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2016 UT IAC CASE LAW BROWSER

I have set out below all of the head notes from the 2016 reported cases of the UT (IAC) (this includes some 2015 cases reported as part of the 2016 series and JR decisions where there has been a head note added). Hopefully this will provide you with an easy way to refresh/update yourself in respect of all of the major developments from the last 12 months. It's perfect to read on the bus, in bed or in the bath ;) I hope it's useful. Adam.

Gheorghiu (reg 24AA EEA Regs - relevant factors) [2016] UKUT 24 (IAC) (24 November 2015)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/24.html

When considering whether or not to suspend certification of EEA appeals pursuant to regulation 24AA of the Immigration (European Economic Area) Regulations 2006, the decision-maker should take into account inter alia:(i) the status of the EEA national; (ii) the impact of removal on family members; (iii) evidence of continuing risk to the public; and (iv) the role oral evidence may play.

Miah (section 117B NIAA 2002 - children) [2016] UKUT 131 (IAC) (23 November 2015)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/131.html

(i) In section 117B(1)-(5) of the Nationality, Immigration and Asylum Act 2002 parliament has made no distinction between adult and child immigrants.

(ii) The factors set out at section 117B(1)-(5) apply to all, regardless of age. They are not however an exhaustive list, and all other relevant factors must also be weighed in the balance. These may include age, vulnerability and immaturity.

*(iii) The juridical status of the relevant Home Office 'Immigration Directorate Instructions' must be appreciated. While these are subservient to primary and secondary legislation and the Immigration Rules, they rank as a **relevant** consideration, framed in flexible terms, to be taken into account by decision makers in every case where they apply.*

VV (grounds of appeal) [2016] UKUT 53 (IAC) (13 November 2015)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/53.html

(1) An application for permission to appeal on the grounds of inadequacy of reasoning in the decision of the First-tier Tribunal must generally demonstrate by reference to the material and arguments placed before that Tribunal that (a) the matter involved a substantial issue between the parties at first instance and (b) that the Tribunal either failed to deal with that matter at all, or gave reasons on that point which are so unclear that they may well conceal an error of law.

(2) Given that parties are under a duty to help further the overriding objective and to co-operate with the Upper Tribunal, those drafting grounds of appeal (a) should proceed on the basis that decisions of the First-tier Tribunal are to be read fairly and as a whole and without excessive legalism; (b) should not seek to argue that a particular consideration was not taken into account by the Tribunal when it can be seen from the decision read fairly and as a whole that it was (and the real disagreement is with the Tribunal's assessment of the evidence or the merits); and (c) should not challenge the adequacy of the reasons given by the First-tier Tribunal without demonstrating how the principles in (1) above have been breached, by reference to the materials placed before that Tribunal and the important or substantial issues which it was asked to determine in that particular case.

(3) Where permission to appeal is granted, an Appellant should review whether the grounds of appeal are genuinely arguable in the light of any response from the Respondent to the appeal. Whether or not the original grounds are pursued, it is generally inappropriate to seek to raise new grounds of appeal close to the date of the hearing if, for example, that would cause unfairness to a Respondent or result in the hearing being adjourned.

Bhudia, R (on the application of) v Secretary of State for the Home Department (para 284(iv) and (ix)) (IJR) [2016] UKUT 25 (IAC) (2 December 2015)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/25.html

(i) The correct construction of paragraph 284(iv) of the Immigration Rules is that the applicant has a period of 28 days within which to make an extension of stay application, measured from the date immediately following the last day of leave in the United Kingdom.

(ii) The purported requirement in Form FLR(M) that an application for further leave to remain in the United Kingdom as a spouse be supported by certain correspondence in specified terms is unlawful.

(iii) The requirement previously enshrined in paragraph 284(ix)(a) of the Immigration Rules that an applicant provide an English Language test certificate in specified terms is satisfied where the applicant has already provided a certificate of this kind to the Secretary of State which has been accepted as valid.

(iv) The jurisdiction of the Upper Tribunal in judicial review proceedings to determine any of the issues raised is not extinguished by the Secretary of State's withdrawal of the decision under challenge: R v Secretary of State for the Home Department, ex parte Salem [1999] AC 450 applied.

Cudjoe (Proxy marriages: burden of proof) (rev 1) Ghana [2016] UKUT 180 (IAC) (14 December 2015)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/180.html

1. It will be for an appellant to prove that their proxy marriage was in accordance with the laws of the country in which it took place, and that both parties were free to marry. The burden of proof may be discharged by production of a marriage certificate issued by a competent authority of the country in which the marriage took place, and reliance upon the statutory presumption of validity consequent to such production. The reliability of marriage certificates and issuance by a competent authority are matters for an appellant to prove.

2. The means of proving that a proxy marriage was contracted according to the laws of the country in which it took place is not limited to the production of a marriage certificate, as is recognised in Kareem (Proxy marriages - EU law)[2014] UKUT 24 (IAC).

3. In cases where a divorce has taken place prior to the proxy marriage and there is an issue as to whether the parties were free to marry, it is for an appellant to show that the dissolution of the previous marriage was in accordance with the laws of the country in which it occurred.

Dasgupta (error of law - proportionality - correct approach) [2016] UKUT 28 (IAC) (11 December 2015)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/28.html

(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.

RK, R (on the application of) v Secretary of State for the Home Department (s.117B(6); "parental relationship" (IJR) [2016] UKUT 31 (IAC) (22 December 2015)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/31.html

1. It is not necessary for an individual to have "parental responsibility" in law for there to exist a parental relationship.

2. Whether a person who is not a biological parent is in a "parental relationship" with a child for the purposes of s.117B(6) of the Nationality, Immigration and Asylum Act 2002 depends on the individual circumstances and whether the role that individual plays establishes he or she has "stepped into the shoes" of a parent.

3. *Applying that approach, apart from the situation of split families where relationships between parents have broken down and an actual or de facto step-parent exists, it will be unusual, but not impossible, for more than 2 individuals to have a "parental relationship" with a child. However, the relationships between a child and professional or voluntary carers or family friends are not "parental relationships".*

Abdul (section 55 - Article 24(3) Charter : Nigeria) [2016] UKUT 106 (IAC) (13 January 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/106.html

(i) There is no hierarchy of weight or importance in the various considerations recited in regulation 21(6) of the EEA Regulations. The weight to be attributed to each factor will vary according to the fact sensitive context of the individual case.

(ii) Where it is contended that the decision maker and/or the First-tier Tribunal (FtT) has acted in contravention of section 55 of the Borders, Citizenship and Immigration Act 2009, the Upper Tribunal will scrutinise the degree of engagement with all material evidence and, in particular, will search for clear findings in the decision of the FtT of what the best interests of any affected child are.

(iii) Article 24(3) of the EU Charter of Fundamental Rights creates a free standing right (although not absolute).

(iv) *Where this right is engaged, a failure by the decision maker and/or the FtT to acknowledge it and to decide accordingly may constitute a material error of law.*

Kasicky, R (on the application of) v Secretary of State for the Home Department (Reg 29AA: interpretation) (IJR) [2016] UKUT 107 (IAC) (28 January 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/107.html

1. *In reg 29AA(3) of the Immigration (European Economic Area) Regulations 2006, the word "appearance" refers to P's formal presence at his appeal.*

2. *In ascertaining whether the exception in reg 29AA applies, the possibility of managing risk by detention or conditions is a factor to be taken into account.*

Mahmood, R (on the application of) v Secretary of State for the Home Department (effective service - 2000 Order) (IJR) [2016] UKUT 57 (IAC) (18 January 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/57.html

(1) Notice of a decision (not falling within the Immigration (Notices) Regulations 2003) is "given" for the purposes of s.4(1) of the Immigration Act 1971 when it is (a) "sent" in accordance with Art 8ZA of the Immigration (Leave to Enter and Remain) Order 2000 (SI 2000/1161) as inserted by the Immigration (Leave to Enter and Remain) Amendment Order 2013 (SI 2013/1749) with effect from 12 July 2013 and (b) according to the method used, is delivered to the individual's postal or e-mail address according to that method.
(2) Where Art 8ZB applies, both delivery and the date of delivery are rebuttably presumed.
(3) There is no requirement that the individual has actual knowledge of the notice or its contents.
(4) Consequently, subject to rebuttal, a notice of a curtailment decision attached to an e-mail sent to an individual's e-mail address will be "given" on the day it is sent and is delivered to that individual's e-mail address.

