2017 UT IAC CASE LAW BROWSER

I have set out below all of the head notes from the 2017 reported cases of the UT (IAC) (this includes 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. I hope it's useful. Adam.
(http://www.bailii.org/uk/cases/UKUT/IAC/2017/ accessed 31/12/17)

January

BA (Returns to Baghdad Iraq CG) [2017] UKUT 18 (IAC) (23 January 2017)
URL: *http://www.bailii.org/uk/cases/UKUT/IAC/2017/18.html*

(i) The level of general violence in Baghdad city remains significant, but the current evidence does not justify departing from the conclusion of the Tribunal in AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC).

(ii) The evidence shows that those who worked for non-security related Western or international companies, or any other categories of people who would be perceived as having collaborated with foreign coalition forces, are still likely to be at risk in areas which are under ISIL control or have high levels of insurgent activity. At the current time the risk is likely to emanate from Sunni insurgent groups who continue to target Western or international companies as well as those who are perceived to collaborate with the Government of Iraq.

(iii) The current evidence indicates that the risk in Baghdad to those who worked for non-security related Western or international companies is low although there is evidence to show that insurgent groups such as ISIL are active and capable of carrying out attacks in the city. In so far as there may be a low level of risk from such groups in Baghdad it is not sufficient to show a real risk solely as a perceived collaborator.

(iv) Kidnapping has been, and remains, a significant and persistent problem contributing to the breakdown of law and order in Iraq. Incidents of kidnapping are likely to be underreported. Kidnappings might be linked to a political or sectarian motive; other kidnappings are rooted in criminal activity for a purely financial motive. Whether a returnee from the West is likely to be perceived as a potential target for kidnapping in Baghdad may depend on how long he or she has been away from Iraq. Each case will be fact sensitive, but in principle, the longer a person has spent abroad the greater the risk. However, the evidence does not show a real risk to a returnee in Baghdad on this ground alone.

(v) Sectarian violence has increased since the withdrawal of US-led coalition forces in 2012, but is not at the levels seen in 2006-2007. A Shia dominated government is supported by Shia militias in Baghdad. The evidence indicates that Sunni men are more likely to be targeted as suspected supporters of Sunni extremist groups such as ISIL. However, Sunni identity alone is not sufficient to give rise to a real risk of serious harm.

(vi) Individual characteristics, which do not in themselves create a real risk of serious harm on return to Baghdad, might amount to a real risk for the purpose of the Refugee Convention, Article 15(c) of the Qualification Directive or Article 3 of the ECHR if assessed on a cumulative basis. The assessment will depend on the facts of each case.

(vii) In general, the authorities in Baghdad are unable, and in the case of Sunni complainants, are likely to be unwilling to provide sufficient protection.

Capparrelli (EEA Nationals - British Nationality : Italy) [2017] UKUT 162 (IAC) (20 January 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/162.html

(i) An EEA national exercising Treaty rights in the United Kingdom is not "settled" within the compass of section 1(1) of the British Nationality Act 1981 since such person's lawful residence is conditional upon remaining economically active: Gal affirmed.

(ii) The statutory phrase "the immigration laws" does not encompass the EU rules on free movement: Gal modified.

(iii) Being ordinarily resident in the United Kingdom does not confer the status of British nationality.

(iv) The dichotomy of persons lawfully present in the United Kingdom under (a) the EEA Regulations 2006 and (b) the Immigration Rules is reflected in paragraph 5 of the latter.

(v) The question of whether a person is ordinarily resident in the United Kingdom is one of fact and degree.

Chin and Another (former BOC/Malaysian national - deportation : Malaysia) (Rev 1) [2017] UKUT 15 (IAC) (11 January 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/15.html
The deportation of a former Malaysian national and former BOC is liable to be deemed unlawful where relevant Government Policies relating to inter-state arrangements with Malaysia have not been taken into account or given effect.

Kaur (children's best interests / public interest interface) [2017] UKUT 14 (IAC) (10 January 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/14.html
(1) The seventh of the principles in the Zoumbas code does not preclude an outcome whereby the best interests of a child must yield to the public interest.

(2) This approach has not been altered by Part 5A of the Nationality, Immigration and Asylum Act 2002.

(3) In the proportionality balancing exercise, the best interests of a child must be assessed in isolation from other factors, such as parental misconduct.

(4) The best interests assessment should normally be carried out at the beginning of the balancing exercise.

(5) The "little weight" provisions in Part 5A of the 2002 Act do not entail an absolute, rigid measurement or concept; "little weight" involves a spectrum which, within its self-contained boundaries, will result in the measurement of the quantum of weight considered appropriate in the fact sensitive context of every case.

(6) In every balancing exercise, the scales must be properly prepared by the Judge, followed by all necessary findings and conclusions, buttressed by adequate reasoning.

Neshanthan (cancellation or revocation of ILR : Sri Lanka) [2017] UKUT 77 (IAC) (17 January 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/77.html
i) Article 13 of the Immigration (Leave to enter and Remain) Order 2000/1161 (the "2000 Order") applies to holders of indefinite leave to remain ("ILR") who travel to a country or territory outside the common travel area so that their ILR does not lapse but continues if Article 13(2)-(4) are satisfied.
ii) If the leave of such an individual continues pursuant to Article 13(2)-(4) of the 2000 Order, an immigration officer has power to cancel their ILR upon their arrival in the United Kingdom.
iii) The grounds upon which such leave may be cancelled are set out at para 321A of the Immigration Rules.
iv) Section 76 of the Nationality, Immigration and Asylum Act 2002 Act is an alternative and additional power, available to the Secretary of State, to revoke indefinite leave to enter or ILR in the circumstances described at s.76(1)-(3) of the 2002 Act.

RN, R (on the application of) v Secretary of State for the Home Department (paragraph 245AAA) [2017] UKUT 76 (IAC) (12 January 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/76.html

(i) On a proper construction of paragraph 245AAA(a)(i) of HC 395, an absence from the United Kingdom for a period of more than 180 days in one of the relevant 12 month periods will entail a failure to satisfy the requirements of paragraph 245CD.

(ii) The term 'residence' in paragraph 245AAA(a) is to be equated to presence.

