Upper Tribunal
(Immigration and Asylum Chamber)

Dasgupta (error of law – proportionality – correct approach) [2016] UKUT 00028 (IAC)

THE IMMIGRATION ACTS

Heard at Field House, London	**Decision Promulgated**
On 03 December 2015	
	……

Before

The Hon. Mr Justice McCloskey, President
Upper Tribunal Judge Blum

Between

ARUN DASGUPTA

Appellant

and

ENTRY CLEARANCE OFFICER, NEW DELHI

Respondent

Representation

Appellant: Mr R De Mello and Mr T Muman, both of Counsel, instructed by JM Wilson Solicitor

Respondent: Mr N Sheldon, of Counsel, instructed by the Government Legal Department

(i) *A tribunal's failure to make clear findings about family life is not per se erroneous in law where its existence has not been contested in the Secretary of State's decision and has not been challenged at the appeal hearing and the tribunal's decision is not otherwise unsustainable in law.*

(ii) *The question of whether there is family life in a child/grandchild context requires a finding of something over and above normal emotional ties and will invariably be intensely fact sensitive.*

(iii) *In error of law appeals, the Upper Tribunal should apply the principles in Edwards v Bairstow [1956] AC 14.*

(iv) *In appeals involving the proportionality of an interference with a Convention right, the ultimate question for the Upper Tribunal is whether the interference is proportionate, per Huang v Secretary of State for the Home Department [2007] 2 AC 167.*

DECISION AND REASONS

Introduction

1. The Appellant is a national of India, aged 85 years. The origins of this appeal to the Upper Tribunal are traceable to a decision made by the Entry Clearance Officer of New Delhi (the "*ECO*"), dated 27 June 2013, whereby the Appellant's application for clearance to enter the United Kingdom as an adult dependant relative under Appendix FM of the Immigration Rules was refused. The Appellant's ensuing appeal to the First-tier Tribunal (the "*FtT*") was, by its determination promulgated on 06 August 2014, allowed. The appeal succeeded under Article 8 ECHR. The appeal was dismissed under the Immigration Rules. We shall elaborate on this *infra*.

2. The procedural developments thereafter may be described as somewhat atypical. First, the ECO, who is represented by the Secretary of State for the Home Department ("the Secretary of State") sought, and was granted, permission to appeal. The permission Judge, in making this decision, highlighted:"…. *the weight which the Judge gives to the rights of the sponsor's children ….*", continuing:

> "*The Judge* [arguably] *erred in his application of the Rules and the jurisprudence relating to the Article 8 rights of the Appellant …..*"

At the stage when this order was made the Appellant had an application, undetermined, seeking permission to appeal on the ground that the FtT should also have allowed the appeal under the Rules and decided that the adult dependant relative rule is, at least in part, not in accordance with the law and/or is incompatible with Article 8 ECHR. Next, having learned that the ECO had been granted permission to appeal, the Appellant's representatives lodged a "cross-appeal" on the same grounds. This elicited a grant of permission to appeal to the Appellant. By way of sketching the contextual framework of these combined appeals, it is appropriate to set out part of the decision of the second permission Judge:

> "*It seems to me that the Appellant's submissions, in suggesting that the Upper Tribunal could deal simultaneously with the case as a judicial review (deploying a High Court Judge), has* [sic] *not only technical obstacles (no such application having been made) but overlooks that a*

challenge to the vires of the Rules is excluded by the Lord Chief Justice's Practice Direction governing UT judicial reviews. However, there is some authority for the proposition that in exercising its statutory 'in accordance with the law' jurisdiction …. the Upper Tribunal in deciding appeals cannot exclude issues going to vires."

The scene is thus set.

Decision of the ECO

3. The ECO noted that the Appellant's application for clearance to enter the United Kingdom had been made as an adult dependant relative under Appendix FM of the Rules. The ECO considered the application under paragraph EC-DR.1.1 thereof, continuing:

> "*You have applied to join your sponsor in the UK* [SD] *and you have stated that she provides you with financial support in the form* [of] *providing you* [with] *accommodation here in India and payment of all of your utility bills and tax. However, you have not submitted any evidence of any financial support from your sponsor. You have also stated that you require care on a day to day basis due to both having medical conditions ……..*
>
> *You are aged 83 years and state that you have end stage macular degeneration in both eyes, Glaucoma and Ischemic heart disease ….*
>
> *From the evidence I am not satisfied that these conditions are so severe that you would both require long term personal care to perform everyday tasks ……*
>
> *I am …. not satisfied that you require, due to either* [sic] *age, illness or disability, long term personal care to perform every day tasks. I therefore refuse your application under paragraph EC-DR1.1(d) of Appendix FM of the Immigration Rules.*"