MSM and others (wasted costs, effect of s.29(4)) [2016] UKUT 62 (IAC) (15 January 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/62.html

Section 29(4) of the Tribunals, Courts and Enforcement Act 2007 results in the Upper Tribunal having powers in relation to the making of wasted costs orders (as defined in section 29(5)) which are not subject to the limitations in s.29(3) or r.10 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

OLO and Others (para 398 - "foreign criminal") [2016] UKUT 56 (IAC) (15 January 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/56.html

A person sentenced to a term of 12 months imprisonment made up of consecutive terms is not a 'foreign criminal' within the meaning of the deportation provisions of the Immigration Rules and is not therefore subject to paragraph 398 of those Rules.

OO (Gay Men) (CG) [2016] UKUT 65 (IAC) (26 January 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/65.html

1. *Although the Algerian Criminal Code makes homosexual behaviour unlawful , the authorities do not seek to prosecute gay men and there is no real risk of prosecution, even when the authorities become aware of such behaviour. In the very few cases where there has been a prosecution for homosexual behaviour, there has been some other feature that has given rise to the prosecution. The state does not actively seek out gay men in order to take any form of action against them, either by means of prosecution or by subjecting gay men to other forms of persecutory ill-treatment.*

2. *Sharia law is not applied against gay men in Algeria. The criminal law is entirely secular and discloses no manifestation, at all, of Sharia law in its application.*

3. *The only risk of ill-treatment at a level to become persecution likely to be encountered by a gay man in Algeria is at the hands of his own family, after they have discovered that he is gay. There is no reliable evidence such as to establish that a gay man, identified as such, faces a real risk of persecutory ill-treatment from persons outside his own family.*

4. *Where a gay man remains living with his family to whom he has disclosed his sexual orientation in circumstances where they are prepared to tolerate that, his decision to live discreetly and to conceal his homosexuality outside the family home is not taken to avoid persecution but to avoid shame or disrespect being brought upon his family. That means that he has chosen to live discreetly, not to avoid persecution but for reasons that do not give rise to a right to international protection.*

5. *Where a gay man has to flee his family home to avoid persecution from family members, in his place of relocation he will attract no real risk of persecution because, generally, he will not live openly as a gay man. As the evidence does not establish that he will face a real risk of persecution if subsequently suspected to be a gay man, his decision to live discreetly and to conceal his sexual orientation is driven by respect for social mores and a desire to avoid attracting disapproval of a type that falls well below the threshold of persecution. Quite apart from that, an Algerian man who has a settled preference for same sex relationships may well continue to entertain doubts as to his sexuality and not to regard himself as a gay man, in any event.*

R (on the application of ZAT and Others) v Secretary of State for the Home Department (Article 8 ECHR - Dublin Regulation - interface - proportionality) (IJR) [2016] UKUT 61 (IAC) (22 January 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/61.html

(i) EU Regulation number 604/2013 (the "Dublin Regulation") and the Human Rights Act 1998, while separate regimes, are not in competition with each other.

(ii) Where the two regimes pull in different directions, full cohesion, or harmonisation, may not be achievable and some accommodation must be found.

(iii) Where an interference with a person's rights under Article 8 ECHR in consequence upon full adherence to the Dublin Regulation regime is demonstrated, the question to be determined is proportionality.

(iv) In the proportionality balancing exercise, the Dublin Regulation will be a consideration of undeniable potency. Vindication of an Article 8 challenge will require a strong and persuasive case and such cases are likely to be rare.

Vigneswaran (abandonment: s 104(4B)) [2016] UKUT 54 (IAC) (7 January 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/54.html

Inaction is not giving notice for the purposes of s 104(4B).

AR and NH (lesbians) (CG) [2016] UKUT 66 (IAC) (1 February 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/66.html

(1) The guidance in MD (same-sex oriented males) India CG [2014] UKUT 65 (IAC) stands. The guidance at (a) - (f) in MD (India) applies equally to lesbians.

(2) A risk of persecution or serious harm for a lesbian woman in India, where it exists, arises from her family members, and the extent of such risk, and whether it extends beyond the home area, is a question of fact in each case.

(3) The risk of persecution or serious harm is higher for uneducated lower class lesbian women in rural areas, who remain under the control of their family members and may not be permitted to leave the home to continue meeting their lesbian partners.

(4) Where family members are hostile to a lesbian woman's sexuality, they may reject her completely and sometimes formally renounce her as a member of that family. In such a case, whether relocation to a city is unduly harsh will be a question of fact, depending on the ability of such a lesbian woman to survive economically away from her family and social networks.

(5) If a lesbian woman's family wishes to pursue and harm her in the place of internal relocation, their ability to do so will depend on the reach of the family network, how persistent they are, and how influential. The evidence indicates that there is normally sufficient state protection for women whose families seek to harm them in their place of internal relocation.

(6) In general, where there is a risk of persecution or serious harm in a lesbian woman's home area, for educated, and therefore 'middle class' women, an internal relocation option is available. They are likely to be able to relocate to one of the major cities in India and are likely to be able to find employment and support themselves, albeit with difficulty, and to

live together openly, should they choose to do so. In general, such relocation will not be unduly harsh.

AR, R (on the application of) v Secretary of State for the Home Department (Bail - conditions - variation - Article 9 ECHR) (IJR) [2016] UKUT 132 (IAC) (1 February 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/132.html

(i) Presidential Guidance Note No 1 of 2012 "Bail Guidance for Judges Presiding over Immigration and Asylum Hearings" is an instrument of guidance and not instruction. The guidance should, however, normally, be followed and good reason is required for not doing so.

(ii) The First-tier Tribunal ("FtT") is empowered to adjudicate on applications to vary the terms of its bail orders.

(iii) The FtT retains exclusive power to vary any of its bail orders during their lifespan. The Chief Immigration Officer has no power to interfere with such orders or make any other order in such circumstances.

(iv) In cases where there is no appeal pending, an application for bail can be made to either the FtT or the Chief Immigration Officer.

(v) While every case will be fact sensitive, a curfew and electronic monitoring restriction in a bail order will not normally constitute a disproportionate interference so as to infringe Article 9 ECHR, Article 10 of the Fundamental rights Charter or the Equality Act 2010.

B, R (on the application of) v Secretary of State for the Home Department (recording of leave - date stamps) (IJR) [2016] UKUT 135 (IAC) (26 February 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/135.html

(1) The judgments of the Court of Appeal in R v Secretary of State for the Home Department ex parte Bagga [1991] 1 QB 485 are authority for the proposition that, if there is no practice on the part of the Secretary of State of using a date stamp to record the grant of leave under the Immigration Act 1971, even a 'blameless' individual will be unable to derive any material benefit from that stamp.

(2) The corollary, however, is not that a blameworthy individual must automatically be able to benefit from such a stamp, which is used in practice to record the grant of leave. Someone who, by misrepresentation, induces an immigration officer to proceed on a mistaken basis is not automatically entitled to succeed, merely because a mistaken decision has been formally recorded.

(3) In such a scenario, consideration must be given to:

(a) the person's actions and understanding; and

(b) what the immigration officer thought he or she was doing by affixing the stamp.

Robinson, R (on the application of) v Secretary of State for the Home Department (paragraph 353 - Waqar applied) (IJR) [2016] UKUT 133 (IAC) (16 February 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/133.html

1. Notwithstanding the amendments brought about by the Immigration Act 2014 to the types of decisions appealable under s82 of the Nationality, Immigration and Asylum Act 2002, para 353 of HC395 continues to perform a gateway function in respect of access to a right of appeal. Arguments to the contrary, founded upon dicta in BA (Nigeria) v SSHD [2009] UKSC 7, are misconceived because, as explained in ZA (Nigeria) v SSHD [2010] EWCA Civ 926, inBA (Nigeria) immigration decisions (of a type that no longer give rise to a right of appeal) had been made so that there was, on that account, a right of appeal.

