In this case law browser I have set out the head notes for all of the UT (IAC) reported cases for 2018. Each case is hyperlinked to the full judgment on Bailii. I hope it is a useful tool.

January

Ahmad (scope of appeals) Pakistan [2018] UKUT 84 (IAC) (23 January 2018)

(1) A notice of removal window (Form RED.0004 (fresh)) is not an EEA decision for the purposes of the Immigration (European Economic Area) Regulations 2006. The notice cannot accordingly be appealed under those Regulations. Even if it could constitute a decision, the notice of removal window will constitute an EEA decision only if it concerns a person's removal from the United Kingdom under regulation 19 of those Regulations.

(2) Section 85(1) of the Nationality, Immigration and Asylum Act 2002 does not enable the Tribunal hearing an appeal in the United Kingdom to treat that appeal as including an appeal which has been certified under section 94 as clearly unfounded and which, as a result, can be brought only once the appellant is outside the United Kingdom.

(3) A statement made by an appellant under section 120 of the 2002 Act in response to a One-Stop notice is a statement made to the Secretary of State or an Immigration Officer. Accordingly, a statement made only in a ground of appeal to the Tribunal is not a statement under that section.

Ahmed & Ors (valid application - burden of proof) [2018] UKUT 53 (IAC) (10 January 2018)

(1) Central to the analysis in Basnet (validity of application - respondent) [2012] UKUT 113 (IAC) is the existence of a further procedure undertaken by the Secretary of State in order to process payment in relation to which applicants are not privy and over which they have no control. As such, it remains appropriate for her to bear the burden of proof.

(2) The fact that an invalidity decision was not immediately challenged may be relevant in determining whether the legal burden, including an initial evidential burden requiring the Secretary of State to raise sufficient evidence to support her invalidity allegation, has been discharged.

(3) Whether the Secretary of State ultimately discharges the legal burden of proof will depend on the nature and quality of evidence she is able to provide, having regard to the timing of any request for payment details and the reasons for any delay, balanced against any rebuttal evidence produced by an appellant.

BA (deprivation of citizenship: appeals) Ghana [2018] UKUT 85 (IAC) (22 January 2018)

(1) In an appeal under section 40A of the British Nationality Act 1981, the Tribunal must first establish whether the relevant condition precedent in section 40(2) or (3) exists for the exercise of the Secretary of State's discretion to deprive a person (P) of British citizenship.

(2) In a section 40(2) case, the fact that the Secretary of State is satisfied that deprivation is conducive to the public good is to be given very significant weight and will almost inevitably be determinative of that issue.

(3) In a section 40(3) case, the Tribunal must establish whether one or more of the means described in subsection (3)(a), (b) and (c) were used by P in order to obtain British citizenship. As held in Pirzada (Deprivation of citizenship: general principles) [2017] UKUT 196 (IAC) the deception must have motivated the acquisition of that citizenship.

(4) In both section 40(2) and (3) cases, the fact that the Secretary of State has decided in the exercise of her discretion to deprive P of British citizenship will in practice mean the Tribunal can allow P's appeal only if satisfied that the reasonably foreseeable consequence of deprivation would violate the obligations of the United Kingdom government under the Human Rights Act 1998 and/or that there is some exceptional feature of the case which means the discretion in the subsection concerned should be exercised differently.

(5) As can be seen from AB (British citizenship: deprivation: Deliallisi considered) (Nigeria) [2016] UKUT 451 (IAC), the stronger P's case appears to the Tribunal to be for resisting any future (post-deprivation) removal on ECHR grounds, the less likely it will be that P's removal from the United Kingdom will be one of the foreseeable consequences of deprivation.

(6) The appeal is to be determined by reference to the evidence adduced to the Tribunal, whether or not the same evidence was before the Secretary of State when she made her decision to deprive.

Elsakhawy (immigration officers: PACE) Egypt [2018] UKUT 86 (IAC) (30 January 2018)

1. The respondent's instructions and guidance to immigration officers correctly reflect the operation of sections 66 and 67 of the Police and Criminal Evidence Act 1984 (PACE) and of the Immigration (PACE Codes of Practice) Direction 2013, in drawing a distinction between administrative enquiries and formal criminal enquiries. The fact that immigration officers have powers of investigation, administrative arrest and criminal arrest does not require them to follow the PACE codes of practice concerning the giving of a "criminal" caution, when questioning a person whom they reasonably suspect of entering into a marriage of convenience, in circumstances where the investigation is merely into whether an administrative breach has occurred.

2. Section 78 of PACE, which gives a criminal court power to refuse to allow evidence which, if admitted, would have such an adverse effect on the fairness of the proceedings that the court ought not to admit it, has little to say about the task facing a Tribunal, in civil proceedings under the EEA Regulations.

OO (Burma -TS remains appropriate) CG [2018] UKUT 52 (IAC) (9 January 2018)

TS (Political opponents–risk) Burma CG [2013] UKUT 00281 (IAC) remains appropriate country guidance on the risk to political opponents in Burma.

Shah ('Cart' judicial review: nature and consequences) [2018] UKUT 51 (IAC) (3 January 2018)

(1) A judicial review challenge to the decision of the Upper Tribunal to refuse permission to appeal a decision of the First-tier Tribunal is a challenge to the lawfulness of the Upper Tribunal's decision. It is emphatically not an opportunity for a party to raise new grounds of appeal against the decision of the First-tier Tribunal.

(2) Whether or not a person succeeds in obtaining permission of the High Court under CPR 54.7A to judicially review a decision to refuse permission to appeal, with the consequence that the decision is quashed, the Upper Tribunal will need to be satisfied that there is an error of law in the decision of the First-tier Tribunal before that decision can be disturbed. Judicial review grounds which fail to show the decision refusing permission was wrong in law are highly unlikely to lead to such a result.

(3) Those responsible for drafting judicial review grounds which are found by the Upper Tribunal to contain misrepresentations or other falsities may be referred by that Tribunal to the High Court, for consideration whether an explanation is required from the solicitors and/or counsel involved.

Thapa & Ors (costs: general principles; s9 review) [2018] UKUT 54 (IAC) (16 January 2018)

1) What emerges from the guidance in Cancino (costs – First-tier Tribunal – new powers) [2015] UKFTT 00059 (IAC) is that the power to award costs in rule 9 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and rule 10 of the Tribunal Procedure (Upper Tribunal) Rules 2008 is to be exercised with significant restraint and that detailed examinations of other decided cases are unlikely to assist in deciding whether to award costs under either of those rules.

(2) Section 9 of the Tribunals, Courts and Enforcement Act 2007, read with the relevant procedure rules, enables the First-tier Tribunal to review, set aside and re-decide a case where, on the materials available to the judge deciding an application for permission to appeal, an error of law has occurred and (as in the present case) a party has thereby been deprived of a fair hearing. In the present case, such a course would have avoided the need for the matter to come before the Upper Tribunal and have resulted in a more expeditious outcome.