The decision of the ECO continues:

> "*Additionally you state that you have employed your domestic help …. for several years and that she currently provides care for you; cooking for you and doing other daily chores. Although you state that only your daughter can provide the care you need, I am therefore not satisfied that you are unable to obtain the required level of care in India. I am also satisfied that the financial support your currently receive from your sponsor will continue and that any care if required could be provided through financial help from her.*"

Decision of the FtT

4. The decision of the FtT illuminates the factual matrix of this appeal (which we shall augment *infra*). The uncontentious facts recorded include that the Appellant is a widower and the sponsor is his daughter, a married lady who has two children now aged 15 and 14 years. The Appellant has been visiting this family with some frequency. His daughter is an NHS Doctor. She has undertaken in writing that she will be fully responsible for the maintenance, accommodation and care of the Appellant in the United Kingdom for a period of 5 years.

5. The appeal to the FtT was pursued on three bases:

(a) The Appellant satisfied the age/illness/disability requirement enshrined in paragraph E-ECDR2.4/2.5 of the Rules.

(b) In the alternative, the impugned decision infringed the Appellant's right to respect for family life under ECHR.

(c) In the further alternative, the operative provisions of the Rules are incompatible with Article 8 ECHR.

6. The FtT determined the appeal in the following terms:

(a) The relevant provisions of the Rules are not "*discriminatory, manifestly unjust, made in bad faith or* [involving] *an oppressive or gratuitous interference with people's rights ….* [and are] *not an inherently disproportionate interference with rights to respect for family life*".

(b) In individual cases, any interference with the right to respect for family life would be in accordance with the law and pursues a legitimate aim.

(c) The Appellant failed to demonstrate that "*… the sponsor is unable, with the practical and financial help of the sponsor* [sic]*, to obtain the required level of care in India …..* [and] *… does not meet the requirement E-ECDR.2.5 of Appendix FM*".

(d) The Appellant's case satisfied the requirement of "*exceptionality*":

> "*I find that there are such exceptional circumstances here, particularly the fact that there are children that are affected and also the cultural aspects. I find that the decision is a disproportionate interference with the family life of the Appellant and the sponsor and her children and therefore infringes Article 8 ECHR.*"

In making this latter conclusion, the Judge explicitly considered section 55 of the Borders, Citizenship and Immigration Act 2009.

Issues of law in this appeal

7. The Secretary of State's appeal and the Appellant's cross-appeal raise very different issues, as the following outline confirms:

(a) The Secretary of State's primary case is that the FtT erred in law in concluding that there was family life protected by Article 8 ECHR.

(b) It is contended, in the alternative, that the FtT erred in law in allowing the Appellant's appeal under Article 8 out with the framework of the Rules.

(c) By his cross-appeal, the Appellant contends that that the FtT erred in law in dismissing his appeal under the Rules. The contention underlying this proposition is that the relevant provision of the Rules is unlawful as it is *ultra vires* and/or irrational and/or incompatible with Article 8.

Both parties agreed that the first question raised by the cross-appeal is whether this Tribunal is competent to consider a challenge of this kind. If "yes," the second question is whether the Appellant's challenge to the offending provision of the Rules is established. If "yes", the third question focuses on the consequences which follow, in broad terms the issue of relief or remedy.

The Secretary of State's Appeal

8. First, we consider whether the finding of family life by the FtT is harmonious with legal principle. In this respect there is no shortage of guidance in the relevant jurisprudence, both domestic and international. In Kugathas v Secretary of State for the Home Department [2003] INLR 170, the Court of Appeal, in the context of considering a mother/adult son relationship, gave expression to certain general principles. The two main judgments enunciate with some emphasis the principle that normal emotional ties between a mother and adult son do not, without more, constitute family life under Article 8. This derives from S v United Kingdom [1984] 40 DR 196, at 198. Sedley LJ, adopting this approach, stated in [19]:

> "*Neither blood ties nor the concern and affection that ordinarily go with them are, by themselves or together, in my judgment enough to constitute family life. Most of us have close relations of whom we are extremely fond and whom we visit, or who visit us, from time to time; but none of us would say on those grounds alone that we have a family life with them in any sense capable of coming within the meaning and purpose of Article 8.*"