2. The argument now advanced, which was not considered by the Upper Tribunal in R (Waqar) v SSHD (statutory appeals/paragraph 353) IJR [2015] 00169 (IAC), founded upon the amendment to the definition of "a human rights claim" found at s113 of the 2002 Act, provided for by the Immigration, Asylum and Nationality Act 2006 but not yet implemented, is no basis for doubting that Waqar is correctly decided.

3. Where the respondent rejects further submissions and goes on to conclude that they do not amount to a fresh claim for the purposes of para 353 of HC 395, it is not implicit that the respondent has made a decision to refuse a human rights claim. Properly understood, the respondent has done precisely the opposite and has declined to make a decision at all. To the extent that the respondent has embarked upon an examination of the merits of the further submissions, she is not making a decision but doing no more than equipping herself to follow the para 353 process.

SM (lone women - ostracism) (CG) [2016] UKUT 67 (IAC) (2 February 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/67.html

(1) Save as herein set out, the existing country guidance in SN and HM (Divorced women - risk on return) Pakistan CG [2004] UKIAT 00283 and in KA and Others (domestic violence - risk on return) Pakistan CG [2010] UKUT 216 (IAC)remains valid.

(2) Where a risk of persecution or serious harm exists in her home area for a single woman or a female head of household, there may be an internal relocation option to one of Pakistan's larger cities, depending on the family, social and educational situation of the woman in question.

(3) It will not be normally be unduly harsh to expect a single woman or female head of household to relocate internally within Pakistan if she can access support from family members or a male guardian in the place of relocation.

(4) It will not normally be unduly harsh for educated, better off, or older women to seek internal relocation to a city. It helps if a woman has qualifications enabling her to get well-paid employment and pay for accommodation and childcare if required.

(5) Where a single woman, with or without children, is ostracised by family members and other sources of possible social support because she is in an irregular situation, internal relocation will be more difficult and whether it is unduly harsh will be a question of fact in each case.

(6) A single woman or female head of household who has no male protector or social network may be able to use the state domestic violence shelters for a short time, but the focus of such shelters is on reconciling people with their family networks, and places are in short supply and time

limited. Privately run shelters may be more flexible, providing longer term support while the woman regularises her social situation, but again, places are limited.

(7) Domestic violence shelters are available for women at risk but where they are used by women with children, such shelters do not always allow older children to enter and stay with their mothers. The risk of temporary separation, and the proportionality of such separation, is likely to differ depending on the age and sex of a woman's children: male children may be removed from their mothers at the age of 5 and placed in an orphanage or a madrasa until the family situation has been regularised (see KA and Others (domestic violence risk on return) Pakistan CG [2010] UKUT 216 (IAC)). Such temporary separation will not always be disproportionate or unduly harsh: that is a question of fact in each case.

(8) Women in Pakistan are legally permitted to divorce their husbands and may institute divorce proceedings from the country of refuge, via a third party and with the help of lawyers in Pakistan, reducing the risk of family reprisals. A woman who does so and returns with a new partner or husband will have access to male protection and is unlikely, outside her home area, to be at risk of ostracism, still less of persecution or serious harm.

TD and AD (Trafficked women)(CG) [2016] UKUT 92 (IAC) (9 February 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/92.html

Much of the guidance given in AM & BM (Trafficked women) Albania CG [2010] UKUT 80 (IAC) is maintained. Where that guidance has been amended or supplemented by this decision it has been highlighted in bold:

"a) It is not possible to set out a typical profile of trafficked women from Albania: trafficked women come from all areas of the country and from varied social backgrounds.

b) Much of Albanian society is governed by a strict code of honour which not only means that trafficked women would have very considerable difficulty in reintegrating into their home areas on return but also will affect their ability to relocate internally. Those who have children outside marriage are particularly vulnerable. In extreme cases the close relatives of the trafficked woman may refuse to have the trafficked woman's child return with her and could force her to abandon the child.

c) ***Some women are lured to leave Albania with false promises of relationships or work. Others may seek out traffickers in order to facilitate their departure from Albania and their establishment in prostitution abroad. Although such women cannot be said to have left Albania against their will, where they have fallen under the control of traffickers for the purpose of exploitation there is likely to be considerable violence within the relationships and a lack of freedom: such women are victims of trafficking****.*

d) ***In the past few years the Albanian government has made significant efforts to improve its response to trafficking. This includes widening the scope of legislation, publishing the Standard Operating Procedures, implementing an effective National Referral Mechanism, appointing a new Anti-trafficking Co-ordinator, and providing training to law enforcement officials. There is in general a Horvath-standard sufficiency of protection, but it will not be effective in every case. When considering whether or not there is a sufficiency of protection for a victim of trafficking her particular circumstances must be considered.***

e) ***There is now in place a reception and reintegration programme for victims of trafficking. Returning victims of trafficking are able to stay in a shelter on arrival, and in 'heavy cases' may be able to stay there for up to 2 years. During this initial period after return victims of trafficking are supported and protected. Unless the individual has particular vulnerabilities such as physical or mental health issues, this option cannot generally be said to be unreasonable; whether it is must be determined on a case by case basis.***

f) ***Once asked to leave the shelter a victim of trafficking can live on her own. In doing so she will face significant challenges including, but not limited to, stigma, isolation, financial hardship and uncertainty, a sense of physical insecurity and the subjective fear of being found either by their families or former traffickers. Some women will have the capacity to negotiate these challenges without undue hardship. There will however be victims of trafficking with characteristics, such as mental illness or psychological scarring, for whom living alone in these circumstances would not be reasonable. Whether a particular appellant falls into that category will call for a careful assessment of all the circumstances.***

g) ***Re-trafficking is a reality. Whether that risk exists for an individual claimant will turn in part on the factors that led to the initial trafficking, and on her personal circumstances, including her background, age, and her willingness and ability to seek help from the authorities. For a proportion of victims of trafficking, their situations may mean that they are especially vulnerable to re-trafficking, or being forced into other exploitative situations.***

h) Trafficked women from Albania may well be members of a particular social group on that account alone. Whether they are at risk of persecution on account of such membership and whether they will be able to access sufficiency of protection from the authorities will depend upon their individual circumstances including but not limited to the following:

1) *The social status and economic standing of her family*
2) *The level of education of the victim of trafficking or her family*

3) *The victim of trafficking's state of health, particularly her mental health*

4) *The presence of an illegitimate child*

5) *The area of origin*

6) *Age*

7) ***What support network will be available.***

AT and another (Article 8 ECHR - Child Refugee - Family Reunification : Eritrea) [2016] UKUT 227 (IAC) (24 March 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/227.html

While the Immigration Rules make no provision for family reunification in the United Kingdom in the case of a child who has been granted asylum, a refusal to permit the family members of such child to enter and remain in the United Kingdom may constitute a disproportionate breach of the right to respect for family life enjoyed by all family members under Article 8 ECHR.

BJ (Singh explained) Sri Lanka [2016] UKUT 184 (IAC) (18 March 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/184.html

Singh (No immigration decision - jurisdiction) [2013] UKUT 440 (IAC) is authority for proposition that the First-tier Tribunal has jurisdiction to hear an appeal only where there has been an immigration decision. It is not authority for the proposition that where an immigration decision has been made the First-tier Tribunal has no jurisdiction to hear an appeal against such decision unless the SSHD has first complied with her obligations under the Immigration (Notices) Regulations 2003.

B, R (on the application of) v Secretary of State for the Home Department (Rule 33A JR amendments and transfers) (IJR) [2016] UKUT 182 (IAC) (15 March 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/182.html

(i) Neither s.18, nor any other provision in the Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act"), nor any provision in the Tribunal Procedure (Upper Tribunal) Rules 2008 gives the Upper Tribunal a discretionary power to transfer to the High Court a case which has been begun in the Upper Tribunal. Where a case has been transferred to the Upper Tribunal, it is only in circumstances bringing the case within rule 33A(3)(b) that a discretionary power to transfer the case back to the High Court will arise.

(ii) Section 18(11) of the 2007 Act contemplates that Tribunal Procedure Rules should provide for the making of amendments to judicial review proceedings in the Upper Tribunal which would have the effect that, once made, the application would be required to be transferred to the High Court. Rule 33A does this by expressly giving the tribunal control over the making of such amendments, and it ensures also that the tribunal controls whether there can be reliance on additional grounds which would have the same effect.