February

AJ (s 94B: Kiarie and Byndloss questions) Nigeria [2018] UKUT 115 (IAC) (28 February 2018)

(1) In the light of Kiarie and Byndloss v Secretary of State for the Home Department [2017] UKSC 42, the First-tier Tribunal should adopt a step-by-step approach, in order to determine whether an appeal certified under section 94B of the Nationality, Immigration and Asylum Act 2002 can be determined without the appellant being physically present in the United Kingdom.

(2) The First-tier Tribunal should address the following questions:

1. Has the appellant's removal pursuant to a section 94B certificate deprived the appellant of the ability to secure legal representation and/or to give instructions and receive advice from United Kingdom lawyers?

2. If not, is the appellant's absence from the United Kingdom likely materially to impair the production of expert and other professional evidence in respect of the appellant, upon which the appellant would otherwise have relied?

3. If not, is it necessary to hear live evidence from the appellant?

4. If so, can such evidence, in all the circumstances, be given in a satisfactory manner by means of video-link?

(3) The First-tier Tribunal should not lightly come to the conclusion that none of the issues covered by the first and second questions prevents the fair hearing of the appeal.

(4) Even if the first and second questions are answered in the negative, the need for live evidence from the appellant is likely to be present. A possible exception might be where the respondent's case is that, even taking a foreign offender appellant's case at its highest, as regards family relationships, remorse and risk of re-offending, the public interest is still such as to make deportation a proportionate interference with the Article 8 rights of all concerned.

(5) If the First-tier Tribunal concludes that the appeal cannot be lawfully determined unless the appellant is physically present in the United Kingdom, it should give a direction to that effect and adjourn the proceedings.

Baihinga (r. 22; human rights appeal: requirements) Sierra Leone [2018] UKUT 90 (IAC) (5 February 2018)

1. The scope for issuing a notice under rule 22 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (circumstances in which the Tribunal may not accept a notice of appeal) is limited. A rule 22 notice may be issued at the stage where the First-tier Tribunal scrutinises a notice of appeal as soon as practicable after it has been given. Where no rule 22 notice is issued at that stage and the matter proceeds to a hearing, the resulting decision of the First-tier Tribunal may be challenged on appeal to the Upper Tribunal, rather than by judicial review (JH (Zimbabwe) v Secretary of State for the Home Department [2009] EWCA Civ 78; Practice Statement 3).

2. An application for leave or entry clearance may constitute a human rights claim, even if the applicant does not, in terms, raise human rights. In cases not covered by the respondent's guidance (whereby certain applications under the immigration rules will be treated as human rights claims), the application will constitute a human rights claim if, on the totality of the information supplied, the applicant is advancing a case which requires the caseworker to consider whether a discretionary decision under the rules needs to be taken by reference to ECHR issues (eg Article 8) or requires the caseworker to look beyond the rules and decide, if they are not satisfied, whether an Article 8 case is nevertheless being advanced.

3. The issue of whether a human rights claim has been refused must be judged by reference to the decision said to constitute the refusal. An entry clearance manager's

decision, in response to a notice of appeal, cannot, for this purpose, be part of the decision of the entry clearance officer.

4. A person who has not made an application which constitutes a human rights claim cannot re-characterise that application by raising human rights issues in her grounds of appeal to the First-tier Tribunal.

Charles (human rights appeal: scope) Grenada [2018] UKUT 89 (IAC) (1 February 2018) (human rights appeal: scope) [2018] UKUT 00089 (IAC)

(i) A human rights appeal under section 82(1)(b) of the Nationality, Immigration and Asylum Act 2002 ("NIAA 2002") can be determined only through the provisions of the ECHR; usually Article 8.

(ii) A person whose human rights claim turns on Article 8 will not be able to advance any criticism of the Secretary of State's decision making under the Immigration Acts, including the immigration rules, unless the circumstances engage Article 8(2).

(iii) Following the amendments to ss.82, 85 and 86 of NIAA 2002 by the Immigration Act 2014, it is no longer possible for the Tribunal to allow an appeal on the ground that a decision is not in accordance with the law. To this extent, Greenwood No. 2 (para 398 considered) [2015] UKUT 00629 (IAC) should no longer be followed.

MT and ET (child's best interests; ex tempore pilot) Nigeria [2018] UKUT 88(IAC) (1 February 2018)

1. A very young child, who has not started school or who has only recently done so, will have difficulty in establishing that her Article 8 private and family life has a material element, which lies outside her need to live with her parent or parents, wherever that may be. This position, however, changes over time, with the result that an assessment of best interests must adopt a correspondingly wider focus, examining the child's position in the wider world, of which school will usually be an important part.
2. The giving of ex tempore decisions furthers the aim of dealing with immigration and asylum appeals as efficiently as possible. But any formal attempt to identify and manage in advance those cases which may lend themselves to the giving of ex tempore decisions needs careful handling; not least to ensure procedural fairness.

Quaidoo (new matter: procedure/process) Ghana [2018] UKUT 87 (IAC) (1 February 2018)

1. If, at a hearing, the Tribunal is satisfied that a matter which an appellant wishes to raise is a new matter, which by reason of section 85(5) of the Nationality, Immigration and Asylum Act 2002, the Tribunal may not consider unless the Secretary of State has given consent, and, in pursuance of the Secretary of State's Guidance, her representative applies for an adjournment for further time to consider whether to give such consent, then it will generally be appropriate to grant such an adjournment, rather than proceed without consideration of the new matter

2. If an appellant considers that the decision of the respondent not to consent to the consideration of a new matter is unlawful, either by reference to the respondent's guidance or otherwise, the appropriate remedy is a challenge by way of judicial review.

March

AS (Safety of Kabul) Afghanistan CG [2018] UKUT 118 (IAC) (28 March 2018)

Risk on return to Kabul from the Taliban

(i) *A person who is of lower-level interest for the Taliban (i.e. not a senior government or security services official, or a spy) is not at real risk of persecution from the Taliban in Kabul.*

Internal relocation to Kabul

(ii) *Having regard to the security and humanitarian situation in Kabul as well as the difficulties faced by the population living there (primarily the urban poor but also IDPs and other returnees, which are not dissimilar to the conditions faced throughout may other parts of Afghanistan); it will not, in general be unreasonable or unduly harsh for a single adult male in good health to relocate to Kabul even if he does not have any specific connections or support network in Kabul.*

(iii) *However, the particular circumstances of an individual applicant must be taken into account in the context of conditions in the place of relocation, including a person's age, nature and quality of support network/connections with Kabul/ Afghanistan, their physical and mental health, and their language, education and vocational skills when determining whether a person falls within the general position set out above.*

(iv) *A person with a support network or specific connections in Kabul is likely to be in a more advantageous position on return, which may counter a particular vulnerability of an individual on return.*

(v) *Although Kabul suffered the highest number of civilian casualties (in the latest UNAMA figures from 2017) and the number of security incidents is increasing, the proportion of the population directly affected by the security situation is tiny. The current security situation in Kabul is not at such a level as to render internal relocation unreasonable or unduly harsh.*

Previous Country Guidance

(vi) *The country guidance in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) in relation to Article 15(c) of the Qualification Directive remains unaffected by this decision.*

(vii) *The country guidance in AK (Article 15(c)) Afghanistan CG [2012] UKUT 163 (IAC) in relation to the (un)reasonableness of internal relocation to Kabul (and other potential places of internal relocation) for certain categories of women remains unaffected by this decision.*

(viii) *The country guidance in AA (unattended children) Afghanistan CG [2012] UKUT 16 (IAC) also remains unaffected by this decision.*

MS (Art 1C(5)- Mogadishu) [2018] UKUT 196 (IAC) (22 March 2018)

The Secretary of State is not entitled to cease a person's refugee status pursuant to Article 1C(5) of the Refugee Convention solely on the basis of a change in circumstances in one part of the country of proposed return.