In a slightly more extensive formulation, Arden LJ stated, at [25]:

> "*Because there is no presumption of family life, in my judgement a family life is not established between an adult child and his surviving parent or other siblings unless something more exists than normal emotional ties: see S v United Kingdom (1984) 40 DR 196 and Abdulaziz, Cabales and Balkandali v United Kingdom [1985] 7 EHRR 471. Such ties might exist if the appellant were dependent on his family or vice versa. It is not, however, essential that the members of the family should be in the same country. The Secretary of State accepts that that possibility may exist, although in my judgment it will probably be exceptional. Accordingly there is no absolute rule that there must be family life in the United Kingdom, as the Immigration Appeal Tribunal held.*"

Notably, in allowing the Secretary of State's appeal, scant regard, or weight, was given to the period of some 15 years, beginning when the Appellant was aged around 20, which the Appellant had spent in Germany with his mother, his brother and his sister's family. The emphasis was, rather, on his voluntary transition to the United Kingdom, over two years before the adjudicator's decision, coupled with the factors of a (mere) single family visit to him in the United Kingdom and periodic phone calls only since his departure.

9. The decision in Kugathas was followed *mutatis mutandis* by the Court of Appeal in JB (India) v Entry Clearance Officer [2009] EWCA Civ 234: see especially per Sullivan LJ at [14]. The Court held that if the Kugathas principles had been applied, there was no rational basis upon which the immigration Judge could have concluded that there was family life between the three adult children, all living in

India and their mother, who had been living in the United Kingdom for six years prior to the impugned decision: see [17].

10. Mr Sheldon in argument also relied on the recent decision of the Court of Appeal in Singh v Secretary of State for the Home Department [2015] EWCA Civ 630. There the Court of Appeal, agreeing with the Upper Tribunal, stated at [26]:

> "…. *The Judge correctly found that the Appellants had no family life in this country to which Article 8 applies. They are independent and working. Their siblings, who are younger, are in India and their mother* [who had been granted indefinite leave to remain in the UK] *understandably spends as much or more time in India than in this country. There was no evidence of anything beyond the normal bonds of affection, apart possibly from some financial support of the family in India. That support cannot lead to a finding of a family life in this country, which was the only family life for which the Appellants contended.*"

We have also considered the decision of the European Court of Human Rights in GHB v United Kingdom [Application number 42455/98] which contains the following passage, at page 5:

> "*The Court recalls that the expression 'family life' in Article 8(1) is broad enough to include the ties between grandparents and grandchildren (see Marckx v Belgium) …*"

The Applicant in that case was one of two grandparents whose grandchild had been adopted when aged 12, following some three years in foster care brought about by her mother's unstable mental health. The grandchild had lived with the grandparents temporarily, for three months, when aged 10 and during the following year there had been regular contact. This was sufficient for the Court to conclude that there was family life between grandparents and grandchild under Article 8 (see page 5).

11. The decision in GHB v United Kingdom and those reviewed *in extenso* by the Court of Appeal in Singh lend emphasis to the proposition that the question of whether there exists family life between, or among, those under scrutiny will invariably be an intensely fact sensitive one. The scope of the protection afforded by Article 8 is elastic, not susceptible to precise measurement. Article 8 is couched in open textured language. It was memorably described by Stanley Burnton J as "the least defined and most unruly" of the Convention rights in R (Wright) v Secretary of State for Health [2006] EWCH 2886 (Admin) at [60]. Bearing in mind the emphasis on the individual factual matrix in all cases of this kind, we turn to consider the decision of the FtT in a little detail.

Factual Matrix

12. We elaborate on [4] above as follows. The family circle consists of the Appellant, a retired businessman who is now aged 85; his daughter (the sponsor), a doctor, who has lived in the United Kingdom for almost 25 years; her husband, whom she married some 20 years ago; and their two children (the Appellant's grandchildren), aged 17 and 16 years respectively. The Appellant's spouse died in 2007. Both retired from their respective occupations around 2001.

13. Mr De Mello invited us to read the decision of the FtT in conjunction with the evidence available to it and we have done so, paying particular attention to those materials which were highlighted in Counsel's submissions: the witness statements of the Appellant's daughter, son, and old grandchild; the written accounts of family friends; the medical evidence; and the family photographs.

