IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000639

First-tier Tribunal No: HU/00418/2021

THE IMMIGRATION ACTS

Decision Issued:

On 15th of November 2024

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

NIVED RAMSURAN
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Decision without a hearing
Rule 34 – The Tribunal Procedure (Upper Tribunal) Rules 2008

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 21 February 2020 to refuse a human rights claim.

2. First-tier Tribunal Judge Wyman dismissed the appeal in a decision sent on 10 August 2021.

3. A panel of the Upper Tribunal found that the First-tier Tribunal decision involved the making of an error of law in a decision sent as long ago as 18 March 2022 (Annex 1).

4. The resumed hearing for remaking the decision was listed on 11 July 2024. It is unclear why it took so long for the case to be listed for remaking. There was no appearance by or on behalf of the appellant. The hearing was adjourned for the reasons given in the directions made by Deputy Upper Tribunal Judge Lewis (Annex 2).

5. Another date was given for a resumed hearing for remaking the decision on 07 October 2024. Again, the appellant did not engage with the appeal process. No

up to date evidence was sent to the Upper Tribunal as suggested in the earlier directions. Once again, there was no appearance by or on behalf of the appellant.

6. On the morning of the hearing, a vague message was received by telephone from an unknown person noted as a 'third party' who said that the appellant could not attend because he 'had been admitted to hospital with cardiac problems'. The Upper Tribunal considered whether, despite his history of non-engagement with this appeal, it was in the interests of justice to adjourn for evidence to be produced to support the statement made about his admission to hospital.

7. Further directions were made requiring the appellant to (i) send medical evidence within 14 days of the date the directions were sent to support the statement that he was unable to attend the hearing because of a hospital admission; and (ii) to confirm in writing within the same time period whether he wished to attend a further hearing. The order made clear that if the appellant failed to respond to the directions given, the Upper Tribunal would proceed to determine the appeal without a hearing on the papers that were already before the court (Annex 3).

8. I am satisfied that the appellant received the earlier hearing notice, otherwise the third party would not have known to call the Upper Tribunal to say that he could not attend the hearing. For this reason, I am also satisfied that it is likely that the appellant also received the directions made to him after that hearing was adjourned. The Upper Tribunal's records indicate that there has been no response to those directions from the appellant. I am satisfied that I can proceed to determine the appeal without a hearing with reference to rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008. The respondent did not object to this course of action. The appellant has been given more than a fair opportunity to present his case. It is not in the interests of justice nor an effective use of court resources to list the case for a further hearing when the appellant does not appear to be engaging with the process.

Decision and reasons

9. The appellant entered the United Kingdom on 28 February 2019 on a visit visa that was valid until 28 August 2019. He was 44 years old on arrival in the UK. On 30 July 2019 the appellant made an in-time application for further leave to remain. Having suffered a heart attack in May 2019 he was unable to travel for a few months. He was granted a further period of leave to remain outside the rules until 13 February 2020 (just less than 6 months' leave). On 12 February 2020 the appellant applied for leave to remain on human rights grounds. The decision to refuse a human rights claim dated 05 January 2021 is the subject of this appeal.

10. The First-tier Tribunal judge heard evidence from the appellant and his partner. She found that the appellant was likely to be in a genuine and subsisting relationship with the UK sponsor and that they had been living together since February 2019. She considered the medical evidence before her at the date of the hearing in July 2021. This included a letter from the appellant's GP, Dr Ramanan, dated 22 January 2020. The doctor confirmed that the appellant had a heart attack and had undergone angioplasty on 14 May 2019. At the hearing, the appellant accepted that adequate treatment would be available in Mauritius. The appellant's evidence was that he had a second heart attack on 09 April 2021. Despite the appellant not having produced any detailed evidence to show whether he was fit to fly, save for a discharge summary from St George's Hospital, the judge concluded that the same advice given by Dr Ramanan in 2019

was likely to apply to the second heart attack i.e. that the appellant should not fly for a period of at least 6 months following the heart attack. In a finely balanced decision, the Upper Tribunal set aside the decision on the ground that this finding was not open to the judge to make on the limited evidence that was before the Tribunal at the date of the hearing.

11. The appellant has failed to produce any up to date evidence in support of this appeal, even though he was given detailed advice about what evidence might be helpful in the directions prepared by Deputy Upper Tribunal Judge Lewis in July 2024.

12. Having heard from the appellant and the sponsor at a hearing in 2021, and despite there being little evidence of co-habitation, the First-tier Tribunal judge accepted that the appellant was likely to be in a genuine relationship with the UK sponsor at that time. However, there is no current evidence to show that the couple are still in a relationship or living together. The appellant has failed to produce sufficient evidence to show that he would meet the 'Eligibility: Relationship Requirement' of Appendix FM of the immigration rules at the date that the decision is now being remade.