Luu (Periods of study: degree level) Vietnam [2016] UKUT 181 (IAC) (7 March 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/181.html

Periods of study for a qualification below degree level, are capable of being counted as time spent studying at degree level for the purpose of paragraph 245ZX(ha), if the period of study is taught at degree level, and when the qualification itself is added to other periods of study, resulting in the award of a degree.

MS (Trafficking - Tribunal's Powers - Art. 4 ECHR : Pakistan) [2016] UKUT 226 (IAC) (23 March 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/266.html

(i) Having regard to the decision of the ECtHR in Rantsev v Cyprus and Russia [2010] 51 EHRR 1, Article 4 ECHR, which outlaws slavery, servitude and forced or compulsory labour, encompasses also human trafficking.

(ii) Trafficking decisions are not immigration decisions within the compass of the 2002 Act, with the result that judicial review provides the appropriate mechanism for direct challenge.

(iii) Tribunals must take into account, where relevant, a decision that an appellant has been a victim of trafficking.

(iv) Where satisfied that a negative trafficking decision is perverse, Tribunals are empowered to make their own decision on whether an appellant was a victim of trafficking.

(v) Tribunals are also empowered to review a trafficking decision on the ground that it has been reached in breach of the Secretary of State's policy guidance.

(vi) While, in principle it seems that other public law misdemeanours can also be considered by Tribunals, this issue does not arise for determination in the present appeal.

(vii) Tribunals may well be better equipped than the Competent Authority to make pertinent findings relating to trafficking.

(viii) The procedural obligations inherent in Article 4 ECHR are linked to those enshrined in the Trafficking Convention, Articles 10(2) and 18 in particular.

(ix) Any attempt to remove a trafficking victim from the United Kingdom in circumstances where the said procedural obligations have not been discharged will normally be unlawful.

Onowu, R (on the application of) v First-tier Tribunal (Immigration and Asylum Chamber) (extension of time for appealing: principles) (IJR) [2016] UKUT 185 (IAC) (31 March 2016)
URL: *http://www.bailii.org/uk/cases/UKUT/IAC/2016/185.html*

In considering whether to exercise discretion to extend time for seeking permission to appeal to the Upper Tribunal, both the First-tier Tribunal and the Upper Tribunal should apply the approach commended by the Court of Appeal in Mitchell v News Group Newspapers Ltd [2013] EWCA Civ 1537; Denton v White [2014] EWCA Civ 906 and R (Hysaj) v Secretary of State for the Home Department [2014] EWCA Civ 1663.

PD and Others (Article 8 : conjoined family claims) Sri Lanka [2016] UKUT 108 (IAC) (17 March 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/108.html

In considering the conjoined Article 8 ECHR claims of multiple family members decision-makers should first apply the Immigration Rules to each individual applicant and, if appropriate, then consider Article 8 outside the Rules. This exercise will typically entail the consideration and determination of all claims jointly, so as to ensure that all material facts and considerations are taken into account in each case.

Rajendran (s117B - family life) [2016] UKUT 138 (IAC) (7 March 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/138.html

1. That "precariousness" is a criterion of relevance to family life as well as private life cases is an established part of Article 8 jurisprudence: see e.g. R (Nagre) v SSHD [2013] EWHC 720 (Admin) and Jeunesse v Netherlands, app.no.12738/10 (GC).

2. The "little weight" provisions of s.117B(4)(a) and (5) of the Nationality, Immigration and Asylum Act 2002 are confined to "private life" established by a person at a time when their immigration status is unlawful or precarious. However, this does not mean that when answering the "public interest question" posed by s117A(2)-(3) a court or tribunal should disregard "precarious family life" criteria set out in established Article 8 jurisprudence. Given that ss.117A-D considerations are not exhaustive, in certain cases it may be an error of law for a court or tribunal to disregard relevant public interest considerations.

Tukhas (para 245HD(f): "appropriate salary") Russia [2016] UKUT 183 (IAC) (17 March 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/183.html

The effect of paragraph 14 of Appendix J to the Immigration Rules is that other than where an applicant has contracted weekly hours or is paid an hourly rate, the appropriate salary for the purposes of paragraph 79 of Appendix A is an applicant's gross annual salary paid by the sponsor employer, subject to the conditions set out in paragraphs 79(i)-(iii) of Appendix A.

Youssef (Refugee Convention - Article 1F(c)) [2016] UKUT 137 (IAC) (2 March 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/137.html

For a person to be excluded from refugee protection under Article 1F(c) of the Refugee Convention on the basis that they knowingly incited and encouraged acts contrary to the purposes and principles of the United Nations it is not necessary to show that such acts have actually been committed or attempted.

Chau Le (Immigration Rules - de minimis principle) Vietnam [2016] UKUT 186 (IAC) (8 April 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/186.html

The de minimis principle is not engaged in the construction or application of the Immigration Rules. Properly analysed, it is a mere surrogate for the discredited "near miss" or "sliding scale" principle.

Chege ("is a persistent offender") Kenya [2016] UKUT 187 (IAC) (12 April 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/187.html

1. *The question whether the appellant "is a persistent offender" is a question of mixed fact and law and falls to be determined by the Tribunal as at the date of the hearing before it.*

2. *The phrase "persistent offender" in s.117D(2)(c) of the 2002 Act must mean the same thing as "persistent offender" in paragraph 398(c) of the Immigration Rules.*

3. *A "persistent offender" is someone who keeps on breaking the law. That does not mean, however, that he has to keep on offending until the date of the relevant decision or that the continuity of the offending cannot be broken. A "persistent offender" is not a permanent status that can never be lost once it is acquired, but an individual can be regarded as a "persistent offender" for the purpose of the Rules and the 2002 Act even though he may not have offended for some time. The question whether he fits that description will depend on the overall picture and pattern of his offending over his entire offending history up to that date. Each case will turn on its own facts.*

IM and AI (Risks - membership of Beja Tribe, Beja Congress and JEM : Sudan) (CG) [2016] UKUT 188 (IAC) (14 April 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/188.html

1. *In order for a person to be at risk on return to Sudan there must be evidence known to the Sudanese authorities which implicates the claimant in activity which they are likely to perceive as a potential threat to the regime to the extent that, on return to Khartoum there is a risk to the claimant that he will be targeted by the authorities. The task of the decision maker is to identify such a person and this requires as comprehensive an assessment as possible about the individual concerned.*

2. *The evidence draws a clear distinction between those who are arrested, detained for a short period, questioned, probably intimidated, possibly rough handled without having suffered (or being at risk of suffering) serious harm and those who face the much graver risk of serious harm. The distinction does not depend upon the individual being classified, for example, as a teacher or a journalist (relevant as these matters are) but is the result of a finely balanced fact-finding exercise encompassing all the information that can be gleaned about him. The decision maker is required to place the individual in the airport on*

return or back home in his community and assess how the authorities are likely to re-act on the strength of the information known to them about him.