14. The unchallenged evidence is that by the time of the grandmother's death in 2007, a very close and loving bond had been established between grandparents and grandchildren through visits from India to the United Kingdom and vice-versa, coupled with family reunions in the United States, where the sponsor's brother resides; since 2007 the Appellant has visited his daughter's family in England almost annually, each sojourn lasting three – five months; the Appellant has developed a strong and close relationship with his grandchildren; and there are robust ties of mutual love and affection. In short, the Appellant has gradually assumed a special position in the lives of his grandchildren. Simultaneously, the father/daughter relationship between the Appellant and the sponsor has continued and flourished, notwithstanding the factors of distance and marriage and has, if anything, strengthened during recent years following the demise of the Appellant's wife and in conjunction with his gradually deteriorating health.

The Arguments and our Conclusions

15. Mr Sheldon, on behalf of the Secretary of State, criticised the determination of the FtT primarily on the basis that it consists of extensive recitation of evidence, coupled with very few explicit findings of fact. As appellate courts have frequently observed, while this is sometimes a vice it is not necessarily fatal. Furthermore, it is of no little significance that the existence of family life in respect of all members of the family circle identified above, was not disputed before the FtT. In particular, we were informed, and accept, that there was no cross-examination of the Appellant's daughter. We would add that this is consistent with the ECO's decision, which did not dispute the nature or depth of the relationships under scrutiny. It is also reflected in the Secretary of State's grounds of appeal to this Tribunal, which contain no complaint about the FtT's approach to the topic of family life. We attach significant weight to these considerations. It is within this context that we must evaluate what Mr Sheldon characterised the FtT's "assumption" that there is family life in relation to the five persons concerned and construe the decision.

16. There is, in the abstract, some force in Mr Sheldon's criticism that the FtT did not conduct the exercise of acknowledging, and then applying, the principles in Kugathas and the line of authority to which we have referred. Furthermore, the FtT did not carry out the "Razgar" exercise (Razgar v Secretary of State for the Home Department [2004] 2 AC 368, at [17]). In addition, the obligation imposed by the Tameside principle to pose the correct question – namely whether there was family life – was not explicitly discharged. However, as the House of Lords has made clear, decisions in human rights cases, save where the Convention right in question has a procedural content (the paradigm being Article 6), are about outcome, rather than the anterior decision making process. See R (SB) v Governors of Denbigh

High School [2007] 1 AC 100 at [68] especially and Belfast City Council v Miss Behavin' Limited [2007] UKHL 19, at [12] - [13] per Lord Hoffmann.

17. Alternatively, bearing in mind that this is an error of law appeal and not a challenge on the merits, we apply the Edwards v Bairstow [1956] AC 14 prism. It is timely to recall these principles. There, in an error of law appeal, the House of Lords applied the standard of "*the true and only reasonable conclusion*" open to the Commissioners [at p10] and, notably, in doing so, employed the language of "*perversity*" [at p 6]. They defined the latter as a case in which -

> "….. *the facts found are such that no person acting judicially and properly instructed as to the relevant law could come to the determination under appeal.*"
>
> [per Lord Radcliffe at p 10]

In the language of Viscount Simonds [at p 6]:

> "*For it is universally conceded that, although it is a pure finding of fact, it may be set aside on grounds which have been stated in various ways but are, I think, fairly summarised by saying that the court should take that course if it appears that the commissioners have acted without any evidence or upon a view of the facts which could not reasonably be entertained.*"

The enduring application and pedigree of the Edwards v Bairstow principles is not, so far as we are aware, in question.

18. We apply these principles in the following way. In the decision of the FtT there is an underlying acceptance of Article 8 family life involving all five people in question. We consider that our scrutiny of the decision of the FtT must take into account both the evidence available to it, its undisputed nature and the significant contextual factor, also uncontentious, that the existence of family life among the five relatives concerned was not contested. In JB (India), the test formulated by Sullivan LJ was whether the tribunal could rationally have found that there was family life if it had expressly applied the Kugathas principles. Weighing all of the evidence in tandem with the *de facto* concession on this issue, which illuminates the content of the FtT's decision, we conclude that it withstands the Secretary of State's challenge. In our judgement the assumption, or finding [the precise formulation matters not] of family life underlying and underpinning the decision of the FtT was properly open to the Judge having regard to the findings express or implicit in the decision, the available evidence, the terms of the ECO's decision and the *de facto* concession. In these particular circumstances, while a more structured approach coupled with more extensive findings by the FtT would have been preferable, this does not vitiate its decision. No error of law has been demonstrated.