13. Although I note that the respondent's decision letter did not take issue with the 'Eligibility: Immigration Status' requirement contained in Appendix FM, the appellant did not, as a matter of fact, meet the requirement because he applied for leave to remain as a partner at a time when he had less than 6 months' leave to remain, which was not as a fiancé or proposed civil partner (paragraph E-LTRP.2.1.).

14. I have also considered whether the appellant would meet the requirements of paragraph EX.1 of Appendix FM. Even if I considered the case at its highest, and the appellant is still in a relationship with the UK sponsor, he would need to show that there were 'insurmountable obstacles' to the couple continuing their family life in Mauritius.

15. The appellant stated that he was in a relationship with a distant cousin, Ms Nagaman. The sponsor is a British citizen. The copy of her passport show that she was born in Vacoas in Mauritius. In her witness statement signed on 06 July 2021, the sponsor said that she came to the UK in 2003 from Mauritius to study Health and Social Care. She was 40 years old at the time. Given their familial relationship it is reasonable to infer that the sponsor was born and brought up in Mauritius and is likely to have linguistic, cultural and familial connections there. The sponsor entered into the relationship at a time when she knew the appellant's immigration status was precarious. The only evidence relating to the extent of her ties here was evidence relating to her employment. Both the appellant and the sponsor have spent most of their lives in Mauritius. Although the sponsor has lived in the UK a good deal longer, there is little or no evidence to show what ties she might have established here.

16. Neither the appellant's nor the sponsor's witness statements identify any particular obstacles to the couple continuing their family life in Mauritius save for the fact that it was asserted that the appellant was unfit to fly. Save that issue, I find that there is no evidence to show that there are likely to be any obstacles, let alone insurmountable obstacles, to the couple continuing their family life in Mauritius. The appellant accepted that medical treatment would be available there and both parties to the relationship have longstanding connections to Mauritius.

17. The appeal turns largely on what evidence there is relating to the appellant's health and fitness to fly. One of only two pieces of evidence before the First-tier Tribunal was the letter from his GP, Dr Ramanan, dated 22 January 2020. The doctor outlined the appellant's medical history to that date and recommended that the appellant was 'not fit to travel to Mauritius at present'. In fact, the letter did not state what the First-tier Tribunal Judge seemed to think it did. Although Dr Ramanan mentioned a period of cardiac rehabilitation the doctor did not give any timeframe on how long he should not fly for. The doctor simply stated: 'He is planning to return once he feels better and his symptoms are well controlled.'.

18. The only other evidence before the First-tier Tribunal of a second heart attack was a discharge summary from St George's Hospital dated 11 April 2021, which appeared to confirm that the appellant was admitted on 09 April 2021. He was treated by the cardiology department for a 'myocardial infarction'. This evidence is sufficient shows that the appellant suffered a second heart attack in April 2021. However, the notes contained in the discharge summary did not address the issue of whether the appellant was fit to fly or not. The nearest they came to mentioning matters to do with travel was to advise the appellant not to drive for a week.

19. The appellant did not engage with the hearing that was listed on 11 July 2024 in the Upper Tribunal. The solicitors who were then on record, Thoree & Co., confirmed the address that they had on record for the appellant in an email dated 13 June 2024. On 18 June 2024 they sent an email to say that: 'Our client is very sick as such he has been unable to provide us with instructions.' They attached a copy of a medical letter from the appellant's GP, Dr Khoory, dated 17 June 2024. The solicitors did not make a formal request to be taken off the record, which they have now, only belatedly, done. Neither the explanation given by the solicitor, nor the attached medical letter, in fact showed that the appellant was not fit to attend the hearing. Nevertheless, as a result of this correspondence the Upper Tribunal took a precautionary approach and decided to adjourn the hearing on 11 July 2024.

20. The more up to date letter from the appellant's GP outlined his medical history. The letter went on to say that the appellant remained under the care of a cardiologist and was recently referred to see the community heart failure nurse for further management. He also needed to see a clinician every 6 months to control his Type 2 diabetes. The height of the evidence is the brief advice given at the bottom of the letter:

> 'With his complicated medical history, it is advisable to avoid traveling for now because of the potential risk of complications.
>
> In the future, it is advisable to get the opinion of (sic) cardiologist regarding his safety and fitness to travel.'

21. In assessing what weight to place on this evidence my first observation is that the letter is from the appellant's GP and not from a member of the cardiology team who is treating him. The GP makes clear that it would be advisable to obtain the more expert opinion of a cardiologist regarding his safety and fitness to travel. The advice about avoiding travel is rather vague and does not specifically mention whether the appellant was, at that time, likely to be fit to fly or not. Nor does the letter state what complications might arise to assess how serious the potential consequences of removal by air might be.