Saha & Anor, R (on the application of) v Secretary of State for the Home Department (Secretary of State's duty of candour) [2017] UKUT 17 (IAC) (13 January 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/17.html
(I) It is impossible to overstate the importance of the duty of candour in judicial review proceedings. Any failings by the Executive in this respect threaten the guarantees upon which judicial review is founded and are inimical to the rule of law.

(II) A failure by the Executive to conduct judicial review proceedings with the necessary degrees of candour, efficiency and attention compromises the ability of its legal representatives to discharge their ethical and professional duties.

(III) All of the aforementioned duties are encompassed within an overarching obligation of good faith rooted in respect for the rule of law.

(IV) Failings of this kind may be reflected in various ways, including how the judicial exercise of discretion in the matter of costs is performed.

Treebhawon and Others (NIAA 2002 Part 5A - compelling circumstances test : Mauritius) [2017] UKUT 13 (IAC) (9 January 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/13.html
(I) Where the case of a foreign national who is not an offender does not satisfy the requirements of the Article 8 ECHR regime of the Immigration Rules, the test to be applied is that of compelling circumstances.

(II) The Parliamentary intention underlying Part 5A of NIAA 2002 is to give proper effect to Article 8 ECHR. Thus a private life developed or established during periods of unlawful or precarious residence might conceivably qualify to be accorded more than little weight and s 117B (4) and (5) are to be construed and applied accordingly.

(III) Mere hardship, mere difficulty, mere hurdles, mere upheaval and mere inconvenience, even where multiplied, are unlikely to satisfy the test of "very significant hurdles" in paragraph 276 ADE of the Immigration Rules.

VA (Solicitor's non-compliance: counsel's duties : Sri Lanka) [2017] UKUT 12 (IAC) (5 January 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/12.html
(i) Counsel's duty is owed to the client. It does not extend to defending non-compliant instructing solicitors.

(ii) It is for non-compliant instructing solicitors to defend themselves by proactively arranging their attendance before the tribunal in appropriate circumstances.

February

Agha, R (on the application of) v Secretary of State for the Home Department (False document) [2017] UKUT 121 (IAC) (21 February 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/121.html
For a document to be a false document under the Immigration Rules there must have been an element of dishonesty in its creation and if this is not immediately obvious in a case of an inaccurate document then that element must be engaged with in any refusal.

Ahmed and Others (deprivation of citizenship) (Pakistan) [2017] UKUT 118 (IAC) (10 February 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/118.html

(i) While the two fold duties enshrined in section 55 of the Borders, Citizenship and Immigration Act 2009 are imposed on the Secretary of State, the onus of making representations and providing relevant evidence relating to a child's best interests rests on the appropriate parental figure.

(ii) A failure to discharge this onus may well defeat any argument that there was a proactive duty of enquiry on the Secretary of State in a given context.

(iii) In deprivation of citizenship cases, section 55 issues arise at two stages: at the deprivation of citizen stage and at the later stage of proposed removal or deportation.

(iv) As the subject of national citizenship lies exclusively within the competence of Member States, EU law has no role to play in deprivation cases: G1 v SSHD [2012] EWCA Civ 867 applied.

(v) The Secretary of State's deprivation of citizenship policy confers a wide margin of appreciation on the decision maker.

(vi) Part 5A of the Nationality, Immigration and Asylum Act 2002 does not apply to deprivation of citizenship decisions as such decisions are not made under the Immigration Acts.

(vii) There would be a considerable saving of human and financial resources with consequential reduced delay if deprivation of citizenship and deportation or removal decisions were to be made jointly.

H, R (on the application of) v The Secretary of State for the Home Department (application of AA (Iraq) CG [2017] UKUT 119 (IAC) (14 February 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/119.html
A proper reading of the Upper Tribunal's decision in AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC) reveals the importance of making findings of fact regarding P's circumstances, in order properly to apply the country guidance in that case. A finding that P cannot currently be returned, owing to a lack of particular travel documentation, will not be determinative of P's claim to international protection if P faces a real risk of serious harm, otherwise than (solely) by reason of P's lack of such documentation.

Lama (video recorded evidence -weight - Art 8 ECHR : Nepal) (Rev 1) [2017] UKUT 16 (IAC) (21 February 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/16.html
(i) Video recorded evidence from witnesses is admissible in the Upper Tribunal. Its weight will vary according to the context.

(ii) Alertness among practitioners and parties to the Upper Tribunal's standard pre-hearing Directions and compliance therewith are crucial.

(iii) There are no hard and fast rules as to what constitutes family life within the compass of Article 8 ECHR.

(iv) A person's value to the community is a factor which may legitimately be considered in the Article 8 proportionality balancing exercise.

Munyua, R (on the application of) v Secretary of State for the Home Department (Parties' responsibility to agree costs) [2017] UKUT 78 (IAC) (13 February 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/78.html
Where judicial review proceedings are resolved by settlement, the parties are responsible for doing all they can to agree costs, both as to liability and amount, rather than leaving this to the decision of the Tribunal, which is likely to carry its own penalty.

PP (female headed household; expert duties) Sri Lanka [2017] UKUT 117 (IAC) (06 February 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/117.html

(I) A Tamil female single head of household residing in the former conflict zone of Northern and North Eastern Sri Lanka may be at risk of sexual abuse and exploitation perpetrated by members of police, military and paramilitary State agents.

(II) The existence and measurement of this risk will be an intensely fact sensitive question in every case. The case-by-case assessment will be informed by the presence or absence of positive risk factors and decreasing risk factors .

(III) The positive risk factors are living in isolation from others, low socio-economic status, dependence upon the distribution of Government aid or the provision of other services by the security forces and a perception of former LTTE membership, links or sympathies. These positive factors do not necessarily have to be satisfied cumulatively in every case: context will invariably be everything.

(IV) The countervailing factors are higher socio-economic status, little dependence on Government aid or services and the support of male relatives or neighbours. The context of the particular case will dictate the force and weight of each of these factors, individually or cumulatively, in any given case. These too will be assessed on a case-by-case basis.

(V) Experts' reports and evidence must comply fully and strictly with the Senior President of Tribunal's Practice Direction.

