the effect of the appellant's return to Bolivia, would be that Ms Spanelova would accompany him there to continue their family life together. This would result in the loss of a highly valued member of society in the UK where she has lived past eighteen years. She maintains a speciality position.

83. Although she stated that there is a shortage of jobs, no evidence was produced that there is a specific shortage of registered nurses in her area of skill.

84. Mr Thoree relies in effect on the decision in Chikwamba v SSHD [2008] UKHL 40 at [44], that the public interest does not require the appellant to leave the UK merely in order to make a successful application for entry clearance.

85. Lord Brown made it clear however at [41-42] that in some cases there will be a public interest in removing (and it will not be disproportionate to remove) a person from the UK if they will be granted entry clearance from UK when applying from abroad. This might include a person with an appalling immigration history.

86. He referred to factors relevant to both whether there is a public interest in removal, including a person's immigration history and where the temporary removal would be disproportionate, having regard to its length and the degree of family disruption and the circumstances in the country of temporary return.

87. In the later decision of the Supreme Court in R (Agyarko) v SSHD [2017] UKSC 11 Lord Reed stated at [51] that:

> "Whether the applicant is in the UK unlawfully, or is entitled to remain in the UK only temporarily, however, the significance of this consideration depends on what the outcome of immigration control might otherwise be. For example, if an applicant would otherwise be automatically deported as a foreign criminal, then the weight of the public interest in his or her removal would generally be very considerable. If, on the other hand, an applicant - even if residing in the UK unlawfully - was otherwise *certain* to be granted leave to enter, at least if an application were made from outside the UK, then there might be no public interest in his or her removal. This point is illustrated by the decision in Chikwamba v SSHD."(Italics added).

88. We have also had regard to the decision of the Court of Appeal in Kaur R (on the application of) [2018] EWCA 1423, where the Chikwamba principle was considered. Holroyd LJ stated at [45] that he had quoted at [26] of his judgment, the passage in which Lord Reed (at paragraph 51 in Agyarko) referred to Chikwamba. Holroyde LJ went on to state that:

> "It is relevant to note that he [Lord Reed] there spoke of an applicant who was "certain to be granted leave to enter" if an application were made from outside the UK, and said that in such case there *might* be no public interest in moving the applicant. That, in my view, is a clear indication that the *Chikwamba* principle will require a fact-specific assessment in each case, will only apply in a very clear case, and even then will not necessarily result in a grant of leave to remain."

89. As noted by the Upper Tribunal in Younas, supra, at [90], Chikwamba pre-dates Part 5A of the Nationality Immigration and Asylum Act 2002. Section 117A(2) states that a Tribunal considering the public interest question must have regard to the considerations listed in section 117B.

90. The “public interest question” is defined as “the question of whether the interference of person's right to respect for private and family life is justified under Article 8(2)”. There is no exception in part 5A of the 2002 Act (or elsewhere) in cases in which an appellant, following removal, will succeed in an application for entry clearance.

91. Accordingly, an appellant in an Article 8 human rights appeal who argues that there is no public interest involved because after leaving the UK he or she will be granted entry clearance must, in all cases, address the relevant considerations in Part 5A of the 2002 Act including s.117B(1), which stipulates that “the maintenance of effective immigration controls is in the public interest”. Reliance on Chikwamba does not obviate the need to do this.

92. As noted in Younas at [97], if there is no public interest in a person’s removal, it will be disproportionate for him to be removed and no further analysis under Article 8 is required. If however, there is at least some degree of public interest in his being temporarily removed, then it will be necessary to evaluate how much weight is given to the public interest so that this can be factored into the proportionality assessment under Article 8(2.

93. Although the appellant’s removal will result in a significant interference with both his and Ms Spanelova’s family life, we find in the light of his cavalier attitude with regard to the immigration laws and rules in the UK, that there is a strong public interest in his removal from the UK. As stated at [98] in Younas, the integrity of, and the public's confidence in, the UK’s immigration system is undermined if a person is able to circumvent it, as the appellant has attempted to do by staying in the UK as a visitor with the intention of remaining permanently. Requiring the appellant, in the circumstances, to leave the UK in order to make a valid entry clearance application as a partner, far from being merely a disruptive formality, serves the important interests of the maintenance of effective immigration controls.

94. As part of the proportionality evaluation, we consider whether the interference in the appellant’s and Ms Spanelova’s right to respect for their family life arising from the appellant’s removal to Bolivia, even for a temporary period, is justified under Article 8(2). In particular, we consider the effect that his removal might entail in depriving the UK of the positive contribution made by Ms Spanelova as a specialist nurse.