22. Specific directions were made in July 2024 for the appellant to produce (i) his GP records; (ii) an opinion from a cardiologist as to his overall prognosis; (iii) a specific medical opinion as to his fitness to travel to Mauritius by air; and (iv) to produce evidence to show whether he is fit to attend a hearing.

23. The appellant has produce no further evidence in response, has failed to attend a further hearing, and has failed to respond to a subsequent order made by the Upper Tribunal. Although the evidence shows that it is likely that the appellant suffers from heart disease and has suffered 2 heart attacks, the last recorded heart attack was over 3 years ago. The letter from the appellant's GP from June 2024 is vague in its advice and does not outline what the consequences might be of air travel to Mauritius. Even then the GP advises that his fitness to travel should be assessed by a specialist cardiologist. There is no evidence from a cardiologist to say that the appellant is too unwell at the current time to undertake air travel to Mauritius. For these reasons, I conclude that the appellant has failed to discharge the burden of proving that his heart condition renders him too unwell to travel by air at the current time for the purpose of this Article 8 assessment. However, the respondent will need be conscious of the fact that any potential removal to Mauritius would need to be carefully assessed and that the advice of a cardiologist should be sought before making any arrangements.

24. I conclude that, even if the appellant is still with his partner, he has failed to produce sufficient evidence to show that there would be insurmountable obstacles to him continuing his family life with her in Mauritius for the purpose of paragraph EX.1 of Appendix FM.

25. Nor does the appellant meet the private life requirements of the immigration rules. He entered on a visitor visa in 2019. He does not meet the 10 year lawful long residence requirement (paragraph 276B) and falls far short of the alternative 20 years long residence requirement (paragraph 276ADE(1)(iii) now in Appendix Private Life). For the same reasons given above, there would be no 'very significant obstacles' to his integration in Mauritius for the purpose of the private life requirements of the immigration rules (paragraph 276ADE(1)(vi) now in Appendix Private Life).

26. For the reasons given above, I conclude that there is insufficient evidence to show that the appellant meets any of the requirements of the immigration rules relating to private and family life in the UK. The rules are said to reflect where the respondent considers a fair balance is struck between the weight to be given to an individual's circumstances and the weight to be given to the public interest for the purpose of an assessment under Article 8 of the European Convention. Compelling circumstances will be needed to outweigh the public interest in maintaining an effective system of immigration control in circumstances where a person does not otherwise meet the requirements of the immigration rules.

27. I turn to consider Article 8 more broadly. The appellant has failed to produce sufficient evidence to show that his removal from the UK would interfere with any private or family life that he might have established in a sufficiently grave way as to engage the operation of Article 8(1) of the European Convention.

28. Article 8 of the European Convention protects the right to private and family life. However, it is not an absolute right and can be interfered with by the state in certain circumstances. It is trite that the state has a right to control immigration and that rules governing the entry and residence of people into the country are "in accordance with the law" for the purpose of Article 8. Any interference with

the right to private or family life must be for a legitimate reason and should be reasonable and proportionate.

29. Part 5A NIAA 2002 applies where a court or tribunal is required to determine whether a decision made under the Immigration Acts breaches a person's right to respect for private and family life under Article 8 of the European Convention. The 'public interest question' means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2): see section 117A(3) of The Nationality, Immigration and Asylum Act 2002 ('NIAA 2002').

30. Beyond the assertion that the appellant does not believe that he fit to fly, which I have found is not supported by sufficient evidence, there is no other evidence of compelling circumstances that might outweigh the public interest in maintaining an effective system of immigration control for the purpose of section 117B(1) NIAA 2002.

31. There is no evidence to show what level of English the appellant might speak for the purpose of section 117B(2) NIAA 2002. There is no evidence to show whether he is financially independent for the purpose of section 117B(3). It is unknown whether the appellant is fit to work or whether the UK sponsor is still working at the date this decision is made. Either way, the ability to speak English or to work are at best neutral matters in the assessment: see *Rhuppiah v SSHD* [2018] UKSC 58.

32. There is no evidence to show what private life the appellant might have established in the UK in the last five years, but even if he has made some connections here, little weight should be given to a private life that has been established by a person at a time when their immigration status is precarious for the purpose of section 117B(5) NIAA 2002.

33. There is no evidence to show that the appellant is still in a relationship with the UK sponsor at the date this decision is made. In any event, the matters contained in section 117B(4) NIAA 2002 do not apply on the facts of this case because the appellant is not remaining in the UK unlawfully. His leave to remain was extended by operation of section 3C of the Immigration Act 1971 ('IA 1971') when he applied for further leave to remain on human rights grounds.