(VI) The methodology of every expert witness should always be patent on the face of the report. If not, it should be provided via a supplement, accompanied by a full and frank explanation of the omission. Experts and practitioners are reminded of the decisions of the Upper Tribunal in MOJ and Others [2014] UKUT 442 (IAC), at [23] - [38] and MS (Trafficking - Tribunal's powers - Article 4 ECHR) Pakistan [2016] UKUT 226 (IAC), at [68] - [69].

SF and others (Guidance, post-2014 Act) [2017] UKUT 120 (IAC) (16 February 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/120.html
Even in the absence of a "not in accordance with the law" ground of appeal, the Tribunal ought to take the Secretary of State's guidance into account if it points clearly to a particular outcome in the instant case. Only in that way can consistency be obtained between those cases that do, and those cases that do not, come before the Tribunal.

March

AO & AM, R (on the application of) v Secretary of State for the Home Department (stay of proceedings - principles) [2017] UKUT 168 (IAC) (28 March 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/168.html
(i) The Upper Tribunal has the same power as the High Court to stay proceedings.

(ii) The most important factors influencing the exercise of this discretionary power will normally be found in the overriding objective.

(iii) Great caution is required where a stay application is founded on the contention that the outcome of another case will significantly influence the outcome of the instant case.

(iv) A stay application will require especially compelling justification in a case qualifying for urgent judicial decision.

(v) The cases of unaccompanied, isolated teenagers marooned in a foreign land suffering from major psychological trauma and seeking, via litigation, the swiftest reunion possible with a separated family member will always, in principle, have a powerful claim to judicial prioritisation.

Ayache, R (on the application of) v The Secretary of State for the Home Department (paragraph 353 and s94B relationship) [2017] UKUT 122 (IAC) (8 March 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/122.html

1. Although paragraph 353 does not refer in terms to certification, a decision certified pursuant to s 94b is plainly a decision on a "human rights claim" albeit a claim regarding temporary removal as opposed to removal for a more lengthy period if a statutory appeal is unsuccessful. In deciding whether to certify under s94B the respondent, and the Tribunal, cannot act in a way which is incompatible with the applicant's Convention rights. It must follow that further submissions made and considered in accordance with paragraph 353 Immigration Rules would fall within their ambit, including the appropriateness of certification. Certification is a response to the human rights claim, albeit focused upon temporary removal rather than the main claim.

2. Paragraph 353 Immigration Rules provides the appropriate remedy where further information and evidence is sought to be placed before the respondent, rather than such material being considered in judicial review proceedings

Aydogdu, R (on the application of) v Secretary of State for the Home Department (Ankara Agreement - family members - settlement) [2017] UKUT 167 (IAC) (20 March 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/167.html

(I) The settlement of migrant Turkish nationals and their family members does not fall within the scope of the "stand-still clause" in Article 41(1) of the Ankara Agreement (ECAA) Additional Protocol as it is not necessary for the exercise of freedom of establishment under Article 13. Thus the status of settlement in the UK for such Turkish nationals and their family members cannot derive in any way from the ECAA or its Additional Protocol;

(II) Where a Turkish national who exercised rights under the ECAA has been granted settlement in the UK the rights of such person and his family members are not derived from the ECAA or its Additional Protocol.

Banger (Unmarried Partner of British National : South Africa) [2017] UKUT 125 (IAC) (30 March 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/125.html

The Upper Tribunal has referred the following questions to the CJEU for a preliminary ruling under Article 267 TFEU:
(1) Do the principles contained in the decision in Immigration Appeal Tribunal and Surinder Singh, ex parte Secretary of State for the Home Department (Case C-370/90) [1992] operate so as to require a Member State to issue or, alternatively, facilitate the provision of a residence authorisation to the non-Union unmarried partner of a EU citizen who, having exercised his Treaty right of freedom of movement to work in a second Member State, returns with such partner to the Member State of his nationality?
(2) Alternatively, is there a requirement to issue or, alternatively, facilitate the provision of such residence authorisation by virtue of European Parliament and Council Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States ("the Directive")?
(3) Where a decision to refuse a residence authorisation is not founded on an extensive examination of the personal circumstances of the Applicant and is not justified by adequate or sufficient reasons is such decision unlawful as being in breach of Article 3(2) of the Citizens Directive?
(4) Is a rule of national law which precludes an appeal to a court or tribunal against a decision of the executive refusing to issue a residence card to a person claiming to be an extended family member compatible with the Directive?

Majera, R (on the application of) v Secretary of State for the Home Department (bail conditions: law and practice) [2017] UKUT 163 (IAC) (13 March 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/163.html

(1) A defect in framing the primary condition of bail granted by the First-tier Tribunal under paragraph 22 of Schedule 2 to the Immigration Act 1971 does not render the grant of bail void. There has, rather, been a valid but defective grant of bail. In such a situation, it is the responsibility of the parties (in particular, the respondent) immediately to draw the defect to the attention of the Tribunal, so that it can be corrected.

(2) Paragraph 2 of Schedule 3 to the 1971 Act gives the respondent power to impose restrictions on taking employment etc in respect of persons who are subject to immigration control. It is difficult to see how any condition of bail granted by the First-tier Tribunal could affect this freestanding power.

(3) Licence conditions imposed by the National Probation Service serve aims wider and different from the conditions that may be imposed by the First-tier Tribunal on a grant of bail. Rather than imposing bail conditions "in the same terms as the licence", which is what the First-tier Tribunal's Bail Guidance recommends, the better course is for the First-tier Tribunal to state that its conditions of bail are without prejudice to any conditions contained in the licence, and for judges to ensure there is no conflict between bail conditions and licence conditions.

RSM & Anor, R (on the application of) v Secretary of State for the Home Department (unaccompanied minors – Art 17 Dublin Regulation – remedies) (Rev 1) [2017] UKUT 124 (IAC) (8 March 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/124.html
(I) The question of whether the Secretary of State has made a decision on the exercise of the discretionary power in Article 17 of the Dublin Regulation is one of fact which will be determined on the basis of evidence, direct or inferential.

(II) Article 17 is an integral part of the Dublin regime. The suggestion that the Article 17 discretion falls to be exercised only where the family reunification criteria in Article 8 are not satisfied is misconceived.