Williams (scope of "liable to deportation") Nigeria [2018] UKUT 116 (IAC) (02 March 2018)

(1) A person who has been deported under a deportation order that remains in force is a person who is liable to deportation within the meaning of section 3 of the Immigration Act 1971 and is therefore unable to bring himself within section 117B(6) of the Nationality, Immigration and Asylum Act 2002.

(2) By the same token, the fact that such a person has been deported does not mean he or she is thereby able to avoid the application of the considerations listed in section 117C.

Yussuf (meaning of "liable to deportation") Somalia [2018] UKUT 117 (IAC) (09 March 2018)

Section 32 of the UK Borders Act 2007 impliedly amends section 3(5)(a) of the Immigration Act 1971 by (a) removing the function of the Secretary of State of deeming a person's deportation to be conducive to the public good, in the case of a foreign criminal within the meaning of the 2007 Act; and (b) substituting an automatic "deeming" provision in such a case. The judgments of the Supreme Court in Hesham Ali v Secretary of State for the Home Department [2016] UKSC 60 make this plain. To that extent Ali (section 6 – liable to deportation) Pakistan [2011] UKUT 00250 (IAC) is wrongly decided.

April

HA & Ors, R (on the application of) v Secretary of State for the Home Department (Dublin III; Articles 9 and 17.2) [2018] UKUT 297 (IAC) (19 April 2018)

(1) Article 9 provides:

Where the applicant has a family member, regardless of whether the family was previously formed in the country of origin, who has been allowed to reside as a beneficiary of international protection in a Member State, that Member State shall be responsible for examining the application for international protection, provided that the persons concerned expressed their desire in writing.

The phrase "who has been allowed to reside as a beneficiary of international protection" in Article 9 of Dublin III is in effect the same as the phrase formerly used in paragraph 352D of the Immigration Rules and following ZN (Afghanistan) [2010] UKSC 21 at [35]. Acquisition of British citizenship by a family member does not alter the fact that he was in receipt of international protection and so article 9 would still apply.

(2) Article 17.2 of Dublin III does not set any specific criteria, but the Dublin Regulations themselves and the CFR provided the general parameters within which decisions must be taken, albeit that the general provisions set out in articles 21 and 22 do not apply. There is, we accept, a wide discretion available to the respondent under the article, but it is not

untrammelled, it is for the respondent to consider an application made under article 17.2 through the lens of article 7 CFR and/or article 8 ECHR, taking account also of the best interests of a child. That approach is consistent with the normative provisions in article 16 that where there are issues of dependency within a family life context, the family should be brought together.

(3) The decision impugned in this case was one arising from the exercise of a discretion conferred on the respondent. On that basis, and following Padfield v Ministry of Agriculture, Fisheries and Food [1968] AC 997, a court should not compel any authority to do more than consider the exercise of a power which is merely permissive and does not impose an obligation to act.

TY (Overseas Adoptions - Certificates of Eligibility) [2018] UKUT 197 (IAC) (12 April 2018)

In cases where an adoption is not recognised by the law of the United Kingdom :
(i) The Tribunal should be aware of the underlying legal process in each part of the Kingdom by which a Certificate of Eligibility is issued.
(ii) The Certificate of Eligibility is the definitive outcome of the fact-finding and assessment that underlies it.
(iii) Whilst there is no exact correlation between the requirements that are to be met in the law of adoption and the requirements to be met under the Immigration Rules in order for a minor to be admitted for the purposes of adoption, they ought properly to be seen as a unified whole where each plays its part in determining whether entry clearance should be granted.
(iv) The Certificate of Eligibility is capable of informing the decision to be made on the application for entry clearance. In particular, the Immigration and Asylum Chamber should be slow to depart from the underlying circumstances (insofar as they can reasonably be ascertained) which are the subject-matter of the Certificate of Eligibility.

R (on the application of Watson) v (1) Secretary of State for the Home Department and (2) First-tier Tribunal (Extant appeal: s94B challenge: forum) [2018] UKUT 00165 (IAC)

(1) Where an appellant's appeal has been certified under section 94B of the Nationality, Immigration and Asylum Act 2002 and the appellant has been removed from the United Kingdom pursuant to that certificate, the First-tier Tribunal is the forum for determining whether, in all the circumstances, the appeal can lawfully be decided, without the appellant being physically present in the United Kingdom. The First-tier Tribunal is under a continuing duty to monitor the position, to ensure that the right to a fair hearing is not abrogated. In doing so, the First-tier Tribunal can be expected to apply the step-by-step approach identified in AJ (s 94B: Kiarie and Byndloss questions) Nigeria [2018] UKUT 00115 (IAC).
(2) If the First-tier Tribunal stays the appeal proceedings because it concludes that they cannot progress save in a manner which breaches the procedural rights safeguarded by Article 8, then it is anticipated the Secretary of State will promptly take the necessary action to rectify this position. If this does not happen, then an application for judicial review can be made to the Upper Tribunal to challenge the Secretary of State's decision and compel him to facilitate the appellant's return.

(3) If the First-tier Tribunal decides that the appeal process is Article 8 compliant, the Tribunal's substantive decision will be susceptible to challenge, on appeal to the Upper Tribunal, on the ground that the Tribunal was wrong so to conclude.

May

Andell (foreign criminal - para 398) [2018] UKUT 198 (IAC) (4 May 2018)

Paragraph 398 of the Rules includes not only foreign criminals as defined in the 2002 Act and the 2007 Act but also other individuals who in the view of the Secretary of State, are liable to deportation because of their criminality and/or their offending behaviour.

AUJ (Trafficking - no conclusive grounds decision) [2018] UKUT 200 (IAC) (17 May 2018)

In cases in which there is no "Conclusive Grounds" decision:
(i) I f a person ("P") claims that the fact of being trafficked in the past or a victim of modern slavery gives rise to a real risk of persecution in the home country and/or being re-trafficked or subjected to modern slavery in the home country and/or that it has had such an impact upon P that removal would be in breach of protected human rights, it will be for P to establish the relevant facts to the appropriate (lower) standard of proof and the judge should made findings of fact on such evidence.
(ii) If P does not advance any such claim in the statutory appeal but adduces evidence of being trafficked or subjected to modern slavery in the past, it will be a question of fact in each case (the burden being on P to the lower standard of proof) whether the Secretary of State's duty to provide reparation, renders P's removal in breach of the protected human rights.