34. Nevertheless, even if the appellant is still in a relationship with the UK sponsor, she entered into and continued the relationship knowing that the appellant's immigration status in the UK was precarious. The appellant's own evidence in his witness statement is that he came to the UK on a visitor visa on 28 February 2019 'to join my British partner'. If that is the case, he used an application for entry clearance as a visitor improperly to circumvent the rules relating to entry clearance for partners contained in Appendix FM. This is exactly the situation that the immigration rules seek to prevent by way of the 'Eligibility: Immigration Status' requirement. This states that a person must not be in the UK as a visitor or with valid leave granted for a period of 6 months or less (paragraph E-LTRP.2.1.). This is a matter that weighs in the public interest of maintaining an effective system of immigration control.

35. Having failed to produce sufficient evidence from a qualified cardiologist to show that his condition is currently so serious that he is not fit to return to Mauritius, I conclude that there is nothing in the evidence before me to show that there are any other compelling circumstances that might outweigh the public interest in maintaining an effective system of immigration control. For these

reasons, I conclude that the decision is proportionate for the purpose of Article 8(2) and does not amount to a breach of Article 8 of the European Convention.

36. For the reasons give above, I conclude that the decision is not unlawful under section 6 of the Human Rights Act 1998.

Notice of Decision

The appeal is DISMISSED on human rights grounds

M.Canavan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

12 November 2024

ANNEX 1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/00418/2021
UI-2021-000639

THE IMMIGRATION ACTS

Heard at Field House

On 16th February 2022

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE CANAVAN
DEPUTY UPPER TRIBUNAL JUDGE WILDING

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR NIVED RAMSURAN
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr S Whitwell, Senior Home Office Presenting Officer
For the Respondent: Mr P Thoree, Solicitor

DECISION AND REASONS

1. The appellant in this appeal is the Secretary of the State for the Home Department, the respondent is Mr Nived Ramsuran. For the purpose of this decision they are referred to as the SSHD and the Claimant.

2. The SSHD appeals in time against the decision of First Tier Tribunal Judge Wyman ('the Judge'), who allowed the Claimant's appeal on human rights grounds on 10 August 2021. Permission was granted by First Tier Tribunal Judge Andrew on 12 October 2021.

The First Tier Tribunal Decision

3. In the decision Judge Wyman found that the appellant and his partner were in a genuine and subsisting relationship. This was notwithstanding limited documentary evidence showing cohabitation.

4. Having found that the appellant and his partner were in a genuine and subsisting relationship, the Judge found that he could met the relationship requirements of E-LTRP 2.1 and 2.2.

5. The Judge then found that the provisions of EX.1 were satisfied on the basis that:

> *16. The appellant had a heart attack back in 2019 from which it appeared that he fully recovered. An initial letter was sent from Dr Ramanan confirming that he had suffered a heart attack and had undergone angioplasty on 14th May 2019. This letter explained that the appellant would need a period of six months cardiac rehabilitation. The Home Office asked for updated medical information prior to making their decision, but no response was received.*
>
> *17. However, the appellant had a second heart attack on 9th April 2021 and was admitted to St George's Hospital on this date. He spent two days in hospital before discharge.*
>
> *18. The appellant has, in my view honestly, commented that once in Mauritius he will be able to receive suitable medical treatment. The medication he is on, aspirin and ticagrelor is available in Mauritius. However, the appellant has stated that he is unable to travel to Mauritius with a flight of twelve hours is too risky for him.*
>
> *19. It is perhaps unfortunate that there is no updated medical evidence from the appellant in relation to his second heart attack save for a discharge summary from St George's Hospital. This letter confirms the appellant's recent hospital admission and current medication. It also states that he will also be referred to cardiology for a follow up. It does not comment on whether or not it would be safe for the appellant to fly back to Mauritius.*
>
> *20. However, the previous letter from Dr Ramanan dated January 2020 which referred to the heart attack back in 2019, did state that the appellant should not fly for a period of at least six months following his heart attack as he was undergoing cardiac rehabilitation. It is therefore presumed that the same principles apply again. I therefore find that there would be insurmountable obstacles faced by the appellant in continuing his family life outside the United Kingdom which could not be overcome, at least not presently.*
>
> *21. If the appellant is stable over the next six to twelve months following his second heart attack, then it is possible that the appellant would be in a position to return to Mauritius. However, the health risks are simply too high at present given the appellant's second heart attack just three months ago.*

The Grounds of Appeal

6. In grounds of appeal settled on the 18th August 2021, the SSHD made a number of submissions. Given our observations on these grounds in due course we set them out in full below:

> *Ground One – Making a material misdirection in law*
>
> *The First Tier Tribunal Judge (FTTJ) has allowed this appeal under Appendix FM – it is submitted that he has erred in law as he should have considered the Appellant's case under Human Rights as a basic requirement.*
>
> *The FTTJ has accepted that the Appellant is in a genuine relationship with his partner, despite limited evidence, he also accepts that the couple are co-habiting. There is no tenancy agreement in joint names, bills or other documentary evidence. The only documentary evidence showing the Appellant at that address is the discharge summary of St George's University Hospital dated 11th April 2021 gives his address as [address] (which is the address where he lives with Ms Nagaman), a letter from the South East London Diabetic Eye Screening to Mr Ramsurun at that address, dated 12th January 2021. The appellant has also provided his Lloyds Bank statements which confirm his address from January 2020 to the present.*
>
> *At [11] the FTTJ notes:*
>
> *'It is surprising that given the length of time of their co-habitation, there is so little documentary evidence. Whilst I acknowledge that at the outset Ms Nagaman may not have wished to go through the administrative hurdle of changing bills and other documents into the joint names of herself and her partner, it is perhaps surprising that she has not taken this step to date'*
>
> *I submit that the FTTJ has no firm evidence of the Appellant and partner's cohabitation. They documentation does not prove that they live together only that his bank details and appointments have been re-directed there.*
>
> *Ground Two – Giving weight to immaterial matters*
>
> *The Appellant has claimed that he has suffered a heart attack, however, in terms of EX.1(b) there is no up to date medical evidence regarding the Appellant's 2nd cardiac arrest in the UK. The Appellant has stated that he is unable to travel to Mauritius with a flight of twelve hours is too risky for him, but this is not supported by current medical evidence as acknowledged by the FTIJ.*
>
> *Instead the FTTJ has relied upon a letter from Dr Ramanan dated January 2020 which referred to the heart attack back in 2019, stating that the appellant should not fly for a period of at least six months following his heart attack.*
>
> *The respondent wrote to the Appellant asking for further informaton* [sic] *on medical evidence on 14th December 2020. No further documentary evidence was submitted by the appellant. It is therefore an error on the FTTJ part to make the presumption that the Appellant did have a 2nd heart attack and that he is not able to travel to Mauritius.*
>
> *With regards to returning to Mauritius, the Appellant came to the UK as an adult, having spent the formative years of his life there,*

The appellant would not suffer significant obstacles re-integrating into life in Mauritius. The appellant appears to have family in Mauritius. 31. Mr Ramsurun explained that he had family in Mauritius. His mother has died but his father is still alive. He also has one brother and four sisters who are all in Mauritius. The Appellant and his partner appear to be distantly related, therefore, there are more family members in Mauritius to offer support. The Appellant's partner works in healthcare, she is educated and could return to Mauritius to obtain a job in healthcare there.

There are no exceptional circumstances in the case. The appellant does not meet the threshold in AM Zimbabwe, and objective evidence shows that treatment is available for cardiac issues.

It is respectfully submitted that the FTTJ has erred in law and as such permission to appeal is sought.

An oral hearing is requested.

A

The hearing

7. We heard submissions from the two representatives. Mr Whitwell sough to refine the respondent's case. In relation to ground one he submitted that the first paragraph under the hearing was submitted that the Judge was wrong to find that the immigration rules could be met. This, read with the grant of permission, was sufficient to show that the Judge was wrong to find that the immigration rules in relation to the finding that they were partners, given that they had not lived together for 2 years as at the date of application.

8. The Judge's finding that the rules could be met therefore was wrong, and a material error of law.

9. Mr Whitwell did not rely on any other part of Ground one.

10. In relation to Ground two, Mr Whitwell again refined the SSHD's case that the Judge's finding that the appellant was not fit to fly was not based on the evidence before the Tribunal, and was in essence a presumption that the appellant would not be able to fly following his second heart attack for the same reasons as why he was not fit to fly after his first one.

11. Mr Whitwell did not seek to rely on any other part of Ground two.

12. In response Mr Thoree submitted that the Judge had considered all of the evidence in the round, and had concluded that they were in a relationship and were living together.

13. The findings as to the balancing exercise were open to the Judge to come to, and whilst there was a degree of supposition in the finding as to the appellant's fitness to fly, it was based on the evidence presented.

Findings and reasons

14. The formatting of the decision is peculiar in that the Judge, for reasons which are not at all clear, has restarted the paragraph numbering after paragraph 44. This makes the decision very difficult to follow.

15. We have considered the arguments presented in the written grounds and as refined by Mr Whitwell, as well as the submissions made in response by Mr Thoree. We are satisfied that there is an error of law in the decision of the Judge such that requires setting aside of that decision.

16. The evidential basis for finding that the Claimant is not fit to fly as at the date of the hearing was that he had been unable to fly after a heart attack suffered in 2019 and had undergone angioplasty on 14th May 2019. Following this he was not fit to fly for some 6 months or so.

