Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2023-002273 & 002274

First-tier Case Nos: HU/60001/2022 & HU/60002/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued
On 22nd of February 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

MS GUL BIBI SHIRZAD – 1st Appellant
MS KAINAT SHERZAD – 2nd Appellant

(Anonymity order not made)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Heard at Field House on 5 February 2024

Representation:

For the Appellant: Miss K Reid, Counsel
For the Respondent: Ms A Nolan, Home Office Presenting Officer

DECISION AND REASONS

The Appellants

1. The appellants are citizens of Afghanistan. The first appellant who was born on 31 May 1982 is the mother of the second appellant who was born on 19 March 2003. They appeal against decisions of the respondent dated 20 June 2022 to refuse their applications for entry clearance under article 8. The appellants wish to join Mr Zarullah Sherzad a citizen of Afghanistan with discretionary leave to remain in the United Kingdom ("

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the sponsor”). He is the husband of the first appellant and the father of the second appellant.

The Appellants’ Case

2. The appellants’ case is that they are dependent on the sponsor financially. They are presently living in Jalalabad in Afghanistan where the sponsor has visited them. He states that he cannot live permanently in Afghanistan having now lived in the United Kingdom for 20 years which would arouse the suspicion of the Taliban regime. The appellants and sponsor cannot enjoy their family life together in Pakistan either because of restrictions placed on Afghan citizens by the Pakistan authorities. The first appellant has worked previously as a women’s rights activist in Afghanistan and neither she nor her daughter the second appellant are able to leave their home. The second appellant who had plans to study medicine before the most recent takeover by the Talinan is unable to obtain an education because of restrictions placed on females by the Taliban government.

The Proceedings

3. The appellants appeals against the respondent’s decision came before Judge of the First-tier Tribunal Ripley sitting at Hatton Cross on 12 May 2023. On that occasion the first appellant’s son (and thus the 2nd appellant’s brother) Sohail Sherzad was also an appellant in the case. In her decision dated 4 June 2023 Judge Ripley dismissed his appeal but allowed the appellants’ appeals. The respondent appealed against the decision to allow the appellants’ appeals and the matter came before me sitting in the Upper Tribunal on 6 October 2023. I affirmed the First-tier decision to dismiss Mr Sohail Sherzad’s appeal but having found a material error of law in the First-tier’s treatment of the appellants’ appeals I set the First-tier Tribunal decision aside. I directed that the appellants’ appeals be reheard on the first available date.

4. Attached to this determination is a copy of my error of law decision dated 16 October 2023. As part of my decision to direct a rehearing of the appellants’ appeals I said: “I consider [the] appellants should be given the opportunity to produce better evidence under article 8 to support their claims of undue harshness including any background material if necessary bearing in mind they are outside the United Kingdom. At [48] [of the First-tier decision] for example the judge highlighted the absence of medical evidence.”

The Relevant Law

5. These appeals are brought outside the immigration rules under the provisions of article 8 (right to respect for private and family life of the European Convention on Human Rights). The burden of proof of establishing that the decision to refuse the appellants’ applications for entry clearance puts this country in breach of its obligations under the

convention rests upon the appellants. The standard of proof is the usual civil standard of balance of probabilities. Where a claim is brought under the provisions of article 3 of the Convention, prohibition of torture, the burden of proof remains on an applicant asserting that the respondent's decision breaches the United Kingdom's obligations under the convention but the standard of proof is the so-called lower standard of proof usually expressed as a reasonable chance.

6. In assessing a claim under article 8 the courts have directed judges to adopt a step-by-step approach see the case of **Razgar [2004] UKHL 27**. The first step is to decide whether there is family life and if so whether it will be interfered with by the respondent's decision. Is that decision pursuant to a legitimate objective? If it is, is the interference proportionate to that legitimate objective? In assessing proportionality the higher courts have recommended a balance sheet approach setting out those factors which favour the appellants case and those which favour the respondent's case.