3. *Distinctions must be drawn with those whose political activity is not particularly great or who do not have great influence. Whilst it does not take much for the NISS to open a file, the very fact that so many are identified as potential targets inevitably requires NISS to distinguish between those whom they view as a real threat and those whom they do not.*

4. *It will not be enough to make out a risk that the authorities' interest will be limited to the extremely common phenomenon of arrest and detention which though intimidating (and designed to be intimidating) does not cross the threshold into persecution.*

5. *The purpose of the targeting is likely to be obtaining information about the claimant's own activities or the activities of his friends and associates.*

6. *The evidence establishes the targeting is not random but the result of suspicion based upon information in the authorities' possession, although it may be limited.*

7. *Caution should be exercised when the claim is based on a single incident. Statistically, a single incident must reduce the likelihood of the Sudanese authorities becoming aware of it or treating the claimant as of significant interest.*

8. *Where the claim is based on events in Sudan in which the claimant has come to the attention of the authorities, the nature of the claimant's involvement, the likelihood of this being perceived as in opposition to the government, his treatment in detention, the length of detention and any relevant surrounding circumstances and the likelihood of the event or the detention being made the subject of a record are all likely to be material factors.*

9. *Where the claim is based on events outside Sudan, the evidence of the claimant having come to the attention of Sudanese intelligence is bound to be more difficult to establish. However it is clear that the Sudanese authorities place reliance upon information-gathering about the activities of members of the diaspora which includes covert surveillance. The nature and extent of the claimant's activities, when and where, will inform the decision maker when he comes to decide whether it is likely those activities will attract the attention of the authorities, bearing in mind the likelihood that the authorities will have to distinguish amongst a potentially large group of individuals between those who merit being targeted and those that do not.*

10. *The decision maker must seek to build up as comprehensive a picture as possible of the claimant taking into account all relevant material including that which may not have been established even to the lower standard of proof.*

11. *Once a composite assessment of the evidence has been made, it will be for the decision maker to determine whether there is a real risk that the claimant will come to the attention of the authorities on return in such a way as amounts to more than the routine commonplace detention but meets the threshold of a real risk of serious harm.*

12. *Where a claimant has not been believed in all or part of his evidence, the decision maker will have to assess how this impacts on the requirement to establish that a Convention claim has been made out. He will not have the comprehensive, composite picture he would otherwise have had. There are likely to be shortfalls in the evidence that the decision*

maker is unable to speculate upon. The final analysis will remain the same: has the claimant established there is a real risk that he, the claimant, will come to the attention of the authorities on return in such a way as amounts to more than the routine commonplace detention and release but meets the threshold of serious harm.

Katsonga v Secretary Of State For The Home Department ("Slip Rule" : FtT's general powers : Zimbabwe) [2016] UKUT 228 (IAC) (19 April 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/228.html

1. *The 'Slip Rule', rule 31 of the First-tier Tribunal Procedure Rules, cannot be used to reverse the effect of a decision.*

2. *Following the repeal by the 2014 Act of subsections (3) to (6) of s 86 of the 2002 Act, the First-tier Tribunal appears to have no duty or power to 'allow' or 'dismiss' an appeal.*

Khurram, R (on the application of) v Secretary of State for the Home Department (effective service; 2000 Order) (IJR) [2016] UKUT 281 (IAC) (18 April 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/281.html

1. *For the purposes of Art 8ZA(2) of the Immigration (Leave to Enter and Remain) Order 2000 (SI 2000/1161)(as inserted by SI 2013/174 with effect from 12 July 2013), a notice is not sent to a postal address "provided for correspondence by the person" if the address is provided to the Secretary of State by a third party such as a sponsor educational institution unless the third party is the authorised agent of the person.*

2. *However, where no postal address (or e-mail address) for correspondence has been provided, an address provided by a third party may be the "last-known or usual place of abode" of the person within Art 8ZA(3)(a) to which a notice may be sent.*

SM and Qadir (ETS - Evidence - Burden of Proof) [2016] UKUT 229 (IAC) (21 April 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/229.html

(i) The Secretary of State's generic evidence, combined with her evidence particular to these two appellants, sufficed to discharge the evidential burden of proving that their TOEIC certificates had been procured by dishonesty.

(ii) However, given the multiple frailties from which this generic evidence was considered to suffer and, in the light of the evidence adduced by the appellants, the Secretary of State failed to discharge the legal burden of proving dishonesty on their part.

Spahiu & Anor, R (on the application of) v Secretary of State for the Home Department (Judicial review - amendment - principles (IJR) [2016] UKUT 230 (IAC) (25 April 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/230.html

(i) The amendment of a judicial review claim form preceding the lodgement of the Acknowledgement of Service does not require the permission of the Tribunal. Such permission is required in all other instances.

(ii) In deciding whether to exercise its discretionary power to permit amendment, the Tribunal will have regard to the overriding objective, fairness, reasonableness and the public law character of the proceedings. The Tribunal will also be alert to any possible subversion or misuse of its processes.

(iii) Every application to amend should be made formally, in writing, on notice to all other parties and paying the appropriate fee which, with effect from 21 March 2016, is £255.

(iv) Where an amendment is permitted in the course of a hearing the Tribunal may, within its discretion, not require compliance with the aforementioned requirements.

(v) There is a sharp distinction between an application to amend grounds and an application to amend the Respondent's decision under challenge: R (HM) v Secretary of State for the Home Department (JR - Scope - Evidence) IJR [2015] UKUT 437 (IAC) applied.

Johnson (deportation - 4 years imprisonment : Sierra Leone) [2016] UKUT 282 (IAC) (13 May 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/282.html

When a foreign offender has been convicted of an offence for which he has been sentenced to imprisonment of at least 4 years and has successfully appealed on human rights grounds, this does not prevent the Secretary of State from relying on the conviction for the purposes of paragraph 398(a) of the Immigration Rules and s.117C of the 2002 Act if and when he re-offends even if the later offence results in less than 4 years imprisonment or, indeed, less than 12 months imprisonment.

MG, R (on the application of) v First-tier Tribunal (Immigration and Asylum Chamber) ('fresh claim'; para 353: no appeal) (IJR) [2016] UKUT 283 (IAC) (17 May 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/283.html

1. *A decision that further submissions do not amount to a 'fresh claim' under para 353 of the Immigration Rules is not a decision to refuse a protection or human rights claim and so does not give rise to a right of appeal to the First-tier Tribunal under s.82 of the Nationality, Immigration and Asylum Act 2002 (as amended by s.15 of the Immigration Act 2014).*

2. *Whilst the First-tier Tribunal must determine whether it has jurisdiction to entertain an appeal, it cannot decide whether a decision that further submissions do not amount to a fresh claim under para 353 was lawful or correct. Such a decision can only be challenged on public law principles in judicial review proceedings.*

MST and others (Disclosure - restrictions - implied undertaking : Eritrea) [2016] UKUT 337 (IAC) (10 May 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/337.html

(i) In some cases the overriding objective will dictate that the respondent's skeleton argument is served in advance of that of the appellant.

(ii) The test for disclosure is whether receipt of the material in question is necessary for the just and fair disposal of the appeal.

(iii) Where uncorroborated and/or anonymous evidence is received, the Tribunal's task is to scrutinise it with caution and to attribute such weight as is considered appropriate.

(iv) Documents obtained by a party pursuant to disclosure or production orders or directions are produced under coercion and, in consequence, are received subject to certain restrictions. In particular, they must not be deployed by the receiving party for any collateral or ulterior purpose not reasonably necessary for the proper conduct of the proceedings.

(v) The so-called implied undertaking, reflected in [iv] above, applies in Tribunal proceedings. However, it may be subject to modification to reflect (a) that the primacy of protecting a party's private documents and invading a party's privacy does not apply with full force in such proceedings, particularly where the custodian is the Secretary of State, (b) the duty of candour owed to the Tribunal and (c) the inquisitorial dimension of Tribunal proceedings.

(vi) In matters of disclosure and the provision and exchange of evidence, all parties are subordinated to the authority of the Tribunal, which is the ultimate arbiter of all procedural and substantive issues.

Nkomo (Deportation: 2014 rights of appeal : Zimbabwe) [2016] UKUT 285 (IAC) (20 May 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/285.html

1. *The No 3 Commencement Order of the 2014 Act, SI 2014/2771, extends the new appeals provisions to identified persons, but the amendment of it in SI 2014/2928 further extends those provisions to identified decisions.*

2. *In consequence, a person against whom a deportation decision was made in the period 10 November 2014 - 5 April 2015 may have no right of appeal if the decisions actually made carry rights of appeal only under the new appeals provisions. (Note: A further change was made to the commencement provision with effect from 2 March 2015, which did not fall for consideration on the facts of this case.)*

Ruhumuliza (Article 1F and "undesirable" : Rwanda) [2016] UKUT 284 (IAC) (19 May 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/284.html

The fact that a person is excluded from the Refugee Convention does not of itself mean that his presence in the UK is undesirable within the meaning of the Immigration Rules.

Arshad & Ors (Tier 1 applicants - funding - "availability" : Pakistan) [2016] UKUT 334 (IAC) (27 June 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/334.html

(i) The effect of the amendment of the regime in paragraph 41/SD of Appendix A to the Immigration Rules via HC628, dated 06 September 2013, is that any application for entry

clearance or leave made before 01 October 2013 is to be decided in accordance with the Rules in force on 30 September 2013.