17. He had a second heart attack on 9th April 2021. The Judge concludes that it is likely that he is again unable to fly following this, and therefore until he is fit to fly then there are insurmountable obstacles to family life continuing in Mauritius.

18. Whilst a Judge can, having considered the evidence in the round, come to a considered view on what is likely to happen as of the date of the hearing, in our judgment considerable care must be given to extending that to circumstances such as this, which requires a clinical assessment.

19. It is a clinical assessment from a doctor as to whether someone is fit to fly or not, the evidence relied on, namely a letter from his doctor from 2019,was not, in our view, capable to demonstrate an inability to fly in 2021. This finding was outside a range of reasonable responses to the evidence. That was the only basis for finding that there would be a disproportionate interference with his Article 8 rights and consequently the Judge's conclusions cannot stand.

20. The first ground is unparticularised and made general submissions disagreeing with the findings relating to co-habitation. The immigration rules reflect where the Secretary of State considers a fair balance should be struck for the purpose of Article 8 of the European Convention and form part of an overall human rights assessment. In light of this, the assertion that the judge failed to consider the case 'under Human Rights' is wholly unarguable.

21. Despite Mr Whitwell's best efforts we are also not at all satisfied that the argument he advanced in relation to ground one was pleaded in the grounds of appeal at all. No argument was particularised about the rules requiring 2 years co-habitation at the date of the application. In any event, in light of the decision in *OA and Others (human rights; 'new matter'; s.120) Nigeria* [2019] UKUT 00065 it was open to the judge to consider whether the appellant would meet the requirements of the immigration rules if he applied at the date of the hearing as part of the overall human rights assessment.

22. The grounds themselves amount to a series of disagreements about the decision made by the Judge but completely fail to identify why those disagreements amount to errors of law. These grounds are themselves not of the quality we would expect to see by any appellant in this Tribunal, let alone a Government department. They make little sense and fail to identify any of the permissible grounds of appeal as discussed in R (Iran) & Ors v Secretary of State for the Home Department [2005] EWCA Civ 982:

> *i) Making perverse or irrational findings on a matter or matters that were material to the outcome ("material matters");*
>
> *ii) Failing to give reasons or any adequate reasons for findings on material matters;*

iii) Failing to take into account and/or resolve conflicts of fact or opinion on material matters;

iv) Giving weight to immaterial matters;

v) Making a material misdirection of law on any material matter;

vi) Committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or the fairness of the proceedings;

vii) Making a mistake as to a material fact which could be established by objective and uncontentious evidence, where the appellant and/or his advisers were not responsible for the mistake, and where unfairness resulted from the fact that a mistake was made.

23. Little care has been given in the grounds to pause and consider under which heading the Judge has materially erred. Whilst the headings to the grounds purport to identify errors of law, the grounds themselves on the whole fail to explain, even in basic terms, how the Judge erred and how such an error is material such that the decision should be set aside.

24. For the reasons identified above we have, notwithstanding the sub standard nature of the grounds of appeal, reluctantly concluded that the Judge's decision is infected with an error of law, such that requires the decision being set aside. The decision is to be remade in the Upper Tribunal, we are not satisfied this is a case which requires a remittal.

25. For the avoidance of doubt the findings of fact made n relation to the genuine and subsisting nature of the relationship and cohabitation are preserved, as they are not infected by the error identified above.

DIRECTIONS

26. **The parties** may file and serve any up to date evidence relied upon at least 14 days before the resumed hearing.

27. **The appellant** shall notify the Upper Tribunal of (i) the details of any witnesses that will be called; (ii) whether they require the assistance of an interpreter; and (iii) if so, in what language within 14 days of the date this decision is sent.

Notice of Decision

The First-tier Tribunal decision involved the making of an error of law such that it is set aside.

The decision will be remade in the Upper Tribunal at a resumed hearing

T.S. Wilding

Date 11th March 2022

Deputy Upper Tribunal Judge Wilding

ANNEX 2

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000639

First-tier Tribunal No: HU/00418/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

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Before

UPPER TRIBUNAL JUDGE CANAVAN
DEPUTY UPPER TRIBUNAL JUDGE LEWIS

Between

Nived RAMSURAN
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: No appearance
For the Respondent: Ms L Lecointe, Senior Presenting Officer

Heard at Field House on 11 July 2024

ADJOURNMENT NOTICE AND DIRECTIONS

1. The appeal is adjourned.

2. The case was listed before the Tribunal today for a 're-making hearing' pursuant to the Decision of the Upper Tribunal (dated 11 March 2022, served 18 March 2022) finding error of law in the decision of First-tier Tribunal Judge Wyman, and further to the Directions incorporated in the 'error of law' decision.

3. Notwithstanding that listing directions were prepared in March 2022, for reasons that are unclear it appears that no further action in respect of relisting the appeal was taken until May 2024. A Notice of hearing was issued on 31 May 2024. The Tribunal apologises for this delay.