(III) Article 17 has a role in circumstances where one of the overarching values of the Dublin Regulation, namely expedition, is not being fulfilled in the procedures and systems of the host Member State.

(IV) Relevant government policy statements constitute, as a minimum, material considerations to be taken into account in deciding whether to exercise the discretionary power in Article 17. The Lumba principle is also engaged.

(V) The judicial assessment of the efficacy of the Dublin systems and procedures in the host Member State will invariably be fact sensitive and will take into account the overarching aims and objectives of the Dublin Regulation, including the maintenance of inter-Member State solidarity and mutual trust and respect, together with expedition.

(VI) Expedition has special force in the case of unaccompanied children.

(VII) The discretion to judicially determine essentially academic issues in judicial review proceedings will normally be informed by the overriding objective.

Smith (paragraph 391(a) - revocation of deportation order : Jamaica) [2017] UKUT 166 (IAC) (17 March 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/166.html
i) In cases involving convictions for an offence for which the person was sentenced to a period of imprisonment of less than 4 years, the Secretary of State's policy, as expressed in paragraph 391(a) of the Immigration Rules, is that the public interest does not require continuation of a deportation order after a period of ten years has elapsed.

(ii) However, paragraph 391(a) allows the Secretary of State to consider on a case by case basis whether a deportation order should be maintained. The mere fact of past convictions is unlikely to be sufficient to maintain an order if the 'prescribed period' has elapsed. Strong public policy reasons would be needed to justify continuing an order in such circumstances.

(iii) Paragraph 391(a) will only be engaged in a 'post-deportation' case if the person is applying for revocation of the order from outside the UK. Nothing in the strict wording of the rule requires the ten-year period to be spent outside the UK. However, the main purpose of deportation is to exclude a person from the UK. Any breach of the deportation order is likely to be a strong public policy ground for maintaining the order even though a period of ten years has elapsed since it was made.

(iv) In 'post-deportation' applications involving sentences of less than four years made before the end of the ten-year period, and 'post-deportation' applications involving sentences of four years or more, appropriate

weight should be given to the Secretary of State's policy as expressed in the 'Conventions exception' and 'sweep-up exception' with reference to paragraphs 398-399A and 390A of the Immigration Rules.

SS, R (on the application of) v Secretary of State for the Home Department ("self-serving" statements) [2017] UKUT 164 (IAC) (13 March 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/164.html
(1) The expression "self-serving" is, to a large extent, a protean one. The expression itself tells us little or nothing. What is needed is a reason, however brief, for that designation. For example, a letter written by a third party to an applicant for international protection may be "self-serving" because it bears the hallmarks of being written to order, in circumstances where the applicant's case is that the letter was a spontaneous warning.

(2) Whilst a statement from a family member is capable of lending weight to a claim, the issue will be whether, looked at in the round, it does so in the particular case in question. Such a statement may, for instance, be incapable of saving a claim which, in all other respects, lacks credibility.

TM (EEA nationals - meaning; NI practitioners : Zimbabwe) [2017] UKUT 165 (IAC) (14 March 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/165.html
1. Schedule 1, paragraph 1 (d) of the Immigration (European Economic Area) (Amendment) Regulations 2012 (SI 2012/1547) amended the definition of EEA national to exclude those who are also British Citizens, but that change was subject to the transitional provisions set out in Schedule 3 of those regulations. Similar provisions were added to the Immigration (European Economic Area) Regulations 2016 by the Immigration (European Economic Area) (Amendment) Regulations 2017 (SI 2017/1) which amended schedule 6 of the 2016 Regulations by adding a new paragraph 9.

2. Although the reg 1 (2) of the 2016 regulations revoked the Immigration (European Economic Area) Regulations 2006, they are preserved for the purposes of appeals, as are the rights of appeal by an amendment to Schedule 4 of the new EEA Regulations made by the Immigration (European Economic Area) (Amendment) Regulations 2017 (SI 2017/1).

3. While the representatives regulated by OISC and members of the Bar of Northern Ireland are both entitled under section 84 of the Immigration and Asylum Act 1999 to provide immigration services, section 11 of the Code of Conduct of the Bar of Northern Ireland precludes barristers from taking instructions from persons other than lawyers who are governed by a professional body (which does not include OISC).

VB & Anor (draft evaders and prison conditions : Ukraine) (CG) [2017] UKUT 79 (IAC) (6 March 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/79.html
1. At the current time it is not reasonably likely that a draft-evader avoiding conscription or mobilisation in Ukraine would face criminal or administrative proceedings for that act, although if a draft-evader did face prosecution proceedings the Criminal Code of Ukraine does provide, in Articles 335, 336 and 409, for a prison sentence for such an offence. It would be a matter for any Tribunal to consider, in the light of developing evidence, whether there were aggravating matters which might lead to imposition of an immediate custodial sentence, rather than a suspended sentence or the matter proceeding as an administrative offence and a fine being sought by a prosecutor.
2. There is a real risk of anyone being returned to Ukraine as a convicted criminal sentenced to a term of imprisonment in that country being detained on arrival, although anyone convicted in absentia would probably be entitled thereafter to a retrial in accordance with Article 412 of the Criminal Procedure Code of Ukraine.
3. There is a real risk that the conditions of detention and imprisonment in Ukraine would subject a person returned to be detained or imprisoned to a breach of Article 3 ECHR.

Zia and Hossan, R (on the application of) v Secretary of State for the Home Department (Strike out - Reinstatement refused - Appeal) [2017] UKUT 123 (IAC) (8 March 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/123.html
(i) A decision of the Upper Tribunal refusing to exercise its power to reinstate a judicial review claim which has been struck out may be the subject of an application for permission to appeal to the Court of Appeal.

(ii) Such a decision, given its nature and consequences, is not to be equated with a mere case management decision.
(iii) Every decision upon an application to reinstate must give effect to the overriding objective.

(iv) Rule 8 of the Tribunal Procedure (Upper Tribunal) Rules 2008 provides the only mechanism for challenging a strike out order. Rule 43 has no application in this context.