Khan, R (on the application of) v Secretary of State for the Home Department (Dishonesty, tax return, paragraph 322(5)) [2018] UKUT 384 (IAC) (3 May 2018)

(i) *Where there has been a significant difference between the income claimed in a previous application for leave to remain and the income declared to HMRC, the Secretary of State is entitled to draw an inference that the Applicant has been deceitful or dishonest and therefore he should be refused ILR within paragraph 322(5) of the Immigration Rules. Such an inference could be expected where there is no plausible explanation for the discrepancy.*

(ii) *Where an Applicant has presented evidence to show that, despite the prima facie inference, he was not in fact dishonest but only careless, then the Secretary of State must decide whether the explanation and evidence is sufficient, in her view, to displace the prima facie inference of deceit/dishonesty.*

(iii) *In approaching that fact-finding task, the Secretary of State should remind herself that, although the standard of proof is the "balance of probability", a finding that a person has been deceitful and dishonest in relation to his tax affairs with the consequence that he is denied settlement in this country is a very serious finding with serious consequences.*

(iv) *For an Applicant simply to blame his or her accountant for an "error" in relation to the historical tax return will not be the end of the matter, given that the accountant will or*

should have asked the tax payer to confirm that the return was accurate and to have signed the tax return. Furthermore the Applicant will have known of his or her earnings and will have expected to pay tax thereon. If the Applicant does not take steps within a reasonable time to remedy the situation, the Secretary of State may be entitled to conclude that this failure justifies a conclusion that there has been deceit or dishonesty.

(v) *When considering whether or not the Applicant is dishonest or merely careless the Secretary of State should consider the following matters, inter alia, as well as the extent to which they are evidenced (as opposed to asserted):*

i. Whether the explanation for the error by the accountant is plausible;
ii. Whether the documentation which can be assumed to exist (for example, correspondence between the Applicant and his accountant at the time of the tax return) has been disclosed or there is a plausible explanation for why it is missing;
iii. Why the Applicant did not realise that an error had been made because his liability to pay tax was less than he should have expected;
iv. Whether, at any stage, the Applicant has taken steps to remedy the situation and, if so, when those steps were taken and the explanation for any significant delay.

PK (Draft evader; punishment; minimum severity) [2018] UKUT 241 (IAC) (5 May 2018)

(i) A legal requirement for conscription and a mechanism for the prosecution or punishment of a person refusing to undertake military service is not sufficient to entitle that person to refugee protection if there is no real risk that the person will be subjected to prosecution or punishment.
(ii) A person will only be entitled to refugee protection if there is a real risk that the prosecution or punishment they face for refusing to perform military service in a conflict that may associate them with acts that are contrary to basic rules of human conduct reaches a minimum threshold of severity.
(iii) VB and Another (draft evaders and prison conditions) Ukraine CG [2017] UKUT 79 (IAC) did not consider whether the Ukrainian conflict involved acts contrary to basic rules of human conduct.

Tirabi (Deportation: "lawfully resident": s.5(1)) [2018] UKUT 199 (IAC) (9 May 2018)

For the purposes of applying to para 399A of the Rules and s. 117C of the 2002 Act a definition of "lawfully resident" analogous to that in para 276A (as mandated by SC (Jamaica)), the invalidation provisions of s. 5(1) of the 1971 Act are to be ignored.

June

AAH (Iraqi Kurds - internal relocation) (CG) [2018] UKUT 212 (IAC) (26 June 2018)

Section C of Country Guidance annexed to the Court of Appeal's decision in AA (Iraq) v Secretary of State for the Home Department [2017] Imm AR 1440; [2017] EWCA Civ 944 is supplemented with the following guidance:

1. Whilst it remains possible for an Iraqi national returnee (P) to obtain a new CSID whether P is able to do so, or do so within a reasonable time frame, will depend on the individual circumstances. Factors to be considered include:

i) Whether P has any other form of documentation, or information about the location of his entry in the civil register. An INC, passport, birth/marriage certificates or an expired CSID would all be of substantial assistance. For someone in possession of one or more of these documents the process should be straightforward. A laissez-passer should not be counted for these purposes: these can be issued without any other form of ID being available, are not of any assistance in 'tracing back' to the family record and are confiscated upon arrival at Baghdad;

ii) The location of the relevant civil registry office. If it is in an area held, or formerly held, by ISIL, is it operational?

iii) Are there male family members who would be able and willing to attend the civil registry with P? Because the registration system is patrilineal it will be relevant to consider whether the relative is from the mother or father's side. A maternal uncle in possession of his CSID would be able to assist in locating the original place of registration of the individual's mother, and from there the trail would need to be followed to the place that her records were transferred upon marriage. It must also be borne in mind that a significant number of IDPs in Iraq are themselves undocumented; if that is the case it is unlikely that they could be of assistance. A woman without a male relative to assist with the process of redocumentation would face very significant obstacles in that officials may refuse to deal with her case at all.

Section E of Country Guidance annexed to the Court of Appeal's decision in AA (Iraq) v Secretary of State for the Home Department [2017] Imm AR 1440; [2017] EWCA Civ 944 is replaced with the following guidance:

2. There are currently no international flights to the Iraqi Kurdish Region (IKR). All returns from the United Kingdom are to Baghdad.

3. For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi passport, the journey from Baghdad to the IKR, whether by air or land, is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.

4. P is unable to board a domestic flight between Baghdad and the IKR without either a CSID or a valid passport.

5. P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or valid passport. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor a valid passport there is a real risk of P being detained at a checkpoint until such time

as the security personnel are able to verify P's identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P's identity documents but may also be achieved by calling upon "connections" higher up in the chain of command.

6. Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There is no sponsorship requirement for Kurds.

7. Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.

8. If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P's family on a case by case basis.

9. For those without the assistance of family in the IKR the accommodation options are limited:

(i) Absent special circumstances it is not reasonably likely that P will be able to gain access to one of the refugee camps in the IKR; these camps are already extremely overcrowded and are closed to newcomers. 64% of IDPs are accommodated in private settings with the vast majority living with family members;

(ii) If P cannot live with a family member, apartments in a modern block in a new neighbourhood are available for rent at a cost of between $300 and $400 per month;

(iii) P could resort to a 'critical shelter arrangement', living in an unfinished or abandoned structure, makeshift shelter, tent, mosque, church or squatting in a government building. It would be unduly harsh to require P to relocate to the IKR if P will live in a critical housing shelter without access to basic necessities such as food, clean water and clothing;

(iv) In considering whether P would be able to access basic necessities, account must be taken of the fact that failed asylum seekers are entitled to apply for a grant under the Voluntary Returns Scheme, which could give P access to £1500. Consideration should also be given to whether P can obtain financial support from other sources such as (a) employment, (b) remittances from relatives abroad, (c) the availability of ad hoc charity or by being able to access PDS rations.