95. Having found that there is a significant public interest in the appellant’s removal, it will be a matter of choice for the appellant and Ms Spanelova, whether or not she continues her family life with the appellant in Bolivia, either permanently or for a relatively short period, pending the outcome of his application for entry clearance.

96. We apply the considerations in s.117B:

i. Section 117(B)(i) provides that maintenance of effective immigration controls is in the public interest. For the reasons given, this constitutes a weighty factor in favour of removal.

ii. The ability to speak English and financial independence – sections 117(B)(ii) and 117B(iii) - are neutral factors. Both the appellant and Ms Spanelova speak English. She earns a substantial income for the family.

iii. We give little weight to the relationship formed with Ms Spanelova, which was established by the appellant at a time when he was in the UK unlawfully.

iv. The remaining subsections of section 117(B) are not applicable.

97. We have also considered the likely time that the appellant be out of the UK, in Bolivia, awaiting a grant of entry clearance. The estimates vary between 12 weeks and six months.

98. In Younas, the Upper Tribunal considered a period of between four and nine months for an entry clearance application in Pakistan, to be reasonable. In that case the Tribunal held that it would not be unreasonable to expect the appellant's daughter to leave the UK for a temporary period whilst her mother applies for entry clearance [117].

99. As already noted, the appellant and Ms Spanelova have a choice as to whether she will remain in the UK whilst the appellant is awaiting the outcome of his entry clearance application or whether she will join him in Bolivia, for the whole or for a part of the period pending the outcome of his entry clearance application. Ms Spanelova is entitled to take leave; she is able to do as many hours work as she wants. She has not contended that if abroad with the appellant for a long time, her employment will be affected, apart from not being paid.

100. Mr Thoree submitted that there is need for skilled workers such as Ms Spanelova. She is a valuable member of society. The undesired effect of the appellant's removal would be the loss of a nurse whose services are in effect indispensable.

101. In Thakrar (Cart JR; Art 8; value to community) [2018] UKUT 336 (IAC), Mr Justice Lane held at [112] that before coming to the conclusion that submissions regarding the positive contribution made to the UK by an individual fall to be taken into account, as diminishing the importance to be given to immigration controls, a judge must not only be satisfied that that the contribution in question directly relates to those controls. He or she must also be satisfied that the contribution is "very significant". In practice, this is likely to arise only where the matter is one over which there can be no real disagreement.

102. He stated at [114] that one touchstone for determining this is to ask whether the removal of the person concerned would lead to an

irreplaceable loss to the community of the UK or to a significant element of it. If judicial restraint is not maintained in this area, there is a danger that the public's perception of human rights law will be adversely affected.

103. We have had regard to the articles and reports regarding nurse shortages in the NHS produced at A8-66. We note the statement from Jamie Roberts, a Clinical Nurse Specialist dated 12 February 2021, that Ms Spanelova has been a valuable member of the team working at HCA Healthcare UK, at University College Hospital.

104. There is however no evidence that her nursing skills are not capable of being filled in the event of her deciding to join the appellant to Bolivia. We find that there is no evidence to suggest that if she elects to join the appellant in Bolivia, as she indicated she would, this would result in an irreplaceable loss to the community of the UK.

105. Mr Thoree also submitted that it might be that the appellant's period in Bolivia will be longer than stated because his overstaying might constitute an aggravating factor. However, no evidence was adduced as to whether there would be extra time, and if so, what the extra period would be likely to be. We are not prepared to engage in speculation as to whether an Entry Clearance Officer might seek to apply a suitability provision to the appellant in the future. For what it is worth, we are not aware of any factors which might, on the face, constitute aggravating features over and above the very lengthy period of overstaying.

106. Having regard to the evidence as a whole and our assessment of all relevant considerations, we find that the contemplated interference with the appellant's right to respect for his family life is proportionate in the circumstances. This is the case in respect of any one of the three possible scenarios: (a) that the appellant and his partner go to live in Bolivia on a long-term basis; (b) that the appellant returns to Bolivia alone and makes an appropriate entry clearance application from there; (c) that the appellant and his partner both return to Bolivia and remained there together whilst an entry clearance application is being processed and decided.

Notice of Decision

The decision of the First-tier Tribunal involved the making of errors of law and that decision has been set aside.

We re-make the decision and dismiss the appellant's appeal.

No anonymity direction made.

Signed C Mailer Date: 3 May 2022

Deputy Upper Tribunal Judge Mailer

TO THE RESPONDENT
FEE AWARD

We have dismissed the appeal and therefore there can be no fee award.

Signed: C Mailer Date: 3 May 2022

Deputy Upper Tribunal Judge Mailer