April

Al-Anizy, R (on the application of) v Secretary of State for the Home Department (undocumented Bidoons - Home Office policy) [2017] UKUT 197 (IAC) (25 April 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/197.html
1) The Home Office family reunification policy embraces a series of flexible possibilities for proof of identity.

2) In any case where withdrawal or a consent order is proposed judicial scrutiny and adjudication are required.

Pirzada (Deprivation of citizenship: general principles : Afghanistan) [2017] UKUT 196 (IAC) (20 April 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/196.html
(i) The Secretary of State has two separate powers of deprivation, exercisable on different grounds, as set out in sub-ss (2) and (3) of s 40 of the British Nationality Act 1981.

(ii) The power under s 40(2) arises only if the Secretary of State is satisfied that deprivation is conducive to the public good.

(iii) The power under sub-s (3) arises only if the Secretary of State is satisfied that registration or naturalisation was obtained by fraud, false representation or concealment of a material fact. The deception referred to must have motivated the grant of (in the present case) citizenship, and therefore necessarily preceded that grant.

(iv) The separation of sub-ss (2) and (3) makes it clear that obtaining naturalisation by one of the means of deception set out in sub-s (3) cannot of itself amount to a reason enabling the Secretary of State to be satisfied that deprivation is conducive to the public good for the purposes of sub-s (2); but, in an appropriate case, there would appear to be no reason why the Secretary of State should not be satisfied that the conditions under both subsections exist.

(v) The restrictions on the rights of appeal imposed by s 84 of the 2002 Act do not apply to appeals against a s 40 decision: therefore, any proper ground of appeal is available to an applicant. The grounds of appeal are, however, limited by the formulation of s 40 and must be directed to whether the Secretary of State's decision was in fact empowered by that section. There is no suggestion that a Tribunal has the power to consider whether it is satisfied of any of the matters set out in sub-ss (2) or (3); nor is there any suggestion that the Tribunal can itself exercise the Secretary of State's discretion.

RLP (BAH revisited – expeditious justice) Jamaica [2017] UKUT 330 (IAC) (11 April 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/330.html
(i) The decision of the Upper Tribunal in BAH (EO – Turkey – Liability to Deport) [2012] UKUT 00196 (IAC) belongs to the legal framework prevailing at the time when it was made: it has long been overtaken by the significant statutory and policy developments and reforms effected by the Immigration Act 2014 and the corresponding amendments of the Immigration Rules, coupled with YM (Uganda) [2014] EWCA Civ 1292 at [36] - [39].

(ii) In cases where the public interest favouring deportation of an immigrant is potent and pressing, even egregious and unjustified delay on the part of the Secretary of State in the underlying decision making process is unlikely to tip the balance in the immigrant’s favour in the proportionality exercise under Article 8(2) ECHR.

May

CS and Others (Proof of Foreign Law : India) [2017] UKUT 199 (IAC) (2 May 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/199.html
The content of any material foreign law is a question of fact normally determined on the basis of expert evidence.

Eisa, R (on the application of) v Secretary of State for the Home Department (Dublin; Articles 27 and 17) [2017] UKUT 261 (IAC) (24 May 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/261.html
(1) Judicial review is a remedy of sufficient flexibility to comply with Article 27(1) of Regulation 604/2013 (Dublin III).

(2) Since an applicant is allowed to remain while this review is being dealt with, there is a suspension of the 6 months within which transfer must be effected in accordance with Article 27(3) of Dublin III.

(3) There is no obligation on the Secretary of State to exercise the power under Article 17 to deal with a claim and, albeit a refusal to exercise the discretion under Article 17 is judicially reviewable, it would require wholly exceptional circumstances to justify any relief being granted if otherwise there was no bar to transfer.

MMK, R (on the application of) v Secretary of State for the Home Department (consent orders - legal effect - enforcement) [2017] UKUT 198 (IAC) (5 May 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/198.html
(i) The commonly used forms of consent order do not expose either party to possible contempt action or other sanction.

(ii) The remedy for non - compliance with a consent order will normally be the initiation of a fresh judicial review claim

RM, R (on the application of) v Secretary of State for the Home Department (Dublin; Article 27(1); procedure) [2017] UKUT 260 (IAC) (11 May 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/260.html
(1) The scope of a challenge to a transfer decision brought, pursuant to art. 27 of Regulation 604/13 (Dublin III), on the basis that the decision infringes the second subparagraph of art. 19(2) of Dublin III is limited to 'traditional' public law grounds.

(2) Section 15(5A) of the Tribunals, Court and Enforcement Act 2007 applies to applications for judicial review, in which the application for permission to bring such proceedings was received by the Upper Tribunal on, or after, 8 August 2016.

ZEI & Ors (Decision withdrawn - FtT Rule 17 – considerations : Palestine) (Rev 1) [2017] UKUT 292 (IAC) (8 May 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/292.html
Rule 17 clearly envisages that in general the appeal is to be treated as withdrawn. It will continue only if a good reason is identified for allowing it to proceed despite being an appeal against a decision that will not have effect in any event. The appellant needs the opportunity to advance a case why he considers an appeal should not be treated as withdrawn, and the SSHD needs the opportunity to respond. The Tribunal has no power to require the Secretary of State to give (or even to have) a good reason for her decision.
The list below cannot and should not be regarded as a comprehensive account of all reasons that might be urged on judges, but we trust that as well as giving guidance on the arguments discussed the reasoning may be adapted to other cases.

(i) The following are not likely to be considered good reasons:
- The parties wish the appeal to proceed.
- The applicant is legally aided and if he has to appeal against a new decision, he will not (or will probably not) be legally aided because the legal aid regime has changed.
- The withdrawal is for reasons the judge considers inappropriate is very unlikely to be a good reason to proceed. An example is that of a Presenting Officer who seeks adjournment of a hearing and when that is refused, withdraws the decision.
- The witnesses are ready to be heard and can only with difficulty or expense be gathered again.

(ii) The following are likely to be capable of being a good reason.

- The appeal regime has changed since the first decision, so that if a new decision is made in the same sense, the rights of appeal will be reduced.
- Undue delay by the respondent.
- The appeal turns on a pure point of law that the judge thinks that even after argument is certainly or almost certainly to be decided in the appellant's favour.
- If there has already been a considerable delay in a decision the appellant is entitled to expect, the fact that children are affected.