(ii) *Every applicant for Tier 1 Entrepreneurial status bears the onus of proving satisfaction of all of the material requirements of the Immigration Rules.*

(iii) *The Rules stipulate that every Tier 1 Entrepreneurial applicant have available £50,000 to invest in the proposed business venture. "Available" in this context denotes that the applicant must be in a position to invest this money in his business consequential upon a positive decision of the Secretary of State. The clear import of the Rules is that the investment must be capable of being made almost immediately thereafter.*

(iv) *A mere intention on the part of a Tier 1 Entrepreneurial applicant to invest £25,000 at the outset of the business venture, coupled with a further intention to invest the balance of £25,000 at some unspecified future date from some unspecified source, does not satisfy the Rules.*

Hamat (Article 9 - freedom of religion : Afghanistan) [2016] UKUT 286 (IAC) (6 June 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/286.html

(i) Article 9 - the right to freedom of thought, conscience and religion - is a distinctive feature of the Human Rights Act to be considered separately from Article 8 when it applies.

(ii) Article 9 permits the same structured approach to the assessment of an Article 8 human rights claim identified by Lord Bingham in his 5-stage approach set out in paragraph 17 of Razgar [2004] UKHL 27 save for the omission of the 'economic well-being of the country' criterion in Article 9 (2) .

(iii) In an appeal where the violation is alleged to occur by reason of removal from the United Kingdom, the test of proportionality governs the exercise of Article 9 rights and not t he more stringent approach involving whether the returnee is at risk of a flagrant denial or gross violation in his home country.

(iv) A further distinctive feature is the creation of a statutory right in s.13 of the Human Rights Act 1998, independent of Article 9, enabling a religious organisation to benefit from the Convention right to freedom of thought, conscience and religion alongside its members collectively and individually.

(v) Matters relied on by way of a positive contribution to the community are capable in principle of affecting the weight to be given to the maintenance of effective immigration control and should not be excluded from consideration altogether but are unlikely in practice to carry much weight.

(vi) The operation of the Immigration Rules will not amount to an unlawful interference in the selection of a religious leader when the personality of the appellant has not influenced the decision and where anybody in the same position as the appellant who fails to meet the requirements of the Rules is likely to be refused.

Shehu, R (on the application of) v Secretary of State for the Home Department (Citizens Directive: no suspensive appeals) (IJR) [2016] UKUT 287 (IAC) (7 June 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/287.html

The redress procedure required by articles 31 and 35 of the Citizens Directive does not make it necessary to treat EEA appeals of any kind as suspensive, since arrangements can be made, on the conditions set out in article 31.4, for allowing the subject to submit his defence in person, which is reason enough for declining to treat the decision of the Court of Appeal in Ahmed *as* per incuriam *for not dealing with article 35.*

SSH and HR (illegal exit: failed asylum seeker (CG) [2016] UKUT 308 (IAC) (29 June 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/308.html

(a) An Iranian male whom it is sought to return to Iran, who does not possess a passport, will be returnable on a laissez passer, which he can obtain from the Iranian Embassy on proof of identity and nationality.

(b) An Iranian male in respect of whom no adverse interest has previously been manifested by the Iranian State does not face a real risk of persecution/breach of his Article 3 rights on return to Iran on account of having left Iran illegally and/or being a failed asylum seeker. No such risk exists at the time of questioning on return to Iran nor after the facts (i.e. of illegal exit and being a failed asylum seeker) have been established. In particular, there is not a real risk of prosecution leading to imprisonment.

AB (Article 1F(a) - defence - duress : Iran) [2016] UKUT 376 (IAC) (22 July 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/376.html

1. In response to an allegation that a person should be excluded under Article 1F(a) of the Refugee Convention because there are serious reasons for considering that the person has committed a crime against peace, a war crime or a crime against humanity as defined in the Rome Statute, there is an initial evidential burden on an appellant to raise a ground for excluding criminal responsibility such as duress.

2. The overall burden remains on the respondent to establish that there are serious reasons for considering that the appellant did not act under duress.

Jan (Upper Tribunal: set-aside powers : Pakistan) [2016] UKUT 336 (IAC) (7 July 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/336.html

The decision of the Court of Appeal in Patel [2015] EWCA Civ 1175 entails the view that the Upper Tribunal's powers to set aside its own decisions are limited to those in rules 43 and 45-6 of the Upper Tribunal Rules.

Kashif, R (on the application of) v Secretary of State for the Home Department (JR jurisdiction: applicant in Scotland (IJR) [2016] UKUT 375 (IAC) (19 July 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/375.html

The Upper Tribunal's jurisdiction to decide an application for Judicial Review is not affected by the applicant's being in Scotland. The Tribunal will, however, consider issues of forum non conveniens if it is suggested that its jurisdiction should not be exercised.

Rexha (S.117C - earlier offences : Albania) [2016] UKUT 335 (IAC) (5 July 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/335.html

The purpose and intention of Parliament in incorporating section 117C of the Nationality, Immigration and Asylum Act 2002 was to ensure that all of the criminal convictions providing a reason for the deportation decision are to be examined within the framework provided by that section.

What is required when undertaking the exercise required by sections 117C(1) to (6) is careful scrutiny of those offences which are on a person's criminal record which have provided a reason for the decision to deport.

The IDIs do not fully reflect section 117C(7) in that it is not necessarily the case that, once a foreign criminal has been convicted and sentenced to more than four years' imprisonment, he will never be eligible to be considered under the Exceptions.

Al - Sirri (Asylum - Exclusion - Article 1F(c)) Egypt [2016] UKUT 448 (IAC) (17 August 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/448.html

In every case involving exclusion of protection under Article 1F of the Refugee Convention, the onus of proof is on the Secretary of State, a detailed and individualised examination of the facts is required, there must be clear and credible evidence of the offending conduct, and the overall evaluative judgment involves the application of a standard higher than suspicion or belief.

Hussein, R (on the application of) v First-Tier Tribunal (para 353: present scope and effect)(IJR) [2016] UKUT 409 (IAC) (8 August 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/409.html

(1) Lord Neuberger's judgment in R (ZA (Nigeria)) v Secretary of State for the Home Department [2010] EWCA Civ 926 is an authoritative pronouncement on the scope of the Supreme Court's judgments in R (BA (Nigeria)) v Secretary of State for the Home Department [2009] UKSC 7.

(2) Parliament's actions in amending paragraph 353 (fresh claims) of the immigration rules in the light of the changes to the appeal regime made by the Immigration Act 2014, together with its decisions:-

(i) to amend, but without bringing into force, the prospective amendments made in 2006 to the definition of "human rights claim" in section 113 of the Nationality, Immigration and Asylum Act 2002; and

(ii) to amend the existing definition of "human rights claim" in the light of the 2014 Act,

show that Parliament intends paragraph 353 to be used to determine whether further submissions constitute a fresh human rights claim for the purpose of "new" section 82 of the 2002 Act.

(3) If, in the post-2014 Act world, Parliament had intended paragraph 353 to apply only to the Secretary of State's certification decisions, then Parliament would have made this plain. If the applicant were correct that paragraph 353 currently has only such a limited ambit, commencing the 2006 amendments to section 113 of the 2002 Act would not enable the Secretary of State to make any significantly greater and/or coherent use of paragraph 353.

(4) Parliament's decision to leave in place the expressions "submissions" and "if rejected" in paragraph 353 are indicative that they continue to serve the function of permitting the Secretary of State to categorise cases as between those that do not amount to a claim at all and those which, though rejected, amount to a fresh human rights claim for the purposes of "new" section 82.

(5) The Secretary of State is not the sole arbiter of whether, in any particular case, she has made a decision to refuse a human rights claim, as opposed to refusing to treat submissions as amounting to a fresh claim.

Sala (EFMs: Right of Appeal : Albania) [2016] UKUT 411 (IAC) (19 August 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/411.html

There is no statutory right of appeal against the decision of the Secretary of State not to grant a Residence Card to a person claiming to be an Extended Family Member.

VOM (Error of law - when appealable : Nigeria) (Rev 1) [2016] UKUT 410 (IAC) (10 August 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/410.html

In a statutory appeal, the right of appeal under s 13 of the 2007 Act does not arise until the Upper Tribunal has completed the process required by s 12.