19. The second limb of the Secretary of State's appeal focuses on the following passage in the concluding paragraph of the FtT's decision:

> "*The Appellant can only succeed in this appeal if he can demonstrate that his circumstances are exceptional, so that the decision represents a disproportionate interference with family life. But 'exceptional' does not necessarily mean unusual or unique. I find that there are such*

exceptional circumstances here, particularly the fact that there are children that are affected and also the cultural aspects. I find that the decision is a disproportionate interference with the family life of the Appellant and the sponsor and her children and therefore infringes Article 8 of ECHR."

[our emphasis]

Mr Sheldon accepts that, in thus concluding, the Judge applied the correct test and committed no misdirection in law. This much is clear from both the terminology employed in this passage and earlier passages of the decision. The challenge is, in essence, to the sufficiency of the Judge's reasons for concluding that there were exceptional circumstances.

20. We refer to, but do not repeat, our consideration of the decision of the FtT above. To this we add that the Judge, en route to this conclusion, made certain specific findings about the Appellant's state of health. Further, having noted his isolated and lonely way of life, he found:

> "*There are compassionate circumstances in this case. Although his physical needs might be met by a programme of care, his emotional needs would not be met.*"

Next, the Judge turned his attention to a report prepared by the Joint Council for the Welfare of Immigrants ("JWCI"), which he summarised thus:

> "*The JCWI report refers to the culture in India of younger generations caring for elderly parents and grandparents under the same roof. Although there are care homes in the country, there are not enough of them providing good care and there is a stigma attached to the idea of formal care homes. The Appellant is, in my view, likely to be less vulnerable than many to the risk of being given inadequate care because he has children who would be in a position to pay for the best possible service. But this does not entirely remove the sponsor's anxiety about letting him go into a care home since, as long as she remains in the UK, she would have a very limited opportunity to monitor the level of care so as to give her reassurance that her father is well looked after. In considering the impact of the decision upon family life, it is appropriate to take into account the culture, which the sponsor refers to in her statement, that children are expected to take care of their parents when they are old and infirm. There is every reason to think that the sponsor would be in a position to continue to look after her father, if he is in the UK, for the foreseeable future without recourse to public funds.*"

21. The Judge's next port of call was section 55 of the Borders, Citizenship and Immigration Act 2009 (the "*2009 Act*"), giving rise to the following assessment:

> "*The sponsor's children were aged 15 and 13 respectively at the date of the decision. They were born in the UK and they are British citizens. Their relationship with their grandfather is not a remote one, since he has been coming to the UK to stay at their home during the summer months for many years. One of them has made a statement in which he refers to his emotional attachment to his grandfather. I accept that there is that attachment.*"

As our resume of the evidence, our scrutiny of the decision of the FtT and our related analysis in [13]–[18] above demonstrate, this was far from the only evidence available

to the Judge relating to the relationship between the Appellant and his daughter. The Judge continues:

> "*It is unrealistic to assume that the Appellant would in the future be able to divide his time between staying in India and coming to the UK for the summer months. Firstly, travel would become increasingly difficult whilst, with age and continuing ill health, he becomes more and more frail. Secondly, it is likely to prove less easy in the future for him to be able to demonstrate that he meets the requirements for a visit visa …..*"

In the next passage of his decision, the Judge clearly accepted the evidence of the sponsor that if her father were unable to secure settlement in the United Kingdom she would leave and go to look after him in Delhi. The Judge noted the further evidence on this issue emanating from the BMA. He continued:

> "*The impact on family life upon the sponsor being forced to return to India after having spent many years in the UK is considerable. The welfare of the children would be particularly affected, as they would either be uprooted in order to live in a country which is very different from the one they have been brought up in or the family would be split while their mother is in India whilst they remained in the UK.*"

22. The Judge found, in terms, that the best interests of the two grandchildren would be promoted by the advent of the Appellant to live with their family and the continued presence of the mother in the family unit. We consider these findings to be unimpeachable. It is clear that the Judge committed no error of law in his approach to the best interests of the grandchildren. In substance, he viewed this as a primary consideration. This consideration is to be evaluated in tandem with the Judge's other findings and the weight given by him to the cultural issue specifically raised. All of the ingredients in this equation must be considered as a whole. Mr Sheldon's submission is that they are insufficient to justify a finding of exceptional circumstances. Viewed through the prism of conventional public law litigation, this has all the hallmarks of an irrationality challenge. As the Court of Appeal stated recently in Secretary of State for the Home Department v Boyd [2015] EWCA Civ 1190, at [16], the question for the appellate court or tribunal in such cases is whether the decision of the first instance tribunal on this issue is "one that was open to it". Framed in somewhat more elaborate terms, the test is whether it is sustainable by reference to the principles in Edwards v Bairstow, rehearsed above.