10. Whether P is able to secure employment must be assessed on a case-by-case basis taking the following matters into account:

(i) Gender. Lone women are very unlikely to be able to secure legitimate employment;

(ii) The unemployment rate for Iraqi IDPs living in the IKR is 70%;

(iii) P cannot work without a CSID;

(iv) Patronage and nepotism continue to be important factors in securing employment. A returnee with family connections to the region will have a significant advantage in that he would ordinarily be able to call upon those contacts to make introductions to prospective employers and to vouch for him;

(v) Skills, education and experience. Unskilled workers are at the greatest disadvantage, with the decline in the construction industry reducing the number of labouring jobs available;

(vi) If P is from an area with a marked association with ISIL, that may deter prospective employers.

Essa (Revocation of protection status appeals) [2018] UKUT 244 (IAC) (27 June 2018)

1 An appeal under s 82(1)(c) is an appeal against revocation of the basis upon which the leave referred to in s 82(2)(c) was granted.
2 The only allowable ground under s 84(3)(a) is by reference to the Refugee Convention, and by s 86(2)(a) that matter must therefore be determined in all cases.
3 Where s 72(10) applies, however, the appeal must be dismissed even if the ground is made out.

KA & Anor, R (on the application of) v Secretary of State for the Home Department (ending of Kumar arrangements) [2018] UKUT 201 (IAC) (13 June 2018)

(1) In R (on the application of Kumar) v Secretary of State for the Home Department (acknowledgment of service: tribunal arrangements) IJR [2014] UKUT 104 (IAC), the Upper Tribunal stated that it would not generally consider "on the papers" an application for permission to bring immigration judicial review proceedings until after six weeks from the filing of that application. As a result, it was not considered necessary for the Secretary of State to file an application for an extension of the 21 day time limit for filing an acknowledgment of service, as provided in rule 29(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (unless the Secretary of State was unable to file within six weeks of being provided with a copy of the judicial review application). Certain consequential arrangements were also made.

(2) The arrangements described in Kumar will not have effect in respect of any application for permission to bring judicial review proceedings which is filed with the Upper Tribunal after 1 January 2019.

The Secretary of State for the Home Department, R (on the application of) v First-tier Tribunal (Immigration and Asylum Chamber) (Litigation Privilege; First-tier Tribunal) [2018] UKUT 243 (IAC) (22 June 2018)

(1) Whether or not to entertain an application for judicial review is a matter that falls within the Upper Tribunal's discretion, applying well-known principles that apply also in the High Court. Where there is an alternative remedy it would only be in the rarest of cases that the

Upper Tribunal would consider exercising its jurisdiction to grant permission to bring judicial review proceedings.
(2) There is a high threshold to be overcome before the Upper Tribunal will entertain an application for judicial review in challenging an interlocutory decision of the FtT. Once the very high threshold is met it is not necessary for each of the grounds to reach that threshold.
(3) Litigation privilege attaches to communications between a client and/or his lawyer and third parties for the purpose of litigation. It entitles the privileged party not to disclose information even if it is relevant to the issues to be determined in a court or tribunal. Proceedings in the First-tier Tribunal are sufficiently adversarial in nature to give rise to litigation privilege. The fact that human rights issues are in play does not mean litigation privilege has to be balanced against those issues

Shrestha & Ors, R (on the application of) v Secretary of State for the Home Department (Hamid jurisdiction: nature and purposes) [2018] UKUT 242 (IAC) (20 June 2018)

(1) The "Hamid" jurisdiction of the High Court and the Upper Tribunal exists to ensure that lawyers conduct themselves according to proper standards of behaviour. The bringing of hopeless applications for judicial review wastes judicial time and risks delaying the prompt examination of other cases, which may have merit. In many cases, the only tangible result of such an application is that the applicant incurs significant expense.

(2) Solicitors who practise in the difficult and demanding area of immigration law and who are properly discharging their professional responsibilities can only safely enjoy the recognition they deserve if the public is confident appropriate steps are being taken to deal with the minority who are failing in their professional responsibilities.

July

AZ (error of law: jurisdiction; PTA practice) [2018] UKUT 245 (IAC) (5 July 2018)

(1) Before it has re-made the decision in an appeal, pursuant to section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007, the Upper Tribunal has jurisdiction to depart from, or vary, its decision that the First-tier Tribunal made an error of law, such that the First-tier Tribunal's decision should be set aside under section 12(2)(a).
(2) As Practice Direction 3.7 indicates, that jurisdiction will, however, be exercised only in very exceptional cases. This will be so, whether or not the same constitution of the Upper Tribunal that made the error of law decision is re-making the decision in the appeal.
(3) Permission to appeal to the Upper Tribunal should be granted on a ground that was not advanced by an applicant for permission, only if:
(a) the judge is satisfied that the ground he or she has identified is one which has a strong prospect of success:
(i) for the original appellant; or
(ii) for the Secretary of State, where the ground relates to a decision which, if undisturbed, would breach the United Kingdom's international Treaty obligations; or
(b) (possibly) the ground relates to an issue of general importance, which the Upper Tribunal needs to address.

Gauswami (Retained right of residence, Jobseekers) [2018] UKUT 275 (IAC) (19 July 2018)

For the purposes of determining retained rights of residence, in regulation 10(6)(a) of both the Immigration (European Economic Area) Regulations 2006 and the Immigration (European Economic Area) Regulations 2016, the reference to a worker includes a jobseeker.

Kovacevic (British citizen - Art 21 TFEU) [2018] UKUT 273 (IAC) (5 July 2018)

(1) A Union citizen who resides in a Member State of which he or she is a national is not a beneficiary under Article 3(1) of the Citizen's Directive.

(2) A dual Croatian/British citizen who was residing in the United Kingdom when Croatia joined the EU and who has never exercised EU Treaty rights does not acquire a right of residence under Article 21 TFEU.

Mansur (Immigration adviser's failings, Article 8) [2018] UKUT 274 (IAC) (16 July 2018)

(1) Poor professional immigration advice or other services given to P cannot give P a stronger form of protected private or family life than P would otherwise have.

(2) The correct way of approaching the matter is to ask whether the poor advice etc that P has received constitutes a reason to qualify the weight to be placed on the public interest in maintaining firm and effective immigration control.

(3) It will be only in a rare case that an adviser's failings will constitute such a reason. The weight that would otherwise need to be given to that interest is not to be reduced just because there happen to be immigration advisers who offer poor advice and other services. Consequently, a person who takes such advice will normally have to live with the consequences.

(4) A blatant failure by an immigration adviser to follow P's instructions, as found by the relevant professional regulator, which led directly to P's application for leave being invalid when it would otherwise have been likely to have been granted, can, however, amount to such a rare case.

MS, R (on the application of) (a child by his litigation friend MAS) v Secretary of State for the Home Department (Dublin III; duty to investigate) [2019] UKUT 9 (19 July 2018)

(1) A Member State considering a Take Charge Request ("TCR") made by another Member State under the Dublin III Regulation has a duty to investigate the basis upon which that TCR request is made and whether the requirements of the Dublin III Regulation are met. (R (on the application of MK, IK (a child by his litigation friend MK) and HK (a child by her litigation friend MK) v Secretary of State for the Home Department (Calais; Dublin III Regulation – investigative duty) IJR [2016] UKUT 00231 (IAC) followed).