4. The Notice of Hearing was sent to the Respondent, the Appellant, and the Appellant's representatives. It appears that the Notice sent to the Appellant was returned, whereupon, on 13 June 2024 an email was sent to the Appellant's representatives to obtain confirmation of address.

5. On 18 June 2024 an email response was received from the Appellant's representatives. The response does not indicate any change of address, but states:

> "*Our client is very sick as such he has been unable to provide us with instructions. We attached copy of our client's recent medical letter for your information.*
>
> *We will update you when we receive any instructions*".

The attached letter from the Appellant's GP is dated 17 June 2024; it gives a different address for the Appellant from the one previously on file. Its substantive contents are discussed further below.

6. No further communication has been received by or on behalf of the Appellant. Nor has there been any request for the representatives to be taken 'off the record'.

7. There was no attendance by or on behalf of the Appellant today. Beyond the generalised reference in the email of 18 June 2024 to the Appellant being "*very sick*" there is, disappointingly, no further attempt to explain the Appellant's non-attendance, alternatively the non-attendance of either or both his representative and/or his partner. The Tribunal would have expected as a matter of basic courtesy some correspondence in this regard. The GP's letter of 17 June 2024 does not state in terms that the Appellant is unfit to attend the hearing centre or otherwise to give evidence.

8. We gave consideration as to how best to proceed in all the circumstances, bearing in mind in particular that a significant – and indeed possibly determinative – aspect of the appeal relates to the Appellant's medical fitness to travel to Mauritius.

9. Ms Lecointe indicated that the Respondent would not make any concessions on any of the issues in the appeal based on the GP letter of 17 June 2024.

10. Although the GP letter includes the sentence "*With his complicated medical history, it is advisable to avoid travelling for now because of the potential risk of complications*", we agree that the letter is insufficiently detailed as to the basis for this opinion. Although a very brief history of the

Appellant's cardiac problems is provided, there is no evidence of any adverse cardiac event since 2021, and no clear evidence of the Appellant's current symptoms, treatment, or prognosis in respect of cardiac problems. Without more, we do not consider it is appropriate to draw any clear inference from the apparent recent referral to the community heart failure nurse for further management.

11. We noted that this was not a case where the Appellant had failed to engage with the process at all. Given that the presently available evidence does not seemingly establish that the Appellant is unable to give his representatives instructions, allowing for the possibility that he might not have realised that he could be represented at the hearing even without attending himself and/or his partner could attend the hearing to give evidence in support of his appeal, and given the limited scope of the recent medical evidence, we decided that it was in the interests of justice that the Appellant have a further opportunity to file and serve any evidence upon which he might wish to rely and to attend (in person or through his representative and/or partner) a hearing of his appeal.

12. The appeal is adjourned accordingly with the following Directions.

Directions

(i) The appeal will be listed at Field House for a face-to-face hearing on the first available date 10 weeks after the date of issue of this document, with a time estimate of 3 hours.

To Thoree & Co Solicitors:

(ii) You must notify the Upper Tribunal within 14 days of the date of the issue of this document whether you continue to be instructed by the appellant, and if not, you must notify the Tribunal to come off the record.

To the Appellant:

(iii) You may file and serve any further evidence upon which you wish to rely in the appeal. In particular, the Tribunal is likely to find it helpful if you were to provide:

(a) an update of your domestic circumstances (to include, if appropriate, confirmation that you are still in a relationship with your partner, and evidence of her present circumstances);

(b) copies of your medical records since 1 April 2021, including all letters and reports from cardiology specialists. You can obtain your medical records through your GP free of charge. It may help to show your GP this document when asking for such records;

(c) an up-to-date opinion from a suitable medical practitioner as to the current prognosis in respect of your cardiology problems,

including an opinion in respect of your fitness to make a journey by air to Mauritius and the likely consequences of making such a flight (if any);

(d) if you claim that you are unfit to attend and participate in a Tribunal hearing, you should provide medical evidence to confirm and explain this.

Any further evidence that you want to rely upon should be filed by uploading on to the CE-File system, and served on the Respondent by email, within 28 days of the date of issue of this document.

(iv) Whether or not you wish to file any further evidence you are to notify the Tribunal within 28 days of the date of the issue of this document whether you would like the decision in your appeal to be made further to another hearing (to be attended by any or all of you, your partner, and your representative), or whether you would like your appeal to be decided 'on the papers' without you attending a further hearing.

(v) The appellant failed to attend the hearing today without explanation. The Upper Tribunal makes clear that if the appellant does not reply to these directions as ordered, or fails to attend the next hearing without good reason, the Upper Tribunal is likely to determine the appeal in his absence.