June

AM, (a Child), R (on the application of) v Secretary of State for the Home Department (Dublin - Unaccompanied Children - Procedural Safeguards) [2017] UKUT 262 (IAC) (5 June 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/262.html
(i) Regulation 604/13/EU (the Dublin Regulation) occupies the field to which it applies and operates as a measure of supreme EU law therein.

(ii) It is not open to the Secretary of State to unilaterally and selectively disapply certain provisions of the Dublin Regulation and its sister implementing Commission Regulation as this is contrary to EU law.

(iii) The dilution and disapplication of the procedural fairness and kindred protections enshrined in the Dublin Regulation, the implementing Regulation, Article 8 ECHR and the common law are not justified on the grounds of expedition and humanitarian challenge.

(iv) Any remedial order in this type of case should take into account the best interests of the child concerned and the need to accommodate child safeguarding checks and processes.

FT, R (on the application of) v Secretary of State for the Home Department ("rolling review"; challenging leave granted) [2017] UKUT 331 (IAC) (30 June 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/331.html
The intrinsic undesirability of and the strong general presumption against allowing a "rolling review" in judicial review proceedings whereby the Upper Tribunal admits material evidence that has not been considered by the primary decision maker are important factors in considering an application to amend grounds to challenge a supplementary or new decision (see R (Caroopen & Myrie) v SSHD [2016] EWCA Civ 1307). However, the decision whether to allow amendments of the grounds of challenge is a case management decision taking account of all relevant considerations.

In applying the policy set out in the Competent Authority Guidance and the Discretionary Leave Guidance, the fact of the respondent having "mishandled" the case and the impact of that upon the applicant, are relevant/material considerations in determining the duration of leave to be granted to a Victim of Trafficking.

Where the respondent has regard to an earlier disengagement from treatment in considering the duration of leave to be granted, a relevant consideration is whether that disengagement from treatment was because of a failure to provide support as a VOT because of an earlier incorrect "conclusive grounds decision".

Nawaz, R (on the application of) v Secretary of State for the Home Department (ETS: review standard/evidential basis) [2017] UKUT 288 (IAC) (20 June 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/288.html
(a) Deception in ETS cases is not a question of precedent fact, except in particular circumstances, for example those in Abbas [2017] EWHC 78 (Admin).
(b) There is no fundamental right to study in a foreign country; nor for children to be there with their would-be student parents; nor can a different standard of review fairly be applied in these cases to applicants with and without children.
(c) It follows that the standard of review in all such cases is on ordinary judicial review principles, requiring fair consideration, bearing in mind both the potentially serious effects of deception findings in general, and the requirements of effective administration.
(d) Oral or other evidence of an applicant's English-language skills or attainments is unlikely to have any decisive effect in judicial review proceedings on the fairness of the decision under challenge, for the reasons given in Habib (JR/1260/2016) [20], and those at [21].

(e) Evidence obtained by use of the Look-up Tool, and subject to the human verification procedure, is an adequate basis for the Secretary of State's deception finding in these cases, in the light of Flynn & another [2008] EWCA Crim 970 [24 – 27], and the evidence of both Dr Harrison and Professor French.
(f) The lack of visible note-taking by the human verifiers does not provide any ground of challenge to the decision as insufficiently transparent, where there has been an offer (whether accepted or not) to provide a copy of a voice recording for analysis.

ZMM (Article 15(c)) Libya CG [2017] UKUT 263 (IAC) (28 June 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/263.html
The violence in Libya has reached such a high level that substantial grounds are shown for believing that a returning civilian would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to a threat to his life or person.

July

Awuah & Ors (Wasted Costs Orders - HOPOs - Tribunal Powers : Ghana) (Rev 1) [2017] UKFTT 555 (IAC) (13 July 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/555.html
(i) The First-tier Tribunal ("FtT") is not empowered to make a Wasted Costs Order ("WCO") against a Home Office Presenting Officer ("HOPO").

(ii) The relationship of Secretary of State and HOPO is governed by the Carltona principle.

(iii) The answerability of HOPOs to the tribunal is achieved through a range of judicial functions and duties.

(iv) In every case where a WCO is in contemplation common law fairness requires that the respondent be alerted to this possibility, be apprised of the case against him and be given adequate time and opportunity to respond.

(v) While expedition and summary decision making are desirable in WCO matters, the basic requirements of fairness to the respondent must always be respected.

(vi) A causal nexus between the impugned conduct of the respondent and the costs unnecessarily incurred by the aggrieved party is an essential pre-condition of a WCO.

(vii) The tribunal's "own motion" power to make a WCO is to be exercised with restraint.

Sleiman (deprivation of citizenship; conduct : Lebanon) [2017] UKUT 367 (IAC) (19 July 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/367.html
In an appeal against a decision to deprive a person of a citizenship status, in assessing whether the appellant obtained registration or naturalisation "by means of" fraud, false representation, or concealment of a material fact, the impugned behaviour must be directly material to the decision to grant citizenship.

Sivapatham (Appearance of Bias : Sri Lanka) [2017] UKUT 293 (IAC) (7 July 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/293.html
(i) Indications of a closed judicial mind, a pre-determined outcome, engage the appearance of bias principle and are likely to render a hearing unfair.

(ii) Provisional or preliminary judicial views are permissible, provided that an open mind is maintained.

(iii) An appellant does not require the permission of the tribunal to give evidence. This does not prevent the application of fair and sensible case management and, further, is subject to the doctrine of misuse of the tribunal's process.

TPN (FtT appeals – withdrawal) Vietnam [2017] UKUT 295 (IAC) (21 July 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/295.html
(i) The public law character of appeals to the FtT is reflected in the regulatory requirement governing the withdrawal of appeals that any proposed withdrawal of an appeal must contain the reasons for the course

mooted and must be judicially scrutinised, per rule 17 of the FtT Rules and rule 17 of the Upper Tribunal Rules.

(ii) Judicial evaluation of both the withdrawal of an appellant's appeal and the withdrawal of the Secretary of State's case or appeal is required.