23. The elevated hurdle which a challenge of this nature must overcome requires no elaboration. Mr Sheldon submitted that in finding exceptional circumstances the FtT identified two factors only, namely the grandchildren and the "*cultural aspects*". This was the core of the Secretary of State's appellate challenge. We consider this submission unsustainable for two reasons. First, the FtT highlighted these two factors "*particularly*, not exclusively. Second, the submission focuses on the concluding paragraph of the decision only, neglecting everything which precedes it. We consider that the Judge's exceptional circumstances finding was based on the whole of the evidential picture. The question for us is whether, viewing the decision of the FtT as a whole, its finding of exceptional circumstances is sustainable in law. This, in the context of an error of law appeal, requires us to pose the question of whether the decision is compatible with the Edwards v Bairstow

principles. We consider that this invites an affirmative answer. The Judge's exceptional circumstances conclusion, uncontaminated by any legal misdirection or other error of law, lay within the range of outcomes reasonably available to him, was not contradicted by the evidence but, rather, had a sufficient evidential foundation and did not leave anything material out of account. Or, to borrow again the recent Court of Appeal phraseology (*supra*), we are satisfied that this conclusion was "*open to*" the FtT in the circumstances.

24. The alternative approach is to view this aspect of the Secretary of State's appeal through the lens of Convention rights, given the nexus between the exceptional circumstances test and Article 8(2) ECHR, as explained and illuminated by the Court of Appeal in MF (Nigeria) v Secretary of State for the Home Department [2013] EWCA Civ 1192. The FtT having made (in our judgment) no error in its approach to the existence of family life linking and uniting the several persons concerned, the next question which it was bound to address was whether the impugned decision represented a disproportionate interference with the Article 8 rights of the family members. Having found that the Appellant's settlement application could not succeed under the Rules, the Judge, in order to decide the question of proportionality, had to apply the recognised test of exceptional circumstances and proceeded to do so. His finding that exceptional circumstances existed equates to a conclusion that the impugned decision interfered disproportionately with the Article 8 rights of the family members concerned.

25. In thus concluding, the FtT was giving effect to Huang v Secretary of State for the Home Department [2007] 2 AC 167, where the House of Lords held that when deciding appeals on human rights grounds, it is the function of the relevant immigration appellate authority to conduct a full merits appeal – see [13] – as the arbiter of all aspects of the human rights claim, including proportionality. To this one adds the footnote that the court or tribunal, in common with the executive's decision maker, is a public authority under section 6 of the Human Rights Act 1998. We can detect no error of law in the conclusion reached by the FtT on the issue of proportionality. Neither the decision making process of the FtT nor its outcome discloses any such error. We remind ourselves that the focus of the Secretary of State's challenge was the sufficiency of reasons and evidence underpinning the impugned conclusion. For the reasons explained above, this challenge is not made out.

26. Finally, while observing that the provisions of Part 5A of the 2002 Act did not form part of the grounds of appeal or the submissions developed in argument, we are alert to our duty under s 117A(2)(a). There was no suggestion that either of the public interests enshrined in s 117B (2) or (3) is engaged. Further the "little weight" provisions do not arise. Applying the same reasoning and analysis as set out above, we are satisfied that the conclusion of the FtT in substance, which was to tip the balance in favour of the assorted factors on the Appellant's side of the equation over the public interest factor in s 117B(1), cannot be impugned.

Conclusion

27. This disposes of the Secretary of State's appeal. As appears from our recent case management directions, we have decided to sever the Secretary of State's appeal from the Appellant's cross-appeal, for the reasons therein explained.

Decision

28. We dismiss the appeal of the Secretary of State and affirm the decision of the FtT.

THE HON. MR JUSTICE MCCLOSKEY
PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 10 December 2015