7. The Immigration Rules add an important consideration when looking at Article 8 outside the Rules. By Appendix FM sub heading "Exceptional circumstances", section GEN.3.2.(1) provides that "Subject to sub-paragraph (4), where an application for entry clearance or leave to enter or remain made under this Appendix, or an application for leave to remain which has otherwise been considered under this Appendix, does not otherwise meet the requirements of this Appendix or Part 9 of the Rules, the decision-maker must consider whether the circumstances in sub-paragraph (2) apply. (2) Where sub-paragraph (1) above applies, the decision-maker must consider, on the basis of the information provided by the applicant, whether there are exceptional circumstances which would render refusal of entry clearance, or leave to enter or remain, a breach of Article 8 (my emphasis) of the European Convention on Human Rights, because such refusal would result in unjustifiably harsh consequences for the applicant, their partner, a relevant child or another family member whose Article 8 rights it is evident from that information would be affected by a decision to refuse the application."

The Documentation

8. On the file was the composite bundle which ran to 520 pages. This comprised the bundle which had been before the judge at first instance but also a medical report on the first appellant dated 11 January 2024. The report indicated that the 1st appellant had been referred for counselling. There was evidence of an attempt by the sponsor to travel to Pakistan in November 2023, a letter of support from the British Afghan Chamber of Commerce and background material on the situation in Afghanistan and its relationship with Pakistan. There was also the appellant's skeleton argument submitted for the hearing at first instance.

The Hearing

9. The sponsor attended and gave oral testimony in English. He adopted the two statements he had made for the proceedings at first instance and explained the relevance of the documents in the composite bundle concerning his recent attempt to travel to Pakistan. The sponsor's intention was to send a message to the appellants in Afghanistan as he was worried about their state of health. The appellants had valid Afghan passports and he wanted them to travel to Pakistan with his son Sohail to receive medical treatment. They would need Pakistan visas but had not obtained those yet. He bought a ticket to fly to Islamabad and he obtained a visa from the Pakistan High Commission. He was issued with an Afghan extension passport about 3 months ago but was denied boarding the flight to London. This was because the airline (Turkish airlines) checked with the Pakistan authorities in Islamabad who said that they would not accept the sponsors extended Afghan passport as valid.

10. Between 2015 and November 2022 he had seen the appellants approximately 10 times but the circumstances during that period were totally different from what appertains in Afghanistan now that the Taliban have taken over. Sometimes he would see the appellants in Pakistan but also he would go to Jalalabad in Afghanistan to visit them. That was when it was possible to cross the border between Afghanistan and Pakistan easily. The situation for his wife and daughter was getting worse day by day. His wife now stayed at home like a prisoner and his daughter the same. He spoke to them almost every day. His wife was being treated by a psychiatrist for depression but could receive medication in Afghanistan. After the flight cancellation, he feared he would not be able to see the appellants again.

11. He had three sisters in Afghanistan who occasionally met up with his wife. Asked in cross examination whether he was aware of any threats against the appellants the sponsor replied "They don't receive any threats directly but if they did due to their occupation they will be killed within 20 days". He said the appellants were "slightly different" as he put it from other Afghan women because his wife was empowering other women.

12. I also heard oral testimony from Mr Saif Qazizada who confirmed that the sponsor had expressed to him his, the sponsor's, concerns for the appellants. His evidence varied from that of the sponsor as he said that the sponsor had told him the appellants had received threats. When I asked him to clarify whether he had spoken to the 1st appellant himself he said he had not but then changed this to say that he had spoken to the 1st appellant when she married the sponsor.

Closing Submissions

13. For the respondent reliance was placed on the refusal letter dated 1 December 2022. It was not credible that the sponsor was unable to travel

to Pakistan to meet the appellants. From the bundle it could be seen the sponsor was granted a visa allowing him entry into Pakistan and he used the same extended passport to obtain that visa. His claim that at Heathrow he was told he could not travel to Pakistan lacked credibility. If he could not travel he would not have been able to obtain a Visa in the first place. The letter produced by the sponsor merely states that the sponsor did not board the flight. The appellants have Afghan passports as can be seen from their visa application forms. The claim that the family would find it difficult to travel to Pakistan was not borne out. There was nothing to suggest they could not stay in Pakistan if they chose to do so.

14. The sponsor had said that he and the appellants would meet at the border. That did not show the sponsor was at risk of going to Afghanistan but even if he could not one had to look at the history of the relationship. Between 2002 and 2015 family life was maintained by modern means of communication, the sponsor and the appellant spoke every day. For 13 years that was how family life was maintained. They could thus maintain their relationship in this way as they had over a significant period of time.