AB (British citizenship: deprivation; Deliallisi considered) Nigeria [2016] UKUT 451 (IAC) (28 September 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/451.html

(1) As held in Deliallisi (British citizen: deprivation appeal: scope) [2013] UKUT 439 (IAC), in an appeal under section 40A of the British Nationality Act 1981 the Tribunal is required to determine the reasonably foreseeable consequences of deprivation.

(2) Whilst the Tribunal considering a section 40A appeal cannot pre-judge the outcome of any future legal challenge that the appellant might bring against a decision to remove, following deprivation, the Tribunal must nevertheless take a view as to whether, from its present vantage point, there is likely to be force in any future challenge: cf section 94 of the Nationality, Immigration and Asylum Act 2002 and paragraph 353 of the immigration rules. The stronger the potential case, the less likely it will be that the reasonably foreseeable consequences of deprivation will include removal.

(3) A person who had indefinite leave to remain in the United Kingdom, immediately before acquiring British citizenship, does not thereby become entitled to indefinite leave to remain, upon being deprived of such citizenship under section 40 of the 1981 Act. Leave to remain is effectively extinguished by becoming a British citizen, since the system of controls under the Immigration Act 1971 does not apply to British citizens.

(4) In a section 40A appeal, an appellant may rely on the ground that deprivation would have a disproportionate effect, as regards the rights flowing from citizenship of the EU, ***only if,*** *on the facts, there is a "cross-border" element. The finding to the contrary in Deliallisi was reached* per incuriam *in the judgment of the Court of Appeal in G1 v Secretary of State for the Home Department [2012] EWCA Civ 867.*

FA (Libya: art 15(c) Libya (CG) [2016] UKUT 413 (IAC) (7 September 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/413.html

1. *The question of whether a person is at art 15(c) risk in Libya should, until further Country Guidance, be determined on the basis of the individual evidence in the case.*

2. *This decision replaces AT and Others Libya CG [2014] UKUT 318 (IAC) in respect of assessment of the art 15(c) risk.*

Hassan & Anor, R (on the application of) v Secretary of State for the Home Department (Dublin - Malta; EU Charter Art 18) (IJR) [2016] UKUT 452 (IAC) (28 September 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/452.html

(i) *There have been significant developments in Malta during recent years. While there may be imperfections in the Maltese asylum decision making processes, these are not sufficient to preclude returns under the Dublin Regulation and, in particular, do not amount to a breach of Article 18 of the EU Charter.*

(ii) While Article 18 of the EU Charter confers rights of a procedural nature, the evidence does not establish that these will be infringed in the event of either of the Applicants pursuing a fresh asylum claim in Malta.

(iii) The limitations of the mechanisms available under Maltese law for challenging refusal of asylum decisions do not infringe Article 18 of the EU Charter.

(iv) In judicial review, decisions of the Administrative Court are not binding on the Upper Tribunal: Secretary of State for Justice v RB [2010] UKUT 454 (AAC) applied.

(v) Per curiam : Article 18 of the EU Charter provides an avenue for challenging transfer decisions under the Dublin Regulation.

(vi) Per curiam : Where a Dublin Regulation transfer decision is challenged under Article 18 of the EU Charter, the ECHR "flagrant breach" standard does not apply. Rather, the test is whether there is a real risk of a breach of Article 18.

MA (ETS - TOEIC testing) Nigeria [2016] UKUT 450 (IAC) (16 September 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/450.html

(i) The question of whether a person engaged in fraud in procuring a TOEIC English language proficiency qualification will invariably be intrinsically fact sensitive.

(ii) Per curiam: where the voice data generated by TOEIC testing are those of a person other than the person claiming to have undergone the tests, there is no breach of EU or UK data protection laws.

Restivo (EEA - prisoner transfer) Italy [2016] UKUT 449 (IAC) (9 September 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/449.html

The European Framework Decision 2008/909/JHA has replaced the framework previously set out in the Council of Europe Convention on the Transfer of Sentenced Persons, itself supplemented by the Protocol of 18 December 1997, to provide the framework within which a request may be made to another Member State for the transfer of an EEA national sentenced in the United Kingdom to serve that sentence in his own country. In the United Kingdom context, it is a precondition for making a transfer request that there be in place a deportation order. A decision to make a deportation order is not a decision to transfer a serving prisoner to another Member State to serve his prison there and so in any appeal against a decision to make a deportation order the Tribunal is not concerned with whether there is any legal impediment to such a transfer taking place.

Where the personal conduct of a person represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society, the fact that such threat is managed while that person serves his or her prison sentence is not itself material to the assessment of the threat he or she poses. The threat exists, whether or not it cannot generate further offending simply because the person concerned, being imprisoned, has significantly less opportunity to commit further criminal offences.

Sheidu (Further submissions; appealable decision : Sudan) [2016] UKUT 412 (IAC) (7 September 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/412.html

If the SSHD makes a decision that is one of those specified in s 82(1), it carries a right of appeal even if the intention was not to treat the submissions as a fresh claim.

HD (Trafficked women) Nigeria (CG) [2016] UKUT 454 (IAC) (17 October 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/454.html

1. *The guidance set out in PO (trafficked women) Nigeria [2009] UKAIT 00046 at paragraphs 191-192 should no longer be followed.*

2. *Although the Government of Nigeria recognises that the trafficking of women, both internally and transnationally, is a significant problem to be addressed, it is not established by the evidence that for women in general in Nigeria there is a real risk of being trafficked.*

3. *For a woman returning to Nigeria, after having been trafficked to the United Kingdom, there is in general no real risk of retribution or of being trafficked afresh by her original traffickers.*

4. *Whether a woman returning to Nigeria having previously been trafficked to the United Kingdom faces on return a real risk of being trafficked afresh will require a detailed assessment of her particular and individual characteristics. Factors that will indicate an enhanced risk of being trafficked include, but are not limited to:*

    a. *The absence of a supportive family willing to take her back into the family unit;*

    b. *Visible or discernible characteristics of vulnerability, such as having no social support network to assist her, no or little education or vocational skills, mental health conditions, which may well have been caused by experiences of abuse when originally trafficked, material and financial deprivation such as to mean that she will be living in poverty or in conditions of destitution;*

    c. *The fact that a woman was previously trafficked is likely to mean that she was then identified by the traffickers as someone disclosing characteristics of vulnerability such as to give rise to a real risk of being trafficked. On returning to Nigeria, it is probable that those characteristics of vulnerability will be enhanced further in the absence of factors that suggest otherwise.*

5. *Factors that indicate a lower risk of being trafficked include, but are not limited to:*

    a. *The availability of a supportive family willing to take the woman back into the family unit;*

b. The fact that the woman has acquired skills and experiences since leaving Nigeria that better equip her to have access to a livelihood on return to Nigeria, thus enabling her to provide for herself.

6. *There will be little risk of being trafficked if received into a NAPTIP shelter or a shelter provided by an NGO for the time that she is there, but that support is likely to be temporary, possibly for just a few weeks, and there will need to be a careful assessment of the position of the woman when she leaves the shelter.*

7. *For a woman who does face a real risk of being trafficked if she returns to her home area, the question of whether internal relocation will be available as a safe and reasonable alternative that will not be unduly harsh will require a detailed assessment of her particular circumstances. For a woman who discloses the characteristics of vulnerability described above that are indicative of a real risk of being trafficked, internal relocation is unlikely to be a viable alternative.*

MST and Others (national service – risk categories) Eritrea CG [2016] UKUT 443 (IAC) (7 October 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/443.html

Country guidance

1. Although reconfirming parts of the country guidance given in MA (Draft evaders – illegal departures – risk) Eritrea CG [2007] UKAIT 59 and MO (illegal exit – risk on return) Eritrea CG [2011] UKUT 190 (IAC), this case replaces that with the following:

2. The Eritrean system of military/national service remains indefinite and since 2012 has expanded to include a people's militia programme, which although not part of national service, constitutes military service.

3. The age limits for national service are likely to remain the same as stated in MO, namely 54 for men and 47 for women except that for children the limit is now likely to be 5 save for adolescents in the context of family reunification. For peoples' militia the age limits are likely to be 60 for women and 70 for men.