(iii) Every judicial determination of an appellant's proposal to withdraw an appeal or the Secretary of State's proposal to withdraw requires a brief outline of the reasons for the decision. The purpose of the judicial scrutiny is to ensure that the appeal is being properly and correctly withdrawn.

(iv) Judicial scrutiny will normally result in the mooted withdrawal of the appeal being perfected by transmission of the notice to the parties required by Rule 17(iii). However, this will not occur automatically: for example where the proposed withdrawal lacks coherence or is based on a clear material misunderstanding or misconception.

(v) The outcome of the judicial scrutiny should be briefly reasoned.

(vi) Rule 29 of the FtT Rules is confined to the substantive determination of appeals.

(vii) The power of the FtT to set aside a decision under Rule 32 is exercisable only by the FtT President and the Resident Judges.

(viii) In cases where an unsuccessful appellant has a choice, best practice dictates that an application to set aside the impugned decision of the FtT under Rule 32 be first exhausted in advance of the lodgement of an application for permission to appeal to the Upper Tribunal. Where both species of challenge are lodged simultaneously, it will be sensible to assign them to the same Judge where feasible.

VT (Article 22 Procedures Directive - confidentiality) [2017] UKUT 368 (IAC) (19 July 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/368.html
(i) There is no general duty of inquiry upon the examiner to authenticate documents produced in support of a protection claim. There may be exceptional situations when a document can be authenticated by a simple process of inquiry which will conclusively resolve the authenticity and reliability of a document.

(ii) There is a general duty of confidentiality during the process of examining a protection claim, including appellate and judicial review proceedings. If it is considered necessary to make an inquiry in the country of origin the country of asylum must obtain the applicant's written consent. Disclosure of confidential information without consent is only justified in limited and exceptional circumstances, such as combating terrorism.

(iii) The humanitarian principles underpinning Article 22 of the Procedures Directive prohibit direct contact with the alleged actor of persecution in the country of origin in a manner that might alert them to the likelihood that a protection claim has been made or in a manner that might place applicants or their family members in the country of origin at risk.

(iv) The humanitarian objective of the Refugee Convention requires anyone seeking to authenticate a document produced in support of a protection claim to follow a precautionary approach. Careful consideration should be given to the duty of confidentiality, to whether an inquiry is necessary, to whether there is a safer alternative and whether the inquiry is made in a way that does not give rise to additional protection issues for applicants or their family members. Disclosure of personal information should go no further than is strictly necessary. Whether an inquiry is necessary and is carried out in an appropriate way will depend on the facts of the case and the circumstances in the country of origin.

(v) Failure to comply with the duty of confidentiality or a breach of the prohibitions contained in Article 22 does not automatically lead to recognition as a refugee, but might be relevant to the overall assessment of risk on return.

August

Adam (Rule 45: authoritative decisions : Sudan) [2017] UKUT 370 (IAC) (25 August 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/370.html

A decision with the status of "authoritative" within the meaning of s. 107 of the 2002 Act is to be regarded as "binding" within the meaning of r. 45 of the Upper Tribunal Rules.

Anjum, R (on the application of) v Entry Clearance Officer, Islamabad (entrepreneur - business expansion - fairness generally) [2017] UKUT 406 (IAC) (16 August 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/406.html
(i) A proposal by a Tier 1 Entrepreneur applicant who operates an existing business to use part of the prescribed minimum finance of £200,000 to purchase a second business for the purpose of developing and expanding the existing enterprise is compatible with paragraph 245 of the Immigration Rules.

(ii) An immigration interview may be unfair, thereby rendering the resulting decision unlawful, where inflexible structural adherence to prepared questions excludes the spontaneity necessary to repeat or clarify obscure questions and/or to probe or elucidate answers given.

Arranz (EEA Regulations - deportation - test : Spain) [2017] UKUT 294 (IAC) (22 August 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/294.html
(i) The burden of proving that a person represents a genuine, present and sufficiently threat affecting one of the fundamental interests of society under Regulation 21(5)(c) of the EEA Regulations rests on the Secretary of State.

(ii) The standard of proof is the balance of probabilities.

(iii) Membership of an organisation proscribed under the laws of a foreign country does not without more satisfy the aforementioned test.

(iv) The "Bouchereau" exception is no longer good law: CS (Morroco) applied

EA & Ors (Article 3 medical cases - Paposhvili not applicable : Afghanistan) [2017] UKUT 445 (07 August 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/445.html
The test in Paposhvili v Belgium, 13 December 2016, ECtHR (Application No 41738/10) is not a test that it is open to the Tribunal to apply by reason of its being contrary to judicial precedent.

Islam and Pathan, R (on the application of) v Secretary of State for the Home Department (Tier 2 licence-revocation-consequences) [2017] UKUT 369 (IAC) (17 August 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/369.html
Unlike the situation for Tier 4 applicants, a person whose sponsor's Tier 2 licence was revoked for non-compliance with the Immigration Rules is not entitled to challenge a decision not to provide him/her with a period of 60 days in which to secure an alternative sponsor. Patel [2011] UKUT 211 (IAC) distinguished .

Mahmud (S. 85 NIAA 2002 - 'new matters' : Iran) [2017] UKUT 488 (IAC) (16 August 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/488.html
1. Whether something is or is not a 'new matter' goes to the jurisdiction of the First-tier Tribunal in the appeal and the First-tier Tribunal must therefore determine for itself the issue.
2. A 'new matter' is a matter which constitutes a ground of appeal of a kind listed in section 84, as required by section 85(6)(a) of the 2002 Act. Constituting a ground of appeal means that it must contain a matter which could raise or establish a listed ground of appeal. A matter is the factual substance of a claim. A ground of appeal is the legal basis on which the facts in any given matter could form the basis of a challenge to the decision under appeal.
3. In practice, a new matter is a factual matrix which has not previously been considered by the Secretary of State in the context of the decision in section 82(1) or a statement made by the appellant under section 120. This requires the matter to be factually distinct from that previously raised by an appellant, as opposed to further or better evidence of an existing matter. The assessment will always be fact sensitive.