(2) The Member State's duty is to "act reasonably" and take "reasonable steps" in carrying out the investigative duty, including determining (where appropriate) the options of DNA testing in the requesting State and, if not, in the UK (MK, IK explained).

(3) The duty of investigation is not a 'rolling one'. The duty does not continue beyond the second rejection, subject to the requirements of fairness (MK, IK not followed).

(4) Fairness requires that the applicant, even after a second rejection, must know the 'gist' of what is being said against him in respect of the application of the criteria relevant to the TCR and must have an opportunity to make representations on the issues and material being relied on if that has not previously been the case. In those circumstances, fairness requires that the respondent consider any representations and material raised (perhaps for the first time) to deal with a matter of which the individual was 'taken by surprise' in the second rejection decision. To that extent only, the duty continues and may require the requested State to reconsider the rejection of the TCR.

(5) In judicial review proceedings challenging a Member State's refusal to accept a TCR, it is for the court or tribunal to decide for itself whether the criteria for determining responsibility under the Dublin III Regulation have been correctly applied. This may require the court or tribunal to reach factual findings on the evidence and it is not restricted to public law principles of challenge.

(6) The tribunal or court's role should not be taken as an open invitation to parties to urge the court or tribunal to review and determine the facts in a Dublin case and, as a concomitant, to admit oral evidence subject to cross-examination. Often there will be no factual dispute: the issue will be a legal one on the proper application of the Dublin III Regulation. Even if there is a factual issue, the need to assess the evidence may not always mean also admitting "oral" evidence subject to cross-examination. It will only be so if it is "necessary in order to resolve the matter fairly and accurately".

August

Ortega (remittal; bias; parental relationship) [2018] UKUT 298 (IAC) (6 August 2018)

1. In an Upper Tribunal error of law decision that remits an appeal to the First-Tier Tribunal, a clear indication should be given if the appeal is to be re-made de novo. If that is not the case, the error of law decision should set out clearly the issues which require re-making and any preserved findings of particular relevance to the re-making of the appeal.

2. As set out in BW (witness statements by advocates) Afghanistan [2014] UKUT 568 (IAC) at paragraph (v) of the headnote of that case: "(v) Where an advocate makes a witness statement in the circumstances outlined above, a change of advocate may be necessary, since the roles of advocate and witness are distinct, separated by a bright luminous line. An advocate must never assume the role of witness."
3. As stated in paragraph 44 of R (on the application of RK) v Secretary of State for the Home Department (Section 117B(6): "parental relationship") IJR [2016] UKUT 31 (IAC), if a non-biological parent ("third party") caring for a child claims to be a step-parent, the existence of such a relationship will depend upon all the circumstances including whether or not there are others (usually the biologically parents) who have such a relationship with the child also. It is unlikely that a person will be able to establish they have taken on the role of a parent when the biological parents continue to be involved in the child's life as the child's parents .

TM (A Minor), R (on the application) v Secretary of State for the Home Department (Minor - asylum - delay) [2018] UKUT 299 (IAC) (23 August 2018)

In considering whether the delay in determining a person's ('P) asylum application is unlawful all the circumstances must be considered in the round including, inter alia: length of delay; whether P was a minor at the date of his application; whether P continues to be a minor; if a minor, P's best interests; the complexities of the claim; the explanation provided by the SSHD and resource allocation; compliance with timeframes provided; the impact of delay on P.

September

ES (s82 NIA 2002, Negative NRM) [2018] UKUT 335 (IAC) (6 September 2018)

1. Following the amendment to s 82 of the Nationality, Immigration and Asylum Act 2002 ('the 2002 Act'), effective from 20 October 2014, a previous decision made by the Competent Authority within the National Referral Mechanism (made on the balance of probabilities) is not of primary relevance to the determination of an asylum appeal, despite the decisions of the Court of Appeal in AS (Afghanistan) v SSHD [2013] EWCA Civ 1469 and SSHD v MS (Pakistan) [2018] EWCA Civ 594.

2. The correct approach to determining whether a person claiming to be a victim of trafficking is entitled to asylum is to consider all the evidence in the round as at the date of hearing, applying the lower standard of proof.
3. Since 20 October 2014, there is also no right of appeal on the basis that a decision is not in accordance with the law and the grounds of appeal are limited to those set out in the amended s 82 of the 2002 Act.

PA (Protection claim, Respondent's enquiries, Bias) [2018] UKUT 337 (IAC) (21 September 2018)

1. Respondent's inquiries in country of origin of applicant for international protection

(1) There is no general legal requirement on the Secretary of State to obtain the consent of an applicant for international protection before making an inquiry about the applicant in the applicant's country of origin. The decision in VT (Article 22 Procedures Directive - confidentiality) Sri Lanka [2017] UKUT 368 (IAC) is not to be read as holding to the contrary.

(2) The United Kingdom's actual legal obligations in this area are contained in Article 22 of the Procedures Directive (2005/85/EC), as given effect in paragraph 339IA of the Immigration Rules. So far as obtaining information is concerned, these provisions prohibit making such an inquiry in a manner that would result in alleged actors of persecution being directly informed of the fact that that an application for international protection has been made, which would jeopardise the applicant's (or his family's) physical integrity, liberty or security.

(3) If information is obtained in a way that has such an effect, the fact that the applicant may have given consent will not affect the fact that there is a breach of Article 22.

2. Allegations of judicial bias

(1) An allegation of bias against a judge is a serious matter and the appellate court or tribunal will expect all proper steps to be taken by the person making it, in the light of a response from the judge.

(2) The views of an appellant who cannot speak English and who has had no prior experience of an appeal hearing are unlikely to be of assistance, insofar as they concern verbal exchanges between the judge and representatives at the hearing of the appeal. In particular, the fact that the judge had more questions for the appellant's counsel than for the respondent's presenting officer has no bearing on whether the judge was biased against the appellant.

(3) It is wholly inappropriate for an official interpreter to have his or her private conversations with an appellant put forward as evidence.

(4) As a general matter, if Counsel concludes during a hearing that a judge is behaving in an inappropriate manner, Counsel has a duty to raise this with the judge.

(5) Although each case will turn on its own facts, an appellate court or tribunal may have regard to the fact that a complaint of this kind was not made at the hearing or, at least, before receipt of the judge's decision.

(6) Allegations relating to what occurred at a hearing would be resolved far more easily if hearings in the First-tier Tribunal were officially recorded.

SR (subsisting parental relationship, s117B(6)) [2018] UKUT 334 (IAC) (5 September 2018)

1. *If a parent ('P') is unable to demonstrate he / she has been taking an active role in a child's upbringing for the purposes of E-LTRPT.2.4 of the Immigration Rules, P may still be able to demonstrate a genuine and subsisting parental relationship with a qualifying child for the purposes of section 117B(6) of the Nationality Immigration and Asylum Act 2002 ('the 2002 Act'). The determination of both matters turns on the particular facts of the case.*

2. *The question of whether it would not be reasonable to expect a child to leave the United Kingdom ('UK') in section 117B(6) of the 2002 Act does not necessarily require a consideration of whether the child will in fact or practice leave the UK. Rather, it poses a straightforward question: would it be reasonable "to expect" the child to leave the UK?*

Thakrar (Cart JR, Art 8, Value to Community) [2018] UKUT 336 (IAC) (19 September 2018)

(1) The fact that an application for permission to appeal involves the assertion that a person's removal from the United Kingdom would violate his or her human rights does not, without more, engage that part of the second appeal criteria, which allows permission to appeal (or permission for a 'Cart' judicial review) to be granted, on the basis that removal constitutes a 'compelling reason' for the appeal to be heard. If the position were otherwise, the second appeal criteria would lose their function as a restriction on the power to grant permission to appeal in immigration cases.