To the Respondent:

(vi) You may file and serve any response addressing any further evidence filed by the Appellant. If the Appellant indicates that he wishes the decision in the appeal to be remade without a further hearing, your written response should include any observation or submission in this respect. Any written response is to be accompanied by copies of any supporting evidence relied upon by the Respondent. The written response and any supporting evidence should be filed by uploading onto the CE-File system, and served on the Appellant by email, within 56 days of the date of the issue of this document.

To both the Appellant and the Respondent:

(vii) You may to apply to the court to vary these Directions.

Notice of Decision

13. The appeal is adjourned with the Directions set out above.

I Lewis
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 July 2024

ANNEX 3

IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000639

First-tier Tribunal No: HU/00418/2021

THE IMMIGRATION ACTS

Directions Issued:

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Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

NIVED RAMSURAN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

(NO ANONYMITY ORDER MADE)

Representation:
For the Appellant: No appearance
For the Respondent: Ms S. McKenzie, Senior Home Office Presenting Officer

DIRECTIONS

1. The appellant appealed the respondent's decision dated 21 February 2020 to refuse a human rights claim. First-tier Tribunal Judge Wyman dismissed the appeal in a decision sent on 10 August 2021.

2. A panel of the Upper Tribunal found that the First-tier Tribunal decision involved the making of an error of law in a decision sent on 18 March 2022. On that occasion the appellant was represented by Thoree & Co. Solicitors. The First-tier Tribunal decision was set aside. The Upper Tribunal made directions for the appellant to file and serve any up to date evidence and to notify the Tribunal of any witnesses at least 14 days before the resumed hearing. Instructions were given for the listing of the case, but for unknown reasons there was a significant delay on the part of the Upper Tribunal before the case was listed for hearing.

3. The resumed hearing for remaking the decision was listed on 11 July 2024. The hearing was adjourned for the reasons given in the directions made by Deputy Upper Tribunal Judge Lewis. There was no attendance by or on behalf of the appellant. No explanation for his non-attendance was given. There was no evidence to suggest that the appellant was engaging with the appeal save for a

single piece of evidence filed at a late stage by his legal representatives stating that their client was too unwell to provide instructions and attaching a letter from his GP dated 17 June 2024. Although no adequate reason had been given for the appellant's non attendance, the Upper Tribunal adjourned the hearing in the interests of justice.

4. The Upper Tribunal directed Thoree & Co. to clarify whether they continued to represent the appellant within 14 days of the date the order was sent. The Upper Tribunal has no record of Thoree & Co. having complied with the order made by the court.

5. The Upper Tribunal also made detailed directions to the appellant, giving examples of evidence that he might need to compile to support his case. In particular, the key issue related to his current state of health and fitness to fly. The appellant was directed to file any further evidence he wished to rely upon with 28 days of the date the order was sent. He was also directed to notify the Tribunal within the same time period whether he wanted the appeal to be determined at a hearing or on the papers without the need to attend a further hearing. The Upper Tribunal has no record of the appellant having responded to these directions.

6. Neither the appellant nor the legal representatives on record complied with the orders made by the court. The Upper Tribunal relisted the case for hearing on 07 October 2024. There was no appearance by or on behalf of the appellant.

ADJOURNMENT

7. On the morning of the hearing, the Upper Tribunal received a message to say that an unknown person had rung the Loughborough Support Centre that morning to say that the appellant could not attend the hearing because he 'had been admitted to hospital with cardiac problems'. No further information was provided as to when the appellant might have been admitted or how serious the problem might be. Whilst it is not disputed that the appellant has a cardiac condition, the appellant's failure to respond to repeated directions or to attend previous hearings now suggest that he is not engaging with this appeal. However, given that there was some indication that there might have been a good reason why he did not attend it was in the interests of justice to adjourn once more. However, the court must be conscious of the fact that court time and public funds are wasted by repeated adjournments and that any further delay is not in the interests of justice.

DIRECTIONS

8. **The appellant** must send medical evidence to support the assertion that he was unable to attend the hearing on 07 October 2024 because he was admitted to hospital no later than 14 days from the date these directions are sent.

9. **The appellant** must also confirm in writing whether he wishes to attend a further hearing or not no later than 14 days from the date these directions are sent.

10. **If the appellant fails to comply with this order** within 14 days of the date these directions are sent, the Upper Tribunal will proceed to determine the appeal without a hearing on the papers that are currently before the Tribunal: see rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008.

11. **Thoree and Co. Solicitors** must explain why they did not comply with the direction made by the Upper Tribunal on 11 July 2024, and shall comply with that direction, within 14 days of the date these directions are sent. Further failure to comply with the directions of this court may lead to a referral to the relevant regulator.

12. There is liberty to apply to the court to vary these directions.

M.Canavan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

08 October 2024