Mustafa, R (on the application of) v Secretary of State for the Home Department (2000 Order - notification of representation) [2017] UKUT 407 (IAC) (25 August 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/407.html
(i) The effect of Article 8ZA of the Immigration (Leave to Enter and Remain) Order 2000 (SI No. 2000/1161), considered in tandem with the Home Office published policy, is that where the Home Office receives notification that an applicant has instructed a representative or has a new representative and the

specified requirements are satisfied, the notification must be accepted and the Home Office internal records must be updated accordingly.

(ii) Conversely, where the notification is rejected for non-compliance with any of the specified requirements, both the applicant and the representative must be informed.

Saimon (Cart Review: "pending" : Bangladesh) [2017] UKUT 371 (IAC) (25 August 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/371.html
An appeal in respect of which a Cart judicial review has quashed a refusal of permission to appeal is again "pending" within the meaning of s.104(2)(a) of the 2002 Act.

September

AM & Ors, R (on the application of) v Secretary of State for the Home Department (liberty to apply - scope - discharging mandatory orders) [2017] UKUT 372 (IAC) (8 September 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/372.html

1. Section 25 (2) (c) of TCEA 2007 invests the upper Tribunal with the same powers as the High Court in matters of liberty to apply.

2. The mechanism of liberty to apply may be invoked for the purpose of pursuing a declaratory order that the Tribunal's principal order in judicial review proceedings has not been satisfied, particularly (but not exclusively) where the latter is a mandatory order.

3. In evaluating the scope of liberty to apply in any given case the Tribunal will seek to give effect to the overriding objective.

4. A mandatory order may be discharged where it has served its main purpose and its perpetuation will advance no discernible end.

AS, R (on the application of) v Kent County Council (age assessment; dental evidence) [2017] UKUT 446 (11 September 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/446.html

1. The application of the benefit of the doubt is nothing more than an acknowledgement that age assessment cannot be concluded with complete accuracy, absent definitive documentary evidence, and is in the case of unaccompanied asylum-seeking children who may also have been traumatised, unlikely to be supported by other evidence. On that basis, its proper application is that where, having considered the evidence, the decision maker concludes there is doubt as to whether an individual is over 18 or not, the decision-maker should conclude that the applicant is under 18.

2. The benefit of the doubt is not of use where a specific date or age has to be determined except insofar as it requires a sympathetic assessment of the evidence as indicated in R (CJ) v Cardiff City Council [2011] EWCA Civ 1590.

3. Human teeth develop as an individual progresses through childhood and into adulthood; that much is clear. How, and to what extent, the stages of that development are indicative of age (and the extent to which it can been assessed by a dental examination) is a matter of significant debate as was noted in R (on the application of ZM and SK) v The London Borough of Croydon (Dental age assessment) [2016] UKUT 559 (IAC).

4. In addition to the issues considered by ZM & SK the Mandibular Maturity Markers (MMMs), Root Pulp Visibility (RPV) and Periodontal Ligament Visibility (PLV) are unreliable.

Uddin (2000 Order - notice to file : Bangladesh) [2017] UKUT 408 (IAC) (11 September 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/408.html
(i) Where the Secretary of State relies on a curtailment notice as having been deemed to have been given by being placed "on file' in accordance with article 8ZA(4) of the Immigration (Leave to Enter and Remain) Order 2000 (as amended) ("the 2000 Order"), it is for the Secretary of State to establish that that article applied.

(ii) The Immigration (Leave to Enter and Remain) Order 2000 allows for the sending of a curtailment notice to an overseas address.

November

Ahmed, R (on the application of) v Secretary of State for the Home Department (3C leave - whether "granted") [2017] UKUT 489 (IAC) (17 November 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/489.html
Where a person who is present with leave as a Tier 4 student makes an application for further leave in the same capacity during the currency of that leave, his leave, although extended by statutory effect of s3C, is an extension of that same leave and so it continues to be leave granted to him as a Tier 4 Student. Therefore, for the purposes of paragraph 245ZX(ha) of the Immigration Rules, any period during which leave to remain is extended by operation of s3C does count towards the five-year limit for grant of leave for study at or above degree level.

HH ('conditional' appeal decisions : Somalia) [2017] UKUT 490 (IAC) (22 November 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/490.html
(1) The scheme of sections 82 to 85 of the Nationality, Immigration and Asylum Act 2002 does not permit an appeal to be conditionally allowed or dismissed.
(2) Even in entry clearance cases, section 85(4) allows post decision evidence provided it does not constitute a new matter.

KB & AH (credibility-structured approach : Pakistan) [2017] UKUT 491 (IAC) (23 November 2017)
URL: http://www.bailii.org/uk/cases/UKUT/IAC/2017/491.html
1. The 'Credibility Indicators' identified in the Home Office Asylum Policy Instruction, Assessing credibility and refugee status Version 3.0, 6 January 2015 (which can be summarised as comprising sufficiency of detail; internal consistency; external consistency; and plausibility), provide a helpful framework within which to conduct a credibility assessment. They facilitate a more structured approach apt to help judges avoid the temptation to look at the evidence in a one-dimensional way or to focus in an ad hoc way solely on whichever indicator or factor appears foremost or opportune.

2. However, any reference to a structured approach in relation to the subject matter of credibility assessment must carry a number of important (interrelated) caveats, among which are the following:

-the aforementioned indicators are merely indicators, not necessary conditions;

-they are not an exhaustive list;

-assessment of credibility being a highly fact-sensitive affair, their main role is to help make sure, where relevant, that the evidence is considered in a number of well-recognised respects;

-making use of these indicators is not a substitute for the requirement to consider the evidence as a whole or 'in the round';

-it remains that credibility assessment is only part of evidence assessment and, as Lord Dyson reminded decision-makers in MA (Somalia) v Secretary of State for the Home Department [2010] UKSC 49 at [33], 'the significance of lies will vary from case to case';

-in the UK context, use of such a structured approach must take place within the framework of EU law governing credibility assessment, Article 4 of the Qualification Directive in particular; and,

-also in the context of UK law, decision-makers (including judges) by s. 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 are statutorily obliged to consider certain types of behaviour as damaging to credibility.

3. Consideration of credibility in light of such indicators, if approached subject to the aforementioned caveats, is a valid and useful exercise, based squarely on existing learning.