(2) Before concluding that submissions regarding the positive contribution made by an individual fall to be taken into account, for the purposes of Article 8(2) of the ECHR, as diminishing the importance to be given to immigration controls, a judge must be satisfied that the contribution is very significant. In practice, this is likely to arise only where the matter is one over which there can be no real disagreement. One touchstone for determining this is to ask whether the removal of the person concerned would lead to an irreplaceable loss to the community of the United Kingdom or to a significant element of it.

(3) The fact that a person makes a substantial contribution to the United Kingdom economy cannot, without more, constitute a factor that diminishes the importance to be given to immigration controls, when determining the Article 8 position of that person or a member of his or her family.

(4) If judicial restraint is not properly maintained in this area, there is a danger that the public's perception of human rights law will be significantly damaged.

October

Abunar (Para 339C: "Country of return") [2018] UKUT 387 (IAC) (24 October 2018)

It appears that paragraph 339C of the Immigration Rules does not correctly transpose the relevant provisions of the Qualification Directive

Ahmed, R (on the application of) v Secretary of State for the Home Department (para 276B – ten years lawful residence) [2019] UKUT 10 (23 October 2018)

If there is no ten years continuous, lawful residence for the purposes of para 276B(i)(a) of the Immigration Rules, an applicant cannot rely on para 276B(v) to argue that any period of overstaying (for the purposes of 276B(i)(a)) should be disregarded. Para 276B(v) involves a freestanding and additional requirement over and above 276B(i)(a).

HKK (Article 3: burden/standard of proof) [2018] UKUT 386 (IAC) (22 October 2018)

(1) It has long been a requirement, found in the case law of the European Court of Human Rights ("ECtHR"), for the government of a signatory state to dispel any doubts regarding a person's claim to be at real risk of Article 3 harm, if that person adduces evidence capable of proving that there are substantial grounds for believing that expulsion from the state would violate Article 3 of the ECHR.

(2) This requirement does not mean the burden of dispelling such doubts shifts to the government in every case where such evidence is adduced, save only where the claim is so lacking in substance as to be clearly unfounded.

(3) Article 4.5 of the Qualification Directive (Council Directive 2004/83/EC) provides that, where certain specified conditions are met, aspects of the statements of an applicant for international protection that are not supported by documentary or other evidence shall not need confirmation.

(4) The effect of Article 4.5 is that a person who has otherwise put forward a cogent case should not fail, merely because he or she does not have supporting documentation. Nowhere in the Directive is it said that a person who has documentation which, on its face, may be said to be supportive of the claim (eg an arrest warrant or witness summons), but

whose claim is found to be problematic in other respects, has nevertheless made out their case, so that the burden of disproving it shifts to the government.

(5) When national courts and tribunals are considering cases in which the ECtHR has decided to embark on its own fact-finding exercise, it is important to ensure that the ECtHR's factual conclusions are not treated as general principles of human rights law and practice.

LS (Article 45 TFEU - derivative rights) [2018] UKUT 426 (IAC) (9 October 2018)

(1) In determining whether the absence of adequate provision for the childcare of the child of a Union citizen may be a factor capable of discouraging that Union citizen from effectively exercising his or her free movement rights under Article 45 TFEU, the Tribunal will need to undertake a wide evaluative assessment of the particular childcare needs in light of all relevant circumstances.

(2) It is necessary for an appellant claiming to have a derivative right of residence under Article 45 TFEU to establish a causal link between the absence of adequate childcare and the interference with the effective exercise by a Union citizen of his or her free movement rights, and the appellant will need to demonstrate, by the provision of reliable evidence, that genuine and reasonable steps have been taken to obtain alternative childcare provision.

Oksuzoglu (EEA appeal - "new matter") [2018] UKUT 385 (IAC) (17 October 2018)

(1) By virtue of schedule 2(1) of the Immigration (EEA) Regulations 2016 ('the 2016 Regs') a "new matter" in section 85(6) of the Nationality, Immigration and Asylum Act 2002 includes not only a ground of appeal of a kind listed in section 84 but also an EEA ground of appeal.

(2) The effect of the transitory and transitional provisions at schedules 5 and 6 of the 2016 Regs is as follows:

(a) All decisions made on or after 1 February 2017 are to be treated as having been made under the 2016 Regs, whatever the date of the application;
(b) Regulation 9 of the 2016 Regs applies (through the medium of the transitory provisions) to all decisions made on or after 25 November 2016 whatever the date of the application;
(c) In all other respects the Immigration (EEA) Regulations 2006 apply if (i) the application was made before 25 November 2016 and (ii) the decision was made before 1 February 2017.

Prathipati, R (on the application of) v Secretary of State for the Home Department (discretion - exceptional circumstances) [2018] UKUT 427 (IAC) (26 October 2018)

1) The Secretary of State has a discretion to allow an application for leave to remain to succeed even if made outside the 28 day period of grace referred to in paragraph 319C(j) of the Immigration Rules, provided that supporting evidence of exceptional circumstances is produced at the same time as making the application. The temporal requirement must, to avoid unfairness and absurdity, be read as subject to the caveat that it cannot rigidly be applied if ignorance of what constitutes the exceptional circumstances makes it impossible to comply with that requirement.

2) The efficacy of administrative review as an alternative remedy to judicial review depends on the ability of reviewers to detect and reverse decisions flawed by error at the initial stage. The more narrowly the remedy is circumscribed, the greater the risk that it may fail to do so.

November

AMA (Article 1C(5) - proviso - internal relocation) [2019] UKUT 11 (IAC) (12 November 2018)

(1) The compelling reasons proviso in article 1C(5) of the 1951 Refugee Convention, as amended, applies in the UK only to refugees under article 1A(1) of the Convention.

(2) Changes in a refugee's country of origin affecting only part of the country may, in principle, lead to cessation of refugee status, albeit it is difficult to see how in practice protection could be said to be sufficiently fundamental and durable in such circumstances.

(3) The SSHD's guidance regarding the role of past persecution can not in itself form a lawful basis for finding that removal would lead to a breach of the Refugee Convention, given the limited appeal rights at section 82 of the Nationality, Immigration and Asylum Act 2002, as amended and SF and others (Guidance - post-2014 Act) Albania [2017] UKUT 120 (IAC) 10 when read in its proper context.