4. The categories of lawful exit have not significantly changed since MO and are likely to be as follows:

(i) Men aged over 54

(ii) Women aged over 47

(iii) Children aged under five (with some scope for adolescents in family reunification cases

(iv) People exempt from national service on medical grounds

(v) People travelling abroad for medical treatment

(vi) People travelling abroad for studies or for a conference

(vii) Business and sportsmen

(viii) Former freedom fighters (Tegadelti) and their family members

(ix) Authority representatives in leading positions and their family members

5. It continues to be the case (as in MO) that most Eritreans who have left Eritrea since 1991 have done so illegally. However, since there are viable, albeit still limited, categories of lawful exit especially for those of draft age for national service, the position remains as it was in MO, namely that a person whose asylum claim has not been found credible cannot be assumed to have left illegally. The position also remains nonetheless (as in MO) that if such a person is found to have left Eritrea on or after August/September 2008, it may be that inferences can be drawn from their health history or level of education or their skills profile as to whether legal exit on their part was feasible, provided that such inferences can be drawn in the light of adverse credibility findings. For these purposes a lengthy period performing national service is likely to enhance a person's skill profile.

6. It remains the case (as in MO) that failed asylum seekers as such are not at risk of persecution or serious harm on return.

7. Notwithstanding that the round-ups (giffas) of suspected evaders/deserters, the "shoot to kill" policy and the targeting of relatives of evaders and deserters are now significantly less likely occurrences, it remains the case, subject to three limited exceptions set out in (iii) below, that if a person of or approaching draft age will be perceived on return as a draft evader or deserter, he or she will face a real risk of persecution, serious harm or ill-treatment contrary to Article 3 or 4 of the ECHR.

(i) A person who is likely to be perceived as a deserter/evader will not be able to avoid exposure to such real risk merely by showing they have paid (or are willing to pay) the diaspora tax and/have signed (or are willing to sign) the letter of regret.

(ii) Even if such a person may avoid punishment in the form of detention and ill-treatment it is likely that he or she will be assigned to perform (further) national service, which, is likely to amount to treatment contrary to Articles 3 and 4 of the ECHR unless he or she falls within one or more of the three limited exceptions set out immediately below in (iii).

(iii) It remains the case (as in MO) that there are persons likely not to face a real risk of persecution or serious harm notwithstanding that they will be perceived on return as draft evaders and deserters, namely: (1) persons whom the regime's military and political leadership perceives as having given them valuable service (either in Eritrea or abroad); (2) persons who are trusted family members of, or are themselves part of, the regime's military or political leadership. A further possible exception, requiring a more case specific analysis is (3) persons (and their children born afterwards) who fled (what later became the territory of) Eritrea during the War of Independence.

8. Notwithstanding that many Eritreans are effectively reservists having been discharged/released from national service and unlikely to face recall, it remains unlikely that they will have received or be able to receive official confirmation of completion of national service. Thus it remains the case, as in MO that "(iv) The general position adopted in MA, that a person of or approaching draft and not medically unfit who is accepted as having left Eritrea illegally is reasonably likely to be regarded with serious hostility on return, is reconfirmed, subject to limited exceptions…"

9. A person liable to perform service in the people's militia and who is assessed to have left Eritrea illegally, is not likely on return to face a real risk of persecution or serious harm.

10. Accordingly, a person whose asylum claim has not been found credible, but who is able to satisfy a decision-maker (i) that he or she left illegally, and (ii) that he or she is of or approaching draft age, is likely to be perceived on return as a draft evader or deserter from national service and as a result face a real risk of persecution or serious harm.

11. While likely to be a rare case, it is possible that a person who has exited lawfully may on forcible return face having to resume or commence national service. In such a case there is a real risk of persecution or serious harm by virtue of such service constituting forced labour contrary to Article 4(2) and Article 3 of the ECHR.

12. Where it is specified above that there is a real risk of persecution in the context of performance of military/national service, it is highly likely that it will be persecution for a Convention reason based on imputed political opinion.

MW (Nationality; Art 4 QD; duty to substantiate) [2016] UKUT 453 (IAC) (3 October 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/453.html

1. Article 4(1) of the Qualification Directive does not impose a shared duty of cooperation on the Member State to substantiate an applicant's nationality.

2. Article 4(2) refers to documentation (including documentation regarding nationality(ies)) "at the applicant's disposal" - which must include documentation which is not in the applicant's present possession but is within his or her power to obtain.

3. The terms of Article 4(3) are consistent with the position that an applicant who denies he is a national of a country where he could obtain protection can be expected to take reasonable steps to establish that he is not such a national.

SA & AA, R (on the application of) v Secretary of State for the Home Department (Dublin - Article 8 ECHR - interim relief) (IJR) [2016] UKUT 507 (IAC) (12 October 2016)
URL: *http://www.bailii.org/uk/cases/UKUT/IAC/2016/507.html*

(i) By virtue of the decision of the Court of Appeal in ZAT & Ors the duty to admit a person to the United Kingdom under Article 8 ECHR without adherence to the initial procedural requirements of the Dublin Regulation requires an especially compelling case.

(ii) The question of whether the best interests of a child will be promoted by delay is an intensely fact sensitive one.

(iii) The grant of interim relief can be formulated in such a way as to respect the role and responsibilities of the relevant authorities of a foreign state.

(iv) Protection of the best interests of a child should not be outweighed by considerations of judicial comity.

Elayi (fair hearing - appearance : India) [2016] UKUT 508 (IAC) (15 November 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/508.html

Justice must not only be done but must manifestly be seen to be done.

JA (child - risk of persecution : Nigeria) [2016] UKUT 560 (IAC) (24 November 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/560.html

> *A child can be at risk of persecutory harm contrary to the UN Convention on the Rights of the Child in circumstances where a comparably placed adult would not be at such a risk.*

ZM and SK, R (on the application of) v The London Borough of Croydon (Dental age assessment) [2016] UKUT 559 (IAC) (11 November 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/559.html

1. *Considerable circumspection must always be deployed in responding to a claim that statistical evidence tends to prove a fact about an individual. Statistics may be more useful to decision-makers at the far ends of the scale (where they may be able to show the plausibility or implausibility of a proposition) than in the middle of the scale where they purport to show the likelihood of the correctness of a plausible proposition.*

2. *When considering statistical evidence it is always necessary to determine whether the population constituting the database from which the statistics are drawn is sufficiently identical to the population from which the individual is drawn.*

3. *The fact that all teeth are mature in the sense that all have reached Demirjian stage H is a sign of chronological maturity but is not a reliable indicator of whether an individual is more or less than 18 years old. The use of the Demirjian stages below stage H does appear to be more reliable in the prediction of age, particularly in the lower teens.*

4. *None of the three mandibular maturity markers so far identified appears yet to have attained such acceptance in the scientific community that it can be accepted as a reliable pointer to chronological age in the late teens in males.*

5. *Dental wear is not a guide to chronological age in the absence of data for a population with similar diet and masticatory habits to those of the person under examination.*

6. *The decision of the Court of Appeal in London Borough of Croydon v Y should not be read as prohibiting a person from refusing to undergo a dental examination. However, (i) the risk inherent in the exposure to x-rays during the taking of the dental panoramic tomograph is not likely to be a reasonable ground for refusing to allow the tomograph to be made, given the advantages stemming from ascertainment of an individual's true age, and (ii) despite the reservations expressed herein, analysis of a person's dental maturity may well have something to add to the process of assessing chronological age.*

7. *It therefore follows that generally speaking the taking of a dental tomograph should be ordered if a party seeks it, and (because of the process of dental maturity) the earlier the tomograph is taken, the more likely it is to be of assistance.*

Aitjilal, R (on the application of) v Secretary of State for the Home Department (EEA Regulations - deportation - reassessment -regulation 24(5)) [2016] UKUT 563 (IAC) (9 December 2016)
http://www.bailii.org/uk/cases/UKUT/IAC/2016/563.html

Neither a decision to make a deportation order nor a notice of intention to make a deportation order triggers the two year period specified in regulation 24(5) of the EEA Regulations. The two year period begins upon the making of the deportation order itself.