15. The sponsor’s wife was said to suffer from mental health difficulties however it was clear from the evidence in the bundle at page 56 that the first appellant saw a psychiatrist in Afghanistan and could obtain the medication she needs. There was nothing in that evidence to show exceptional circumstances or that it was disproportionate to refuse the appellant’s application. The appellants have not been threatened in Afghanistan and they are not living in fear. How the 1st appellant feels is no different to how other women feel in Afghanistan. The appellants’ position was no different to any other female.

16. In closing for the appellant reliance was placed on the skeleton argument. The immigration rules it was accepted could not be met thus the issue was the interference with the parties family life. Once the sponsor regularised his stay in the United Kingdom he would be able to travel freely to see his family in Pakistan or other neighbouring countries. It was now very difficult to stay in touch with the appellants compared to how it was in the past when the sponsor was in touch with them through modern methods of communication. They had done so in a country where at that time rights were respected. The appellants were no longer living in a country where that was still the case.

17. There had been an interference in the family life of the parties by this decision because between 2015 and 2022 (when the Taliban took over again) the sponsor could visit the appellants on a regular basis. During that seven year period he met them on 10 occasions, sometimes more than once a year. The only reason this came to an end was because of the change of government in Afghanistan.

18. In considering whether the interference caused by the decision was proportionate to the legitimate aim pursued the position of these two

women had to be considered against the objective material in the bundle. Afghanistan is the only country in the world where women are prevented from being educated. They are at risk of violence. Whilst they had not received direct threats themselves it was not surprising that women who had promoted the rights of women would live in fear as the first appellant is doing. Living under Taliban rule would create that threatening position for her. The evidence that they are living in fear was credible. They were in a different position to other women and girls in Afghanistan. Not just because the first appellant worked for women's rights but because they have a family life with someone living in the United Kingdom. Most women in Afghanistan do not have an opportunity to leave the country. The appellants in this case do because of their sponsor in the United Kingdom, he can maintain and accommodate them.

19. The respondent had proposed that family life be maintained through visits to Pakistan with the sponsor visiting the appellants in Afghanistan. The Foreign Office advised against travel to Afghanistan it was preposterous to suggest the sponsor should make a family visit to Afghanistan. There was material in the bundle showing the Pakistan authorities attempting to remove Afghan citizens from Pakistan and Afghans were denied access to basic rights. The sponsor did not have to put in evidence that he obtained a visa for Pakistan he put it in so he could explain what had happened when he tried to travel to Pakistan. This made his explanation more credible. He was desperate to see his family so why would he not board the flight at the very least? The circumstances of this case were exceptional and sufficiently compelling for the appeal to be allowed outside the rules.

Discussion and Findings

20. It is accepted in this case that due to his status at the time of application the sponsor cannot sponsor the appellants under the immigration rules. It does not appear to be in dispute that the sponsor could maintain and accommodate his wife and their daughter but this is an application for entry clearance from outside the United Kingdom and in the situation where the rules cannot be met the appellants can only pray in aid article 8. Although life for the appellants in Afghanistan is not necessarily pleasant, it is hard to see how their situation crosses the high threshold of article 3 such that they could succeed outside the rules under that article. They have not been subject to violence or the threat of violence.

21. In essence their argument is that as females they will have their freedom severely curtailed by the strict interpretation of Islamic law imposed on the population by the return to government of the Taliban. There is little up to date country guidance on Afghanistan, previous country guidance might now be out of date because of the Taliban takeover. The first appellant is suffering from depression but is under the care of a doctor in Afghanistan and appears to be able to obtain the necessary medication. Her condition is therefore within limits being controlled. The appellants'

situation is uncomfortable. The first appellant can no longer promote the rights of Afghan women due to the adverse attitude of the Taliban government and the second appellant cannot enjoy an education that is barred to all females now in Afghanistan. This is obviously a very disappointing outcome for the appellants but it is no different to the position faced by any other female in Afghanistan. Following the Court of Appeal authority of EV Philippines **[2014] EWCA Civ 874** per Lord Justice Lewison (with whom the others agreed): "Just as we cannot provide medical treatment for the world, so we cannot educate the world". The economic circumstances in Afghanistan are no doubt difficult for most of the population although not for the appellants who are maintained by the support of the sponsor. The appellants are members of a particular social group, women in Afghanistan, but the evidence does not support the contention that they are being persecuted.

22. Thus the appellants fall back on their argument that their appeal should be allowed under article 8 outside the rules. I accept that the sponsor does maintain communication with the appellants and before the Taliban takeover was able to maintain contact with them by visiting them. They are financially dependent upon him. Does the respondent's decision interfere with that family life or does it merely continue the status quo? The decision is in accordance with the legitimate aim of immigration control because of the sponsor's status such that the appeal cannot succeed under the rules. If it did succeed under the rules the decision would no longer be pursuant to a legitimate objective. The issue as so often in article 8 appeals is whether if there is interference with family life such interference is proportionate to the legitimate aim pursued.

23. When assessing proportionality. I find on the respondent's side of the balance sheet is the public interest in maintaining immigration control. The appellants are outside the United Kingdom and therefore to have to demonstrate sufficiently compelling reasons why their family life with the sponsor should weigh more heavily on the scales than the public interest weighs on the respondent's side of the scales. Their argument in essence is that they are in a different category to other would-be applicants because they have a sponsor in the United Kingdom who could maintain and accommodate them which is not something open to most other persons whose family has become separated. This is not a strong argument in favour of the appellants as the parties do not have a right to choose where to enjoy their family life.

24. The sponsor claims that they cannot enjoy their family life in Pakistan because of the hostile attitude of the authorities towards Afghan citizens and the sponsor does not wish to return to Afghanistan. His explanation for this is state of affairs is somewhat vague but appears to be on the basis that he has lived away from Afghanistan for a long time and might therefore be a person of interest to the Afghan authorities were he to resume living in the country now. Assuming this to be correct, it means that the only way that the family can stay in touch barring a change of

heart by the Pakistan authorities (which would allow the appellants and the sponsor to meet in Pakistan) is that they must maintain their family life through modern means of communication. They are doing this at the present time as they speak regularly over the Internet.

25. To revert to the question posed at paragraph 22 above, the respondent makes the point that the decision to refuse entry clearance continues the status quo it does not impose a fresh interference on the family relationships which was not already there. The threshold to cross to establish family life is a low one, in this case it is a husband, wife and daughter. I agree with the respondent’s argument, it is difficult to say that the respondent’s decision represents an interference with the parties family life as it merely continues the present position. However even if that is wrong and there is an interference there is no very compelling reason which the appellants can put forward as to why their application should be allowed outside the immigration rules. They are not in danger in Afghanistan, they are in communication with their sponsor and their financial and it seems their medical needs are being taken care of. I therefore dismiss the appellants’ appeals against the respondent’s decision to refuse entry clearance.

Notice of Decision

I dismiss the appellant’s appeal is against refusal of entry clearance.

I make no anonymity order as there is no public policy reason for so doing.

Signed this 16th day of February 2024

....
Judge Woodcraft
Deputy Upper Tribunal Judge

TO THE RESPONDENT
FEE AWARD

As I have dismissed the appeals there can be no fee award.

Signed this 16th day of February 2024

....

Judge Woodcraft
Deputy Upper Tribunal Judge

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: UI-2023-002273

THE IMMIGRATION ACTS

Decision & Reasons Issued

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Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

MS GUL BIBI SHIRZAD – 1st Appellant
MR SOHAIL SHERZAD – 2nd Appellant
MS KAINAT SHERZAD – 3rd Appellant

(Anonymity order not made)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Heard at Field House on 6 October 2023

Representation:

For the Appellant: Ms M Benitez, counsel
For the Respondent: Mr E Terrell, Home Office Presenting Officer

DECISION AND REASONS

The Appellants

1. There are cross appeals in this case but for the sake of clarity I shall continue to refer to the parties as they were referred to at first instance. All three appellants are citizens of Afghanistan. The first appellant who was born on 31 May 1982 is the mother of the second and third appellants who were born on 25 May 2001 and 19 March 2003 respectively. The respondent appeals against a decision of Judge of the

First-tier Tribunal Ripley sitting at Hatton Cross on 12 May 2023 in which she allowed appeals by the first and third appellants against decisions of the respondent dated 20 June 2022. Those decisions were to refuse the appellant's applications for entry clearance under article 8. The second appellant appeals against the same determination of the First-tier Tribunal which dismissed his appeal against the decision of the respondent.

2. The three appellants wish to join Mr Zarullah Sherzad who is the husband of the first appellant and the father of the second and third appellants. He is a citizen of Afghanistan with discretionary leave to remain in the United Kingdom and I shall refer to him as the sponsor.

The Appellants' Case

3. The appellant's case was that they were all dependent on the sponsor financially. They were presently living in Jalalabad in Afghanistan where the sponsor had visited them. He stated he could not live permanently in Afghanistan having now lived in the United Kingdom for 20 years. The first appellant had worked as a women's rights activist in Afghanistan and neither she nor her daughter the third appellant were now able to leave their home. The third appellant would not be able to obtain an education because of restrictions placed by the Taliban government.

The Decision at First Instance

4. At [28] the judge accepted that there was family life between all the appellants and the sponsor placing particular weight on the appellants financial dependency on the sponsor. The appellants were unable to satisfy the immigration rules primarily because of the sponsors immigration status, he did not have indefinite leave to remain and because of the lack of evidence of the second and third appellants knowledge of English. The judge thus considered the matter outside the rules under article 8 weighing the compassionate circumstances against the public interest.

5. The Taliban takeover had had different impacts on each of the appellants. The second appellant was studying business at university and had no specific claim to have any difficulties continuing with his life in Afghanistan. The appellants were not living in hiding in Afghanistan, see [38]. The first and third appellants were independent minded women who had lost their independence following the Taliban takeover. The family were being supported with funds from the sponsor. They were unable to leave their family lives together in Pakistan because of the significant risk to the appellants there.

6. It was not proportionate to argue that the sponsor should return to Afghanistan. He had been absent for over 20 years which would arouse suspicion. The appellants have developed strong relationships with other family members in Afghanistan. The sponsor runs a successful business

and could support the appellants. If the first and third appellants were to leave Afghanistan to come to the United Kingdom, the second appellant would still have familial support in Afghanistan. Although refusing the second appellant but allowing the first appellant would place the first appellant in the painful predicament of deciding whether to leave Afghanistan or stay, it would still not cause the second appellant later difficulties, see [52]. The first appellant would become eligible to join the sponsor in 2025 in any event. The judge placed particular weight on: (i) the family's inability to lead their family life abroad in Afghanistan or Pakistan; (ii) the denial of freedom and (iii) the particular vulnerabilities the first and third appellants faced as women. She allowed their appeals but dismiss the appeal of the second appellant.

The Onward Appeal

7. In her grounds of appeal the respondent argued that the appellants were living safely in Afghanistan and had no issue with the authorities hence their ability to travel to and from Pakistan. Their position was no different to that of any other female in Afghanistan and the respondent's decision merely maintained the status quo. In granting permission to appeal the First-tier judge wrote that the trial judge had not explained why family life which had continued in the same way for 20 years would be disproportionately affected by the respondent's decision. The appellants filed a rule 24 response prepared by counsel who appeared before me but who had not appeared at first instance which argued that Afghanistan was not safe for the appellants.

The Hearing Before Me

8. In consequence of the grant of permission the matter came before me to determine in the first place whether there was a material error of law in the decision of the First-tier Tribunal such that it fell to be set aside. If there was then I would make directions on the rehearing of the appeal. If there was not the decision at first instance would stand.

9. For the respondent it was acknowledged that the judge had placed weight on family life and the difficulties they faced. The grounds focused on the judge's point about denial of freedom which related more to a protection appeal than an entry clearance one. The judge had to balance the strength of the public interest against the impact on family life.

10. For the appellant counsel relied on her rule 24 reply. The judge accepted that the parties could not live in Pakistan. The judge had to consider how country conditions impacted on the appellants' ability to conduct their family life. The respondent did not challenge the judge's decision that the family could not live in Afghanistan together. In relation to the 2nd appellant's cross-appeal it was an error for the judge to find that the second appellant would have family support. It was not canvassed at the hearing. The judge's findings were flawed. There was no reference to the

impact on the second appellant of being separated from the other two appellants.

11. In conclusion the respondent argued that there the second appellant's appeal attacked [45] and [46] of the determination and whether there were family members in Afghanistan. Other than the error in relation to the 1st and 3rd appellants the determination was a very careful one. The judge did not have to refer to every piece of evidence. Circumstances in Afghanistan were difficult but the context was quite important. The judge had considered economic circumstances see [40]. The judge was dealing with a sponsor who did not have indefinite leave to remain and could not therefore sponsor under the immigration rules. The second appellant was not a young child there was no evidence of economic hardship. He had family support in Afghanistan. The judge's findings were perfectly valid for the reasons given.

12. Finally in conclusion for the 2nd appellant counsel made two points. It was rejected that there were family members in Afghanistan who could support the second appellant. The judge should have taken into account the second appellant's age and explained how a lack of maturity would impact on the proportionality assessment in relation to the second appeal. The parties agreed that if there was an error in relation to both appeal and cross-appeal then the matter should be remitted back to the First-tier.

Discussion and Findings

13. The judge distinguished the case of the 2nd appellant from the cases of the 1st and 3rd appellants primarily because of the impact of Taliban rule on female citizens of Afghanistan. The 2nd appellant was able to work in Afghanistan. As a male he would not experience any particular difficulties and would have the support of family members in Afghanistan. He would continue to receive funds from his father. Whilst it may be that there was no direct evidence before the judge on the issue of other family members, it was a reasonable inference for the judge to take. If the first appellant and her children had survived in Afghanistan for 20 years without the physical presence of the sponsor, there must be other family members available who were able to assist the appellants. There was no reason why that assistance would end if the 1st and 3rd appellants left Afghanistan but the 2nd appellant remained.

14. For the second appellant to succeed outside the immigration rules he would have to show that the consequences for him were he to remain in Afghanistan without the 1st and 3rd appellants would be unduly harsh. The judge rejected this conclusion in respect of the second appellant. I have summarised her findings in the preceding paragraph and I see no basis on which the judge's conclusions can be criticised. Even if the result is disappointing for the second appellant no material error of law has been demonstrated in the determination in his case.

15. As to the 1st and 3rd appellants, the situation is more complicated. In essence their argument is that as females they will have their freedom severely curtailed by the strict interpretation of the law imposed on the population by the return to government of the Taliban. It does not appear that the judge in the First-tier was referred to any up to date country guidance on Afghanistan, previous country guidance might now be out of date because of the Taliban takeover. In essence the appeal of the 1st and 3rd appellants is more akin to an international protection claim than an article 8 claim. It is difficult to see how on the basis only of article 8 that the 1st and 3rd appellants right to respect for private and family life has been disproportionately interfered with by a decision of the respondent which itself merely maintains the status quo.

16. The economic circumstances in Afghanistan are no doubt difficult for most of the population although not for the appellants who are maintained by the support of the sponsor. The judge appears to have assumed that because the 1st and 3rd appellants were female and before the Taliban takeover had worked for the improvement of the lives of Afghan females that the imposition of Taliban rule of itself would so impact their article 8 lives they should be granted entry clearance to come to the United Kingdom. This point was not fully argued in the First-tier. I find that there was a material error of law in the judge's decision to allow the appeals of the 1st and 3rd appellants on the basis of conditions generally for females in Afghanistan.

17. Whilst there is existing authority that females in Afghanistan are a particular social group, that relates to international protection claims (usually made by persons already in the United Kingdom). That is not the case here. This is a claim under article 8. Having decided to overturn the decision of the First-tier I have decided not to proceed to remake the decision by dismissing the 1st and 3rd appellants appeals outright as I consider the first and third appellants should be given the opportunity to produce better evidence under article 8 to support their claims of undue harshness including any background material if necessary bearing in mind they are outside the United Kingdom. At [48] for example the judge highlighted the absence of medical evidence. Although a rehearing may involve some findings of fact, it will not be so extensive that it requires the case to be remitted back to the First-tier to be heard again. That might have been necessary if, as was submitted to me, all three appellants had their decisions set aside. I therefore set aside the decision of the First-tier Tribunal in relation to the 1st and 3rd appellants only and direct that their appeals be reheard in the Upper Tribunal on the first available date.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law in respect of the 1st and 3rd Appellants' appeals and I set the decisions aside. I dismiss the 2nd Appellant's appeal

Respondent's onward appeal in respect of the 1st and 3rd appellants allowed.

Their appeals will be heard on the first available date.

2nd Appellant's appeal dismissed

I make no anonymity order as there is no public policy reason for so doing.

Signed this 16th day of October 2023

....
Judge Woodcraft
Deputy Upper Tribunal Judge

TO THE RESPONDENT
FEE AWARD

Fee awards were made in respect of the 1st and 3rd appellants' appeals . As I have set their determinations aside, I set aside the fee awards in their cases. There can be no fee award in respect of the 2nd Appellant

Signed this 16th day of October

....
Judge Woodcraft
Deputy Upper Tribunal Judge