FB & Anor, R (on the application of) v Secretary of State for the Home Department (removal window policy) [2018] UKUT 428 (IAC) (1 November 2018)

The Secretary of State's "removal window" policy, as set out in Chapter 60 of the General Instructions of 21 May 2018, was, as a general matter, compatible with access to justice but was legally deficient, both in its treatment of cases where a removal window is deferred and in the lack of information regarding place and route of removal.

Safi & Ors (permission to appeal decisions) [2018] UKUT 388 (IAC) (13 November 2018)

(1) It is essential for a judge who is granting permission to appeal only on limited grounds to say so, in terms, in the section of the standard form document that contains the decision, as opposed to the reasons for the decision.
(2) It is likely to be only in very exceptional circumstances that the Upper Tribunal will be persuaded to entertain a submission that a decision which, on its face, grants permission to appeal without express limitation is to be construed as anything other than a grant of permission on all of the grounds accompanying the application for permission, regardless of what might be said in the reasons for decision section of the document.

December

Amsar (Isle of Man: free movement) [2019] UKUT 12 (IAC) (18 December 2018)

(1) The Isle of Man and the Channel Islands are not part of the United Kingdom and have only a very limited legal relationship with the European Union.

(2) An EU national who works on the Isle of Man is not thereby exercising EU rights of free movement for the purposes of the Immigration (EEA) Regulations 2006.

HB (Kurds) Iran (illegal exit: failed asylum seeker) CG [2018] UKUT 430 (IAC)

(1) SSH and HR (illegal exit: failed asylum seeker) Iran CG [2016] UKUT 308 (IAC) remains valid country guidance in terms of the country guidance offered in the headnote. For the avoidance of doubt, that decision is not authority for any proposition in relation to the risk on return for refused Kurdish asylum-seekers on account of their Kurdish ethnicity alone.
(2) Kurds in Iran face discrimination. However, the evidence does not support a contention that such discrimination is, in general, at such a level as to amount to persecution or Article 3 ill-treatment.
(3) Since 2016 the Iranian authorities have become increasingly suspicious of, and sensitive to, Kurdish political activity. Those of Kurdish ethnicity are thus regarded with even greater suspicion than hitherto and are reasonably likely to be subjected to heightened scrutiny on return to Iran.
(4) However, the mere fact of being a returnee of Kurdish ethnicity with or without a valid passport, and even if combined with illegal exit, does not create a risk of persecution or Article 3 ill-treatment.
(5) Kurdish ethnicity is nevertheless a risk factor which, when combined with other factors, may create a real risk of persecution or Article 3 ill-treatment. Being a risk factor it means that Kurdish ethnicity is a factor of particular significance when assessing risk. Those "other factors" will include the matters identified in paragraphs (6)-(9) below.
(6) A period of residence in the KRI by a Kurdish returnee is reasonably likely to result in additional questioning by the authorities on return. However, this is a factor that will be highly fact-specific and the degree of interest that such residence will excite will depend, non-exhaustively, on matters such as the length of residence in the KRI, what the person concerned was doing there and why they left.
(7) Kurds involved in Kurdish political groups or activity are at risk of arrest, prolonged detention and physical abuse by the Iranian authorities. Even Kurds expressing peaceful dissent or who speak out about Kurdish rights also face a real risk of persecution or Article 3 ill-treatment.
(8) Activities that can be perceived to be political by the Iranian authorities include social welfare and charitable activities on behalf of Kurds. Indeed, involvement with any organised activity on behalf of or in support of Kurds can be perceived as political and thus involve a risk of adverse attention by the Iranian authorities with the consequent risk of persecution or Article 3 ill-treatment.
(9) Even 'low-level' political activity, or activity that is perceived to be political, such as, by way of example only, mere possession of leaflets espousing or supporting Kurdish rights, if discovered, involves the same risk of persecution or Article 3 ill-treatment. Each case however, depends on its own facts and an assessment will need to be made as to the nature of the material possessed and how it would be likely to be viewed by the Iranian authorities in the context of the foregoing guidance.
(10) The Iranian authorities demonstrate what could be described as a 'hair-trigger' approach to those suspected of or perceived to be involved in Kurdish political activities or support for Kurdish rights. By 'hair-trigger' it means that the threshold for suspicion is low and the reaction of the authorities is reasonably likely to be extreme.

SM & Ors, R (on the application of) v Secretary of State for the Home Department (Dublin Regulation - Italy) [2018] UKUT 429 (IAC) (4 December 2018)

(1) Subject to paragraph (2) below, on the evidence before the Upper Tribunal, no judge of the First-tier Tribunal, properly directed, could find there is a real risk of an asylum seeker or Beneficiary of International Protection (BIP) suffering Article 3 ill-treatment if returned to Italy pursuant to the Dublin Regulation, by reason only of the situation that the person concerned may be reasonably likely to experience in Italy, as a "Dublin returnee". The evidence does not rebut the general presumption that Italy will comply with its international obligations in such cases.
(2) However, the evidence before the Upper Tribunal is markedly different from that previously considered by the High Court in "Dublin" cases concerning Italy, such that it cannot, without more, be said a human rights claim based on Article 3 is bound to fail, if the claim is made by a 'particularly vulnerable person' (as described in paragraph (3) below).
(3) The categories of "vulnerable persons" identified in the Reception Directive are a starting point for assessing whether a person has a particular vulnerability for the purposes of this paragraph. The extent of a person's particular vulnerability must be sufficiently severe to show a potential breach of Article 3. It is difficult to specify when a particular vulnerability might require additional safeguarding to protect a person's rights under Article 3. The assessment will depend on the facts of each case. However, a person who makes general assertions about mental health problems without independent evidence or who has been diagnosed with a mild mental health condition or has a minor disability may have sufficient resilience to cope with the procedures on return to Italy, even if it entails the possibility of facing a difficult temporary period of homelessness or basic conditions in first-line reception facilities. There will be cases where a person's particular vulnerability is sufficiently serious that the risk of even a temporary period of homelessness or housing in the basic conditions of first-line reception might cross the relevant threshold. Such cases are likely to include those with significant mental or physical health problems or disabilities. Other people may have inherent characteristics that render them particularly vulnerable e.g. unaccompanied children or the elderly.
(4) In the case of a 'particularly vulnerable person', the following considerations apply:
(i) A failure by the respondent to consider whether to exercise discretion under article 17(2) of the Dublin Regulation is likely to render the certification decision unlawful;
(ii) If the respondent considers whether to exercise such discretion but decides not to do so, the return and reception of the person concerned will need to be well-planned. Although the Italian authorities would not want to leave a particularly vulnerable asylum seeker or BIP without support, the evidence indicates that there is no general process, similar to that which exists for families with children, to ensure that particularly vulnerable persons will not be at real risk of Article 3 treatment, while waiting for suitable support and accommodation, of which there is an acute shortage. In order to protect the rights of such a person in accordance with the respondent's duties under the European Convention, the respondent would need to seek an assurance from the Italian authorities that suitable support and accommodation will be in place, before effecting a transfer.
(iii) It follows that a failure to obtain such an assurance prior to the transfer of a particularly vulnerable person is likely to give rise to a human rights claim that is not necessarily 'bound to fail' before the First-tier